

(1978) 04 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases No's. 403, 480, 491, 503, 504, 506, 513, 516, 518, 540, 570 and 593 of 1978

Krishna Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-04-1978

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 29, 388A, 389, 389A
Bihar Municipal (Amendment) Ordinance, 1978 — Section 3, 4, 4(1)
Constitution of India, 1950 — Article 14, 171(4), 246, 254
Representation of the People Act, 1950 — Section 27, 27(2)

Citation : AIR 1978 Patna 267 : (1978) 26 BLJR 521

Hon'ble Judges : K.B.N. Singh, C.J.;Shambhu Prasad Singh, J;P.S. Sahay, J;Medini Prasad Singh, J;Hari Lal Agrawal, J

Bench : Full Bench

Advocate : B.C. Ghose, Yogendra Mishra and Anil Kumar Sinha, in C.W.J.C. Nos. 503 and 504 of 1978, Balbhadra Prasad Singh and Rajeshwar Dayal, in C.W.J.C. No. 540 of 1978, Basudeo Prasad Rana Pratap Singh, No. 2 and Sheoji Prasad, in C.W.J.C. No. 518 of 1978, P.S. Mishra, Rajendra Prasad Singh, Arun Kumar Singh and T.N. Jha, in C.W.J.C. Nos. 403, 480, 491, 513, 516, 570 and 593 of 1978, Kamlapati Singh and Braj Kishore Singh, in C.W.J.C. No. 506 of 1978, for the Appellant; K.D. Chatterji, Gen., S.B.N. Singh, Govt. Pleader No. 2., Md. Khaleel, Govt. Pleader, No. 3, R.B. Mahto, Govt. Pleader No. 4, K.N. Singh, Standing Counsel No. 4, H. Anzar, (J.C.), Iqbal Ahmad, (J.C.), Basant Kumar Singh, (J.C.), Arun Kumar Singh, (J.C.), Narabadeshwar Pd. Singh, (J.C.), B.N.P. Gupta, (J.C.), A.P. Singh, (J.C.), Harendra Prasad, (J.C.), Ashotosh Jha, (J.C.), R.C. Sinha, (J.C.), J.D. Singh, (J.C.), H.K. Thakur, Standing Counsel No. 3 and Uday Shankar Sharan Singh, (J.C.), for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, C.J.—The petitioners in the twelve writ applications have challenged the vires of the Bihar Municipal (Amendment) Ordinance, 1978 (hereinafter to be referred to as "the Ordinance"), and, with consent of the parties, they have been heard together and are being disposed of by this

common order. The main attack is on Section 4 of the said Ordinance, by virtue of which, on promulgation of the Ordinance on the 16th February, 1978, the members and office bearers of all the Notified Area Committees, including the petitioners, ceased to hold their respective offices.

2. The petitioners in all these writ applications are members and office bearers of twelve Notified Area Committees, namely, (1) Futwah, (2) Kasha, (3) Masaurhi, (4) Janakpur, (5) Dumra, (6) Behea, (7) Narkatiaganj, (8) Rajgir, (9) Mahnar, (10), Dalsingsarai, (11) Hussaini-bad and (12) Hilsa. The Notified Area Committees were established for the aforesaid places by notifications issued from time to time u/s 388 of the Bihar and Orissa Municipal Act (hereinafter referred to as "the Act") by the State Government. Some of them are old ones having been established as early as in 1937, such as, Dumra Notified Area Committee, while others are of comparatively recent origin. It is not necessary to state the details as to their establishment and constitution as given in the respective writ applications. Suffice it to refer, briefly, to the facts of the first case, namely, C. W. J. C. No. 403 of 1978, which relates to Futwah Notified Area Committee, to bring home the questions raised in all these writ applications, inasmuch as the petitioners in all these writ applications were nominated as members or Commissioners of their respective Notified Area Committees more or less during the said period (late 1973 to early 1977) and the petitioners have not run out the tenure of five years to which they claim to be entitled by virtue of Section 29 of the Act, which the petitioners allege has been arbitrarily terminated and cut short by 2 to 3 years by the Ordinance. The Ordinance has also put a restriction on the number of members that could be appointed in a Notified Area Committee on the basis of population between 10,000 and 20,000, which ordinarily used to be 40 in the case of each Notified Area Committee, thus reducing the number of membership of a Notified Area Committee.

3. The petitioners grievance in C. W. J. C. No. 403 of 1978 as also in other writ applications is that the election of the members of the Bihar Legislative Council, representing the local bodies, is due to be held in April 1978 and the petitioners being members of the Notified Area Committee are voters of the Electoral College of the Bihar Legislative Council representing the local authorities constituency a right of which they have been arbitrarily deprived by mala fide and colourable exercise of power under the Ordinance. The petitioners have filed a copy of the Ordinance as Annexure "2". A copy of the Gazette Notification dated the 21st March, 1968, constituting Futwah Notified Area Committee u/s 388 of the Act and also applying, u/s 389 (a), certain provisions of the Act has been filed as Annexure "3". In all the writ applications the parties have proceeded on the footing that in the case of other Notified Area Committees also those very provisions of the Act, or at any rate, those relevant for our consideration, have been made applicable. By a supplementary affidavit the petitioners (of C. W. J. C. No. 403 of 1978) have alleged that the Ordinance was issued with ulterior motive to remove the petitioners and other members of the Notified Area Committee who were appointed by the previous Government in

power, namely, the Congress Government. The "mala fide in law is further envisaged in the conduct" of the Government of Janta Party headed by Sri Karpoori Thakur on the eve of the election of the members of the Bihar Legislative Council representing the local bodies by introducing a law in the Act to nominate new members in place of the existing members who may support the candidate of the party in power for election in the legislative council and the whole motive behind the move was political in nature. Another Supplementary affidavit was filed on the 10th March, 1978 wherein it has been asserted that the Ordinance is violative of Article 14 of the Constitution on the ground that it is discriminatory between the sitting members of the Notified Area Committee and the members who may be appointed in their place.

4. The State filed a counter affidavit in C. W. J. C. No. 403 of 1978 denying the allegation of mala fide and asserting that the Ordinance in question has been made with a view to rationalise the constitution of the Notified Area Committees and to remove certain anomalies. The State served its copy on learned counsel for the petitioners in nil the writ applications with a prayer to treat it as a counter affidavit in all the applications to avoid any delay in hearing of the writ applications.

5. Mr. B. C. Ghose has appeared in C. W. J. C. No. 504 of 1978 Mr. Basudeva Prasad has appeared in C. W. J. C. No. 518 of 1978, Mr. Balbhadra Prasad Singh has appeared in C. W. J. C. No. 540 of 1978 and Mr. Prabha Shankar Mishra has appeared in C. W. J. C. Nos. 403, 480, 491, 513, 516, 570 and 593 of 1978. Learned counsel appearing in the other writ applications have adopted the arguments of learned counsel in the aforesaid applications.

