

(1970) 01 CAL CK 0009

In the Calcutta High Court

Case No : Civil Rules 1905 (W) , 3250 (W) , 3251 (W) , 3304 (W) , 3305 (W)
and 3306 (W) of 1969

Midnapur Zilla Parishad and Others, Howrah Zilla Parishad
and Another, Jalpaiguri Zilla Parishad and Another,
Murshidabad Zilla Parishad and Another, 24-Parganas Zilla
Parishad, Burdwan Zilla Parishad

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-01-1970

Acts Referred:

West Bengal Panchayat Act, 1957 — Section 22, 25, 26(1)(b)

West Bengal Zilla Parishad Act, 1963 — Section 10, 10(2), 107, 108, 108(1)

Citation : 74 CWN 596

Hon'ble Judges : Anil K. Sen, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri and Saradindu Samanta, for the Appellant; Nani Coomar Chakraborty and J.K. Banerjee in C.R. No. 1905 (W) of 1969 and P.K. Sen Gupta and H.N. Mukherjee, for the Respondent

Judgement

Anil K. Sen, J.—These rules, issued on applications under Article 226(1) of the Constitution, were heard together as they raise more or less common questions.

In all these applications what have been disputed are orders all dated April 23, 1969 and all in same terms passed by the State of West Bengal in exercise of its powers u/s 109A of the West Bengal Zilla Parishads Act 1963 (West Bengal Act 35 of 1963) (hereinafter referred to as the said Zilla Parishads Act). By this order the State of West Bengal has put the petitioners, the Zilla Parishads under the control of administrators the result whereof is to supersede the members of the Parishads for reasons set out in the order. The petitioners before this Court are the Zilla Parishads together with in some cases the Chairman and the Vice-Chairman thereof.

As the averments made in all the applications under the Article 226 of the Constitution are more or less the same or similar, I shall first take up Civil Rules

1905 (W) of 1969 (Midnapore Zilla Parishad and others v. The State of West Bengal and others) for consideration on the pleadings of