6. The three main submissions made by learned counsel in these writ applications are the following:

(1) Section 4 of the Ordinance is violative of Article 14 of the Constitution.

(2) Section 4 of the Ordinance, which terminates the membership of the petitioners is repugnant to and is in direct conflict with Section 29 of the Act and takes away the vested right of the petitioners to continue in office for a period of 5 years and is unconstitutional.

(3) Section 4 of the Ordinance is repugnant to Section 27 of the Representation of the People Act.

7. Mr. Ghose has submitted that the Ordinance makes provision based on Population for classification of municipal bodies i. e. into municipality and notified area committee for the purpose of municipal administration which is without any rational basis having no nexus with the object of municipal administration and is violative of Article 14 of the Constitution. He has urged that raising the number of inhabitants from 5000 to 20000 of a town for constitution of a Municipality and fixing the minimum number of inhabitants at 10,000 and a maximum of 20,000 for establishing a Notified Area Committee by Sections 2 and 3 of the Ordinance

has no rational basis and has no nexus with the object of the Act, namely, to provide municipal administration. The result will be that the towns having a population less than 20,000 will go without any municipality and those below 10,000 without Notified Area Committee and thus denied the benefit of municipal administration as provided under the Act and these provisions are discriminatory and offend against Article 14. He has also urged that on that ground the entire Ordinance can be challenged as ultra vires Article 14. The basis of the argument of Mr. Ghose is that a town having a population of 5000 and above and satisfying the other conditions laid down in Section 4, before the Ordinance, had a vested right to have the benefit of municipal administration and the increase in the number of inhabitants from 5000 to 20000 is arbitrary and without any nexus with the object sought to be achieved by the Ordinance. Mr. Ghose has urged that though the expression used in Section 4 is that the State Government "may" declare its intention to constitute such town as fulfils the requirements of Section 4 into a Municipality, the expression "may" means "shall" as it is for public good and the power is not discretionary but obligatory. He has relied on a decision of the Supreme Court in the case of Sardar Govindrao and Others Vs. State of Madhya Pradesh, , and the off-quoted lines of Maxwell on the Interpretation of Statutes (as quoted in the aforesaid decision of the Supreme Court), that in such circumstances, may mean "shall", and has the force of compulsion. The scheme of the Act, to which I shall refer hereinafter, is against Mr. Ghose's contention that the power conferred u/s 4 of the Act on the State Government is obligatory and not discretionary. Where the legislative intent is clear that the power is discretionary, it will not make it obligatory merely because ultimately a section of the people happens to be bene-fitted. Relevant portion of Section 4 of the Act, as it stood before its amendment by the Ordinance, authorising the State Government to declare its intention to constitute or alter limits of municipality, may usefully be quoted :--

"(1) (a) When the State Government is satisfied that three fourths of the adult male population of any town are engaged on pursuits other than agricultural and that such town contains not less than five thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town, the State Government may declare its intention to constitute such town, together with or exclusive of any railway station, village, land or building in the vicinity of such town, municipality, and to extend to it all or any of the provisions of this Act. "(b) When the State Government is satisfied that any municipality, or any area in a municipality, does not fulfil the conditions specified in Clause (a) or when the Commissioners at a meeting have made a recommendation in this behalf, the State Government may declare its intention to withdraw such municipality from the operation of this Act or to exclude such area from such municipality.

* * *

Section 5 provides for filing objection by any inhabitant of the town or area or

any rate-payer of the Municipality concerned to Government's declaration within six weeks from the date of publication of the declaration u/s 4 for consideration of the Government. After consideration of the objection, the State Government may pass final orders as laid down in Section 6, which runs as follows :--

"6. Constitution, abolition or alteration of limits of a municipality -

The State Government may, thereupon, by notification- (a) constitute the town or any specified part thereof a municipality and extend to it all or any of the provisions of this Act, or

(b) withdraw the whole area comprised in the municipality from the operation of this Act, or

(c) include the local area or any part thereof in the municipality or exclude it therefrom, or

(d) subdivide the municipality into two or more municipalities, or unite the municipalities as the case may be." On a bare reading of the aforesaid provisions it is apparent that there is no compulsion on the State to issue a notification u/s 4 declaring its intention to constitute a municipality the moment the three conditions laid down in Section 4 (1) (a), namely, (1) three-fourths of the adult male population of any town are engaged on pursuits other than agricultural (2) such town has not less than 5000 inhabitants, and (3) an average number of inhabitants in the town is not less than 1000 inhabitants per square mile, are satisfied.

8. The provision for filing of an objection by the citizens u/s 5 militates against the provision of Section 4 being mandatory inasmuch as after considering such an objection the Government u/s 6 has ample power to take a decision whether to constitute or not to constitute a municipality, may be on the objection of the inhabitants of the town, although the conditions may be satisfied. The provision of Section 6 (b), which authorises the State Government to withdraw by notification the whole area comprised in the municipality from the operation of the Act on the recommendation of the Commissioners, is also very significant. It is not that all the provisions of the Act ipso facto apply to a municipality but only such of them as are made applicable to it u/s 7. Section 10 also is important inasmuch as it lays down that when the whole area comprised in a municipality is withdrawn from the operation of the Act by a notification published u/s 6 of this Act and all rules and bye-laws shall cease to apply to such area. Section 11 authorises the State Government to exempt a municipality from the provisions of this Act unsuited to it on the recommendation of the Commissioners. It is thus manifest that the Act gives ample discretion to the State Government in matters of creation of municipality and as also to the provisions that could be made applicable to a municipality. In such circumstances it will be difficult to hold that merely because the establishment of municipality may be beneficial to the inhabitants it must necessarily be held to be mandatory de hors the other provisions of the Act. It may be relevant to point out in this connection that the

preamble of the Act has not cast any such obligation, it purports to consolidate and amend the law relating to the Municipalities in the State of Bihar. In my considered opinion, therefore, the inhabitants of any town satisfying the aforesaid three criteria as laid down in Section 4 (1) have no vested right to have a municipality. There is no question of any discrimination. Discrimination after all may be in relation to something to which one is entitled in law from which one is being debarred by change in law. The increase in the number of inhabitants from time to time from 5000 to 20000 is, therefore, not violative of Article 14 of the Constitution inasmuch as it will apply equally to all the municipalities that may have to be constituted hereinafter. The basis of increase also does not appear to be irrational inasmuch as what was considered to be a good number for a town to qualify for declaring it to be a Municipality in 1922 is not the same in the year 1978. In this State there are many villages having 5000 inhabitants of which judicial notice can be taken. The fixing of minimum population of 10000 and maximum of 20000 for constituting a Notified Area Committee also does not appear to be irrational. It may be mentioned that the Act is conspicuously silent as to the criteria on the basis of which any area can be declared to be a Notified Area. The provisions of Section 4 were not applied to the Notified Area Committees u/s 389 (a) of the Act. Therefore, in view of my finding above, the fixing of minimum and maximum number of inhabitants of a town for establishing a Notified Area Committee is neither discriminatory nor irrational and is not violative of Article 14 of the Constitution for reasons already assigned.

9. The decision of the Supreme Court in *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, , relied upon by Mr. Ghose, itself supports the view I have taken. The expression "may" used at two places in Section 5 of the Central Provinces and Berar Revocation of Land Revenue Exemption Act, 1948, dealing with awards of money grants or pension to classes of persons, one general and the other specified, has to be differently understood in the context in which it has been used in relation to different sets of persons. The following observation from the said decision of the Supreme Court may usefully be quoted (at p. 1225) :

"The two sub-sections have to be read separately, because though the word "may" appears in both of them that word in Sub-section (3) takes its meaning from an obligation which is laid upon Government in respect of certain institutions and persons, if the stated conditions are fulfilled. The word "may" is often read as "shall" or "must" when there is something in the nature of the thing to be done which makes it the duty of the person on whom the power is conferred to exercise the power."

The power of the State Government, u/s 4 of the Act is also not meant to be exercised for the benefit of any individual or a group of individuals so that they can be said to have any vested right to it. There is nothing in the Act to indicate that what the State Government is required to do, in its very nature, makes it the duty of the State Government to exercise that power. The contention of Mr. Ghose about the Ordinance being ultra vires is without any substance.

10. Mr. Basudeva Prasad, learned counsel appearing for the petitioners in Civil Writ Jurisdiction Case No. 518 of 1978, has confined his attack to Section 4 of the Ordinance, while maintaining that it is safer to adopt Mr. Ghose's arguments also. His attack on Section 4 of the Ordinance is on three grounds, namely -

(1) colourable exercise of power of Entry No. 5 of List II of the Seventh Schedule to the Constitution, and fraud on the exercise of legislative power.

(2) arbitrary deprivation of civil rights of the petitioners to hold office as Members of the Notified Area Committee, acquired under the Notification issued u/s 29 of the Act, so ultra vires Article 14 of the Constitution,

(3) unreasonable restriction on the petitioners rights to hold office as Members of the Notified Area Committee, so ultra vires Article 19(1)(g) of the Constitution.

Mr. Prasad has, however, submitted that the second and the third grounds urged by him are dependent on his first submission.

11. The first submission of Mr. Prasad that Section 4 of the Ordinance is a colourable exercise of power under Entry No. 5 of List II of the Seventh Schedule to the Constitution and is a covert piece of legislation, is based on the assumption that the Ordinance is prospective and not retrospective. It may be mentioned that the learned Advocate General appearing for the respondents quite fairly conceded that the Ordinance is prospective and not retrospective, at the same time maintaining that the Government is not contemplating to abolish any of the Municipalities or the Notified Area Committees already functioning, as that may adversely affect those who have been enjoying the advantages of Municipal administration. If it is prospective, then, according to Mr. Prasad, Section 4 is out of context and the Ordinance is really one provision Act, containing Section 4, made with the sole purpose that the petitioners may quit their office its other provisions being merely eye wash. The purpose really is not to amend the Act, but to make provision so that the petitioners. who were nominees of the then Government in power, namely, the Congress Government, should go and the present Government be in a position to induct new members, who may support it in electing members to the Bihar Legislative Council from the local bodies constituency, comprising of the Notified Area Committees. The Ordinance is a short one and consists of only four sections. Section 2 amends Section 4 (1) (a) of the Act and raises the minimum number of inhabitants for the purpose of constitution of a Municipality from five thousand to twenty thousand. Section 3 incorporates a new Section 388-A in the Act and reads as follows :--

"388-A. Criteria for the Constitution of a Notified Area Committee -- (1) A notified area may be constituted when the State Government is satisfied that conditions as laid down in Section 4 of the Act exist in any town having a population not less than ten thousand inhabitants and not more than twenty thousand inhabitants.

Provided that nothing in this section shall apply to any sub-divisional headquarter town and towns having an industrial complex.

(2) Every Notified Area Committee shall have non-official members at the rate of one for every one thousand inhabitants, but in no case it shall have less than ten and more than twenty non-official members. In case of the first constitution of the Notified Area Committee, the non-official Members shall be appointed by the State Government from the inhabitants of the area and in case of the subsequent constitution of a Notified Area Committee, the appointment shall be made from those inhabitants who are tax payers.

(3) Every district headquarter town shall have a Municipality, irrespective of the conditions laid down in Section 4 of the Act or in Sub-section (1) above."

Section 4 of the Ordinance, which Mr. Prasad has challenged, is as follows:--

"4. Vacation of office by Members, Vice-Chairman and Chairman of the existing Notified Area Committees) After the promulgation of this Ordinance, the Members, Vice-Chairman and Chairman of the existing Notified Area Committees shall cease to hold their respective offices."

The question, therefore, is whether the provision contained in Section 4 of the Ordinance is a colourable exercise of legislative power and is a covert piece of legislation ? As to what is meant by "colourable exercise of power" is well settled by decision of the Supreme Court in the case of K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, , in the light of which the provisions of the Ordinance have to be considered. Relevant portions from the said decision may usefully be reproduced:-- (at p. 379)

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of "bona fides" or "mala fides" on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power, vide Cooley's Constitutional Limitations Vol. I, p. 379."

If the constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although

apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J., in *Attorney General for Ontario v. Reciprocal Insurance* 1924 AC 328;

"Where the law making authority is of a limited or qualified character, it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what is that the legislature is really doing,"

12. It will be relevant at this stage to refer to the counter affidavit filed on behalf of the State of Bihar in Civil Writ Jurisdiction Case No. 403 of 1978, in which it is asserted that the object of the Ordinance is to rationalise the constitution of the Notified Area Committees and to remove certain existing anomalies. In Paragraphs Nos. 7 and 8 of the counter affidavit it is stated that the Notified Area Committees, hitherto, had been haphazardly created, without any regard to the size of the population of the area in question, and it was necessary to lay down some principles based on certain size of population, most of the Notified Area Committees had as many as 40 members, irrespective of the size of the population of the area and members were nominated without any principle, and even non-residents had been nominated. Many of the Municipalities, having much larger population say, a lac, had only 30 members, while the Notified Area Committees, having a population of nearly five thousand had 40 members. It was to remove all these anomalies and to rationalise the constitution of the Notified Area Committees that the Ordinance has been promulgated and not with any ulterior purpose, Although, u/s 388 the State Government has to declare by a notification that it is necessary to make administrative provisions for all or any of the purposes of the Act in any area, and, u/s 389 to apply to such a Notified Area any provision of the Act which may be applicable to a Municipality, the Act itself does not provide any guide for creation or constitution of a Notified Area. In the Act, there is no provision dealing with the minimum number of inhabitants necessary for constitution of a Notified Area Committee or other requisites as laid down in Section 4 of the Act in relation to a Municipality, for declaration of any area to be a Notified Area, nor has the provision of Section 4 been made applicable by adaptation to a Notified Area. The requisite population for declaring a town into a Municipality, as envisaged u/s 4 of the Act, per se, could not be adopted for the purpose of constituting any area into a Notified Area, as in that case there would have been no difference between a Municipality and a Notified Area, the two authorities being not of the same grade a Municipality obviously ranks higher than a Notified Area Committee. In this background, the incorporation of a new Section 388-A, applying the same criteria as laid down in Section 4 of the Act, for constitution of a Notified Area Committee for a town having a lesser population than required for a Municipality, i.e. below 20,000 and not less than 10,000 seems to be obviously for removing the lacuna that remained in the Act for the purpose of constitution of a Notified Area Committee and it cannot be said to be an irrelevant matter. Similarly, the provision u/s 388

(2) of the Act, for one member for every 1000 inhabitants with a limit of not less than ten members and not more than twenty, is with a view to rationalise the membership of the Notified Area Committees, which was in a chaotic state, the Notified Area Committees, undisputedly, having, in most cases, much larger number of members than many of the Municipalities, This will bring the membership of the Notified Area Committees on the same line and will be on par with the Municipalities. As a matter of fact, these lacunae in the Act with regard to the constitution of the Notified Area Committees came in, before this Court, for adverse criticisms in writ cases against the Government in power from time to time, when they purported to create a Notified Area Committee where none was needed and packed it with large number of members, leaving room for criticisms that it was done for ulterior purposes. It is high time that the constitution and composition of such Municipal bodies which are said to be the nurseries of democracy, be so regulated as to be above suspicion, so as to attract citizens' co-operation and their involvement in such bodies to a greater extent. The towns at the Subdivisional and District Headquarters, for the purpose of constituting them into Notified Area Committees or Municipalities, are immune from the fetters of Sections 388 and 289 of the Act. The District town and the subdivisional towns are class by themselves and their separate classification cannot be said to be irrational as, in view of their position, they have a tendency to grow and for their planned growth and sanitation the existence of a Municipality or a Notified Area Committee in such towns becomes necessary.

13. There seems to be substance in the contention of the learned Advocate General that Section 4 of the Ordinance providing for the termination of the tenure of the Members, Vice-Chairman and Chairman of the existing Notified Area Committees, is with a view to give effect to the rationalisation brought in by the Ordinance with regard to the Membership of the Notified Area Committees. Analysing the provisions of Section 4 of the Ordinance, it is apparent that it does not stand in isolation, but is there to effectuate the purpose behind incorporation of Section 388-A of the Act and to rationalise the constitution of the Notified Area Committees. Entry 5 of List II of the Seventh Schedule to the Constitution reads as follows:

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

The provision contained in Section 4 of the Ordinance, dealing with the termination of the membership of the Notified Area Committees is a matter relevant to the "constitution" of the Notified Area Committees and will be clearly within the legislative ambit and is not a colourable exercise of power or a colourable legislation. Colourable legislation, in terms of the decision of the Supreme Court reported in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, will be that where legislation is ostensibly under one or other of the

powers conferred by the Constitution, but, in truth and substance, not falling within the ambit of that power, and, therefore, unconstitutional. That is not so in the instant cases. The termination of the tenure of the membership is inextricably linked with the other provisions of the Ordinance, aimed at rationalisation of the membership of the notified Area Committees and is with a view to effectuate its purpose in instanti. Such a provision cannot be said to be a colourable exercise of legislative power. There is thus no substance in the first contention of Mr. Prasad.

14. The first contention raised by Mr. Prasad having failed, his other two contentions being dependent on the first, as urged by him, have also to be rejected. But, all the same, as those contentions were raised, they be answered in short, With regard to the second point Mr. Prasad has urged that u/s 29 of the Act the petitioners were entitled not only to continue as members for a period of five years, but also, under the proviso to Sub-section (2) for a further period of six months, which can be extended to another period of six months, and this period could not be reduced by Section 4 of the Ordinance, as that would amount to arbitrary deprivation of a civil right of the petitioners to hold office u/s 29 of the Act, and, therefore, ultra vires of Article 14 of the Constitution. Section 29 of the Act has been applied to a notified area committee by virtue of a notification issued u/s 389 (a) of the Act. The petitioners have been appointed as members by notifications issued u/s 389 (c) of the Act. That the State Government has power to withdraw the notifications appointing the petitioners as members and to issue another notification appointing some other set of persons cannot be doubted in view of the observation of the Supreme Court in the case of Ramji Prasad Singh Vs. Ram Bilas Jha and Others, . The petitioners have, therefore, no vested right. Section 29 itself is subject to the other provisions of the Act and can be validly terminated by a valid piece of legislation, such as Section 4 of the Ordinance. I will refer to this aspect of the matter in some details while considering the submission of Mr. Prabha Shankar Mishra on the point of repugnancy of Section 4 of the Ordinance with Section 29 of the Act.

15. The third point raised by Mr. Easudeva Prasad is that Section 4 of the Ordinance puts an unreasonable restriction on the right of the petitioners to hold the office of Commissioners and so ultra vires of Article 19(1)(g) of the Constitution. He has urged that the office of Commissioners was "occupation" within the meaning of the said Article and has relied on a decision of the Andhra Pradesh High Court in the case of P.V.G. Raju (Rajah of Vizianagaram) Vs. Commissioner of Expenditure-tax, , In that case the question was whether the amount spent for election of the petitioner and for candidates set up by him could be debited for having been incurred for carrying on any "vocation or occupation" and on the facts of that case it was held that P. V. G. Raju, who was the Chairman of the State Socialist Party, had taken up politics as a career. It was also held therein that an occasional excursion into the political arena was, of course, not enough. No such averment has been made in C. W. J. C. No. 518 of 1978 about the petitioners who are all nominated by Government having taken

politics as a career. The question, therefore of infringement of any right under Article 19 of the Constitution does not arise.

16. Mr. Prabha Shanker Mishra, learned counsel, who appears on behalf of the petitioners in Civil Writ Jurisdiction cases Nos. 403, 480, 491, 513, 516, 570 and 593 of 1978, has submitted that Section 4 of the Ordinance is violative of Article 14 of the Constitution, inasmuch as it discriminates between the present members and the future members of the Notified Area Committees that may be appointed hereafter, to form one class, and there is no intelligible differentia nor any reasonable nexus for such a discrimination. He has submitted that while the petitioners, who have not completed the tenure of five years, are made to go, those who would be appointed in their place would continue for a term of five years, as the notification issued u/s 389 of the Act, applying Section 29, still holds good and has not been so far withdrawn. Mr. Mishra has placed strong reliance on the decision of the Supreme Court in the case of *Dinnapati Sadasiva Reddi v. Chancellor, Osmania University* AIR 1967 SC 1305 in support of his contention.

17. The true scope of Article 14 of the Constitution has been fully explained by the Supreme Court in the case of *Western M.P. Electric Power and Supply Company Ltd. Vs. State of U.P. and Another*, which is followed in its subsequent decisions. What Article 14 prohibits is denial to any person equality before law and it also prohibits denial of equal protection of the laws. But all the same this does not mean that the law must equally apply to every one. What it means is that it must apply equally amongst equals, that is to say, between persons similarly placed or situated. The first question, therefore, that falls for consideration, is when, Article 14 of the Constitution is invoked, whether the persons between whom discrimination is alleged fall within the same class. The observations of Shah J. in this regard in the case of *Western M.P. Electric Power and Supply Company Ltd. Vs. State of U.P. and Another*, may usefully be reproduced (at p. 24) :--

"Article 14 of the Constitution ensures equality among equals, its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the subject sought to be achieved by the Law."

It follows, therefore, that in order to avail of the aid of Article 14 of the Constitution and establish discrimination, the petitioners have to establish that the impugned Section 4 of the Ordinance is discriminatory and the following things must be established:

(a) That the petitioner is a person or a group of persons similarly situated to another persons or group of persons; and,

(b) That so far as the petitioners and the other persons are concerned, the application of the impugned law is more favourable or different than the law which works to the prejudice of the petitioners as compared to those who are their equals.

Judged in the aforesaid background the question that falls for consideration is whether the petitioners were sought to be removed by virtue of Section 4 of the Ordinance and the future members, who may be inducted to the Notified Area Committees, are similarly situated, so as to hold that it differentiates between the present members and the future members of the Notified Area Committees and it has singled out the petitioners for unfavourable treatment. As already pointed out, Section 29 of the Act, per se, does not apply to a Notified Area Committee. It fixes the tenure of the Commissioners of a Municipality and not of the members of a Notified Area Committee. The State Government has applied its provisions by adaptation by a notification issued u/s 389 (1) of the Act. The said notification can be withdrawn by the State Government any moment and may or may not apply to future appointees and their tenure of appointment may be completely different. Judged in this background, the present members of the Notified Area Committees and those who may be appointed in future cannot be said to belong to one class. All the members of the present] Notified Area Committees cease to hold office in view of Section 4 of the Ordinance and no one has been singled out of this group, so as to allege any discrimination amongst them, and fresh appointments can be made according to the new principle, as envisaged u/s 388A of the Act as to their number and composition, based on the principles envisaged thereunder. This does not involve singling out any one, leaving others untouched, nor does it amount to any classification amongst the members of the different Notified Area Committees, who are made to quit. Classification means segregating a group from a larger group. No such thing has happened in the instant cases. The whole lot of the members appointed by the State Government go out in view of the legislation. There is no question of any discrimination inter se being involved. In the alternative, even if the present members and the future members are held to belong to the same class Section 4 of the Ordinance is not discriminatory, and can well be held to be valid. What Article 14 of the Constitution forbids is a class legislation, but it does not forbid a reasonable classification. Such a classification to be valid must satisfy two conditions, namely, that it must be founded on the basis of intelligible differentia which distinguishes a person or group of persons that are grouped together from others left out of that group, and it must be in accord with the objects sought to be achieved, as laid down in the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . As already held, Section 4 of the Ordinance has a rational relation with the object sought to be achieved by the Ordinance, and, as a matter of fact, Section 4 is an essential preliminary step for the purpose of rationalisation of membership and representation in a Notified Area Committee, as contemplated u/s 388A of the Act, incorporated by Section 3 of the Ordinance. Looked at from any point of view, Section 4 of the Ordinance cannot be held to

be violative of Article 14 of the Constitution.

18. That decision in the case of D. S. Reddi AIR 1967 SC 1305, relied on by Mr. Mishra, is clearly distinguishable. In that case, D. S. Reddi, the then Vice-Chancellor of the Osmania University, who was re-appointed as the Vice-Chancellor in April, 1964, would have continued for a term of five years under the Osmania University Act, 1959. This term was reduced under the Osmania University (Amendment) Act, 1966 (Act II of 1966), to three years, u/s 13 of the Act. Section 13 also provided that the Vice-Chancellor shall not be removed, except on the grounds of misbehaviour and incapacity, according to the procedure laid down u/s 12 (2) of the Act. Thereafter came the Osmania University (Second Amendment) Act, 1966 (Act XI of 1966), which incorporated the impugned Section 13A, which was to the effect that the person holding the office of the Vice-Chancellor of the Osmania University, immediately before the commencement of this Amending Act, would hold office until a new Vice-Chancellor was appointed u/s 12 (1) of the Act and also laid down that such an appointment would be made within 90 days of the commencement of the Second Amending Act. It was on account of Section 13-A that D. S. Reddi, who would have otherwise continued for a longer period, was made to vacate the office of the Vice-Chancellor within a period of 90 days, without there being any reasonable purpose, behind such a legislation. It was in that background that the Supreme Court observed as follows (at p. 1314) :--

"We are inclined to accept the contention of Mr. Setalvad, that there is no justification for the impugned legislation resulting in a classification of the Vice-Chancellors into two categories, viz., the appellant as the then existing Vice-Chancellor and the future Vice-Chancellors to be appointed under the Act.

In our view, the Vice-Chancellor, who is appointed under the Act, or the Vice-Chancellor who was holding that post on the date of the commencement of the second Amendment Act, form one single group or class. Even assuming that the classification of these two types of persons as coming under two different groups can be made, nevertheless it is essential that such a classification must be founded on an intelligible differentia which distinguishes the appellant from the Vice-Chancellor appointed under the Act. We are not able to find any such intelligible differentia on the basis of which the classification can be justified." It may also be relevant, in this regard, to refer to the following observations of the Supreme Court made in that decision :

"..... the differentia adopted in Section 13-A and directed as against Appellant -- and the appellant alone--cannot be considered to have a rational relation to the object sought to be achieved by the second Amendment Act."

The position in the instant cases, as already held, is completely different.

19. The other contention of Mr. Prabha Shanker Mishra, about Section 4 of the Ordinance being invalid on the ground of its direct conflict with Section 29 of the Act and its repugnancy, may be taken up. The argument is that the membership

of the petitioners of the Notified Area Committees cannot be terminated without making necessary amendments to Section 29 of the Act and unless that is done, the petitioners tenure cannot be terminated and Section 4 of the Ordinance will be void, as being hit by Section 29 of the Act.

20. One provision of a statute cannot[be ultra vires another provision of the same statute. It is the settled principle of construction of statute that harmonious construction be given to its provisions, so as to give effect to the legislative intent as expressed in its apparently conflicting provisions. Where, however, such a harmonious construction cannot be given, as it is impossible to resolve absolute contradiction, that the question of repugnancy arises. In such a case the earlier provision will be impliedly deemed to stand repealed by the later one. Following lines from the Maxwell on Interpretation of Statutes, Eleventh Edition, page 154, may usefully be quoted :

"Consequently, if the provisions of a later Act are so inconsistent with, or repugnant to, those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later."

I have already pointed out that Section 29 of, the Act prescribes the tenure of the Municipal Commissioners and per se it does not apply to the Notified Area Committees. Section 29 has been applied by a notification issued by the State Government by adoption u/s 389A of the Act. The petitioners also have been appointed by notifications issued by the State Government u/s 389C of the Act. It cannot be disputed that the State Government has also the power to issue a second notification cancelling or recalling the appointment in appropriate cases. The tenure of the Members of the Notified Area Committees, therefore, is a precarious one. If the tenure of the petitioners would be terminated by a second notification and Section 29 of the Act will not stand as a bar to it, it is difficult to understand as to why the tenure of the petitioners could not be terminated by the Ordinance, which is as good as an Act of Legislature. Section 29 of the Act itself, while providing for the tenure of the office-bearers and the Municipal Commissioners of a Municipality, specifically makes it subject to the other provisions of the Act. The Ordinance in question has been promulgated to amend the Act. Section 29 is a general provision, dealing with tenure, while Section 4 of the Ordinance is a special provision, dealing with specific situation, as discussed above, to Nationalise the constitution of the Notified Area Committees in accordance with the present provisions. In my considered opinion, there is no inconsistency between the two provisions, as both relate to different situations. The submission of Mr. Mishra that the petitioners tenure cannot be cut down unless Section 29 is suitably amended is without any substance. Even if it would have been a case of repugnancy. Section 4 enacted for specific purpose, would have prevailed, so as to effectuate the purpose for which it was enacted. The petitioners tenure being precarious, its term cannot be longer than it lasts, I would, therefore, hold that Section 4 of the Ordinance is not invalid on this score as well.

21. Mr. Balbhadra Prasad Singh, learned counsel appearing on behalf of the petitioners in C. W. J. C. No. 540 of 1978, has urged two points, namely, (1) that Section 4 of the Ordinance, in effect, wipes out the Notified Area Committees from the Fourth Schedule of the Representation of the People Act and constitutes violation of Article 14 of the Constitution, and (2) that Section 4 of the Ordinance is repugnant to Section 27 of the Representation of People Act, 1950, a Central Act, and as such is void under Article 254 of the Constitution. Both these points can be conveniently taken up together.

22. As regards the first point, Mr. Singh has submitted that under Article 171(3) (a) of the Constitution, which deals with composition of the legislative councils out of the total number of members of the legislative council of a State one third is required to be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament by law specify. Section 27 of the Representation of the People Act deals with the preparation of electoral rolls for legislative council constituencies including local authorities constituency. Sub-section (2) of Section 27 lays down that for the purpose of elections to the legislative council of a State in any local authorities' constituency the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule. The fourth schedule in relation to Bihar mentions six local authorities, namely, Municipalities, District Boards, Cantonment Boards, Notified Area Committees, Zila Parishads and Panchayat Samitis. Mr. Singh's submission is that the effect of Section 4 of the Ordinance is to wipe out the members of Notified Area Committees, one of the local authorities, while leaving the members of the other five local authorities free to exercise the statutory right to elect or to be elected to the legislative council from the local authorities' constituency, thus depriving the petitioners and others of a statutorily protected right to participate in the election on equal basis with the other electorates of local authorities of that constituency and is tantamount to unequalising the equals which is forbidden by Article 14 of the Constitution. There is no substance in this contention of Mr. Singh. u/s 4 of the Ordinance the members of the Notified Area Committees for the time being ceased to hold office. The section does not say that fresh members will not be nominated for election to legislative council from the local authorities' constituency. The right to be included as voters in the electoral roll u/s 27 (2) of the Representation of the People Act continues so long as one is a member of the Notified Area Committee and after he ceased to be a member, the election registration officer is required to strike off the name of such a member from the electoral roll. Mr. Singh himself has conceded that the right to an elected office or the right to elect is no more than a statutory right under which a person may be installed in an office or may get the right to elect one in office. The right thus created by a statute can very well be taken away by a similar legislative enactment. Section 4 of the Ordinance, terminating the membership of the petitioners, is a valid piece of legislation and it cannot be held to be invalid

as that would also incidentally deprive them of chance of being voters of local authorities" constituency for the purpose of election to legislative council. The right to be an elector is dependent on being member of local authorities. The notified Area Committees themselves have not been wiped out as a result of Section 4 of the Ordinance or other provisions of the Ordinance as conceded by the learned Advocate General.

23. There is no repugnancy between Section 4 of the Ordinance and Section 27 of the Representation of the People Act. All that Section 4 of the Ordinance says is that the existing members of the Notified Area Committee shall vacate their office. It neither alters the Fourth Schedule of the Representation of the People Act, 1950, nor affects the manner of election as laid down in Article 171(4) of the Constitution read with the Representation of the People Act. The entire argument is based on the misconception that Section 4 of the Ordinance, in effect, deletes the Notified Area Committees from the local authorities" constituency. I must hasten to add in all fairness to Mr. Singh that he has conceded that Section 3 of the Ordinance being prospective it does not retroactively efface out of existence such of the Notified Area Committees as are not meeting the standard laid down in the newly incorporated Section 388-A in the Act. There is thus no question of repugnancy between a Central Law and a State Law so as to make the offending provisions of the State Law repugnant. Besides that, election to Legislature of a State is subject-matter of Entry 72 of List I while the Ordinance in question appertains to List II and the question of repugnancy, if any, under Article 254 could arise, only with reference to a legislation falling under the concurrent list as laid down in a majority decision of the Supreme Court in the case of Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., .

24. An argument has been advanced by Mr. Singh relying on American decisions in the cases of *Morris H. Kramer v. Union Free School District No. 15* (1969) 23 Law Ed 2d 583; *Joseph Q. Cipriano v. City of Houma* (1969) 23 Law Ed 2d 647 and *John L. Hill v. Michael L. Stone* (1975) 44 Law Ed 2d 172, that there was no compelling State interest to remove the petitioners from the membership of the Notified Area Committees and to disfranchise them so as to get over the equality clause enshrined in Article 14 of the Constitution. It is not necessary to refer in any detail to those cases as the American decisions have been rendered in view of the peculiar nature of the American Federation in which the federating States were independent States with Constitutions of their own, and a hierarchy of courts with a State Supreme Court at the apex while under the U. S. Constitution, the Federal Government is a government of enumerated powers; and Federal Courts function in the States to determine questions of federal law and questions arising under the U. S. Constitution. But this is not the position in our country. It will suffice in this regard to refer to the Constitutional Law of India by Seervai, Second Edition, at page 208, para. 9.15:

"Granted that intentional and purposeful discrimination by executive action violates equality, and entitles the person discriminated against to obtain relief

under Article 32 or 226, does it follow that if a person is in fact denied equality by executive officers, but not intentionally or purposely, that the person aggrieved should be denied the cheap and speedy remedy under Articles 32 and/or 226 ? In considering some of the situations which may arise, we have seen that the main consideration which led the U. S. Supreme Court to limit the violation of "equality under the 14th Amendment to intentional and purposeful discrimination was, that finding a denial of equality in the action of State officers, acting under State laws, would convert what were essentially State questions, to be decided by State Courts, into federal questions, to be decided by Federal Courts. For reasons given in para. 9.13 above these considerations have no relevance in India."

25. It will thus be seen that the ground of attack on Section 4 of the Ordinance, being violative of Article 14 of the Constitution, has varied from Counsel to Counsel. The argument of Mr. B. C. Ghose has been that the entire Ordinance was ultra vires, as the increase in the number of inhabitants from five thousand to ten thousand for the constitution of the Notified Area Committee or a Municipality was without any rational basis, and the Members of the Notified Area Committees suffered discrimination vis-a-vis the Commissioners of the Municipalities. The substance of the argument of Mr. Balbhadra Prasad Singh was that Section 4 of the Ordinance wipes out the Notified Area Committees from the Fourth Schedule of the Representation of the People Act, 1950, and thus violative of Article 14 of the Constitution. The contention of Mr. Prabha Shanker Mishra, on the other hand, was that the existing Members of the Notified Area Committees, who were prematurely made to vacate office, by virtue of Section 4 of the Ordinance, suffered discrimination vis-a-vis the Members of the Notified Area Committees that may hereafter be appointed, and would continue to a full term of five years. All these varying grounds of attack on the vires of the Ordinance, as discussed, have been rejected by me.

26. Having disposed of the major contentions raised in these writ applications, some of the subsidiary contentions raised by Mr. B. C. Ghose, learned counsel appearing on behalf of the petitioners in Civil Writ Jurisdiction Case No. 504 of 1978, now remains to be considered. In the writ application it is alleged that respondent No. 5, the Chief Election Officer, Bihar, whose name has since been expunged, by a letter dated the 19th Jan., 1978, requested the District Magistrates and the Divisional Commissioners to issue directions to the Executive Officers of every local authorities to submit . a list of the members of the local bodies to the Electoral Registration Officer for preparation of Electoral Rolls for the 1978 Vidhan Parishad Election (Legislative Council Election), a copy of which has been filed as Annexure "2". In pursuance thereof, on the 31st January, 1978, the Assistant Electoral Officer-cum-Secretary to the Commissioner, Tirhut Division, Muzaffarpur, directed the Chairman of the Dumra Notified Area Committee, to submit a list of members in the prescribed pro forma by the 10th Feb., 1978 (Annexure "3") and Shri Bhola Prasad (petitioner No. 1), Vice-Chairman of the Dumra Notified Area Committee (petitioner No. 4), in his turn

sent a list of the members, along with his letter dated the 9th Feb., 1978 (Annexure ("4")). Mr. Ghose has contended that the list supplied by petitioner No. 3 of the members of the Dumra Notified Area Committee will be deemed to be the electoral roll so far as the Dumra Notified Area Committee is concerned for the election of members from the local bodies for the 1978 Legislative Council election. There is no substance in this submission of Mr. Ghose. Firstly, Annexure "2" itself states that the list is required for making necessary alterations and additions in the electoral roll. Therefore, it cannot be an electoral roll. Section 15 of the Representation of the People Act, 1950, requires that there shall be an electoral roll for every constituency, which shall be prepared in accordance with the Act under the superintendence, direction and control of the Election Commission. Section 27 deals with the preparation of the electoral roll for the Council Constituencies, Clause (d) of Sub-section (2) of Section 27 of the Representation of the People Act, 1950, makes it obligatory for the executive officer of every local authority (by whatever designation such an officer may be known) to immediately inform the Electoral Registration Officer about every change in the membership of that local authority and the Electoral Registration Officer, on receipt of the information, strike off from the electoral roll the names of the persons who have ceased to be, and include therein the names of the persons who have become, members of that local authority. In view of these clear provisions, the list supplied, if any, cannot be said to be the electoral roll. It may be mentioned that no electoral roll containing the names of the petitioners for 1978 election from local bodies constituency has been brought to our notice.

27. Mr. Ghose has also submitted that the Government directions contained in the wireless message dated the 21st Feb., 1978 (Annexure "6" to C. W. J. C. Nos. 503 and 504 and Annexure "4" to C. W. J. C. No. 570 of 1978), for appointment of Special Officers for the Notified Area Committees, is wholly illegal and uncalled for inasmuch as it is only in consequence of supersession of a Municipality u/s 386 of the Act that a Special Officer can be appointed under Clause (b) of Sub-section (1) of Section 386 by the State Government to perform the duties of Commissioners. Section 385 of the Act envisages circumstances for supersession of Commissioners of a Municipality, they being incompetency, default or abuse of powers by the Commissioners. That not being the position with regard to the Notified Area Committee, no Special Officer could be appointed and the appointment of the Block Development Officer as Special Officer is wholly illegal, with the result that the petitioners will be deemed to continue till the new office bearers are nominated u/s 29 of the Act, as no vacuum could be left in the administration of the Municipality or Notified Area Committee and clerks cannot fill it. There does not seem to be any substance in this contention of Mr. Ghose. Once it is held that Section 4 of the Ordinance is a valid piece of legislation, its effect will be that the members. Chairman and Vice-Chairman of the Notified Area Committees would cease to hold their respective offices from the date of the promulgation of the Ordinance, that is to say from the 17th February, 1978. It is true that a Special Officer can be appointed only in

case of supersession of the Notified Area Committees under the circumstances as laid down in Sections 385 and 386 of the Act But, Annexure "6" is really in the nature of an administrative order, and not an order of appointment of Special Officer u/s 386 of the Act, to fill up the void in the exigencies of the situation, as is mentioned in Annexure "6", which reads as follows:--

"An Ordinance has been promulgated providing cessation of terms of members and office bearers of all notified area committees in the State. It will create a void in administration of notified area committees. In order to fill up the void, it is requested that the Block Development Officers of the area or any other officer, where there is no B. D. O. may be asked to take over charge of N. A. C. and act as Special Officer thereof (except at places where Special Officers are already posted) untill further orders or the re constitution of notified area committees. In such Notified Area Committees, where Executive Officers are already posted, he will assume charge as Special Officer."

The Government order, therefore, being a stop gap arrangement to look after the administration of the Notified Area Committees for the period of vacuum and to safeguard the interests of the Notified Area Committees, I do not find any justification for quashing such an order.

28. In the result all these applications are dismissed, but, in the circumstances, I would make no order as to costs.

Shambhu Prasad Singh, J.

I agree with the learned Chief Justice that these 12 writ applications challenging the vires of the Bihar Municipal (Amendment) Ordinance, 1978 (hereinafter to be referred to as "the Ordinance") be dismissed and I also agree with the reasons given for the conclusions arrived at by him. However, I would like to add few observations of my own.

29. Those sections of the Ordinance which amend the Bihar and Orissa Municipal Act (hereinafter to be referred to as "the Act") are undoubtedly within the legislative competence of the State legislature and the purpose sought to be achieved by them also appears to be laudable one. So far there was no criterion laid down in the Act for constitution of a Notified Area Committee and how many members Notified Area Committees may have. The Ordinance thus takes away some arbitrary powers vested in the State Government under the Act as it stood prior to the amendment. The real attack, as pointed out by the learned Chief Justice, was on Section 4 of the Ordinance which has affected the office bearers and the members of the existing Notified Area Committees adversely by providing for vacation of office by them with effect from the date the Ordinance came into existence. Had not this section been there in the Ordinance, perhaps, these writ applications would not have been filed, but as Section 4 has a nexus with other provisions of the Ordinance specially Section 3 because Notified Area Committees could not be constituted in accordance with the provisions of Section 3 unless the sitting office bearers and members ceased to hold their respective

offices, this is also within the legislative competence of the State Legislature and there appears no substance in the argument that it is a fraud on legislative powers. True it is that much can be said in favour of the contention that there may be a political motive in terminating the term of office of the office bearers and the members of the Notified Area Committee for the purpose of getting elected to the State Vidhan Parishad persons who may be candidates of the political party in power in the State by nomination of such members to the Notified Area Committee who would support such candidates for the Vidhan Parishad. Had the members and office bearers of Notified Area Committees been declared to have ceased from holding their respective offices by an executive order, that may have been challenged on the ground of mala fide, but a legislation cannot be challenged on the ground of mala fide and, therefore, even if the purpose behind the enactment of Section 4 of the Ordinance be as stated above, as contended by learned counsel for the petitioners, it cannot be declared to be ultra vires as it has got nexus with the purpose to be achieved by other provisions of the Ordinance.

30. The existing members were also nominated by the party in power. They did not come by election. Therefore, they cannot make a grievance if they are removed from their office for which they have got no vested right by the political party in power in the State for bringing in their own men as members of the Notified Area Committees. There is always an element of uncertainty in politics and the new members who may be brought by nomination may also one day be declared to have ceased to hold their offices by some other political party if per chance it comes to power. Therefore, there is no force in the argument that the Ordinance makes a distinction between the members who have ceased to hold their offices by virtue of provisions of Section 4 of the Ordinance and those who may be nominated in their place. If Legislative Assemblies themselves may be dissolved before the completion of the term and the sitting members cannot make a grievance that they have been deprived of any right, the outgoing members of the Notified Area Committees also cannot make a grievance against Section 4 of the Ordinance. I would, however, like to add that ours is a country which believes in democracy and it would have been in fitness of things that in laws to be passed in our country ordinarily there should be no provisions for nomination of members to such bodies as Notified Area Committee. The Members for Notified Area Committees should also be elected like Commissioners of Municipalities and that would be an ideal state of things.

Hari Lal Aggawal, J.

31. I have had the advantage of perusing the Judgment prepared by the learned Chief Justice and I agree with him. But at the same time, I would like to make a few observations of my own.

32. The impugned Ordinance has been promulgated at the behest of the election of the members of the legislative council; and the petitioners as the members of the Notified Area Committees were voters of the electoral college representing

the local body. Perhaps this is the main reason for them to rush up to this Court as they have now lost that privilege.

33. Various anomalies in the Municipal Act "had been existing from a long time with regard to the constitution of the Notified Area Committees. It cannot be disputed, and was also, in fact, not rightly disputed, that the provisions brought by the impugned Ordinance would remove some of the anomalies and would provide a more rational base for functioning of the Committee which are nothing but a simpler form of municipal administration. In the case of Shivadhar Prasad and Others Vs. The State of Bihar and Others, , while considering the case of the Maner Notified Area Committee where a contention was raised that only such persons could be appointed to a Committee who were inhabitants of the area in question, I speaking for the Court had held that there was no such inhibition in Section 388 (1) of the Bihar and Orissa Municipal Act, but at the same time had observed that the State Government would have done better to include in the Committee in question, only such members who were residents of the local area falling under the Notified Area Committee in question. The State Government has now laid down the criteria for the constitution of a Notified Area Committee by insertion of a new Section 388-A and the members are to be taken from the inhabitants and taxpayers alone. I am thus happy that our observations have borne fruit.

34. One of the attacks on Section 4 of the Ordinance by Mr. Prabha Shankar Misra was that it having been not made a part of the main Act, could not control the provisions of Section 29 of the Act as the expression that controls the tenure of office of Chairman, Vice-Chairman, President, and the Commissioners is hedged with the expression "save as otherwise provided in this Act". In my opinion, the argument that Section 4 of the Ordinance on that account will have no reflection on the provision of Section 29 of the Act, has got no force as the purpose of Section 4 is not, in any way, to affect the subsequent constitutions of the Notified Area Committees, but only to have within its sweep the existing Committees and, therefore, it would not have been necessary for making this provision a part of the main Act as its continuance as a part of the main Act rather was bound to create confusion and complication.

35. Yet another argument has been made which though loses its force on account of my above observations; nonetheless, I would also mention it, and that was that the State Government would have done well in reconstituting the Notified Area Committees in accordance with the new criteria, as and when the terms of their sitting members would have expired. It is well known that Notified Area Committees are constituted on different dates and the terms of the sitting members accordingly would expire on different dates. This would not be a reasonable proposition to accept that while some Notified Area Committees should have their members in accordance with the new criteria, others should continue under the old pattern. This would lead to an anomalous situation. It was conceded by Mr. Prabha Shankar Misra that the fixation of tenure u/s 29 of the

Act of the different office- bearers could be cut down by an appropriate provision, but he urged that unless that was done, it could not be curtailed and the members must be allowed to enjoy their full term. The proposition as such cannot be disputed and, in my opinion, only to meet this contingency the provision of Section 4 was thought necessary to be enforced by the impugned Ordinance. In my opinion, therefore, Section 4 does not suffer from any infirmity.

M.P. Singh, J.

36. I agree with the reasoning and conclusion of my lord the Chief Justice. I have nothing to add.

P. S. Sahay, J.

37. I agree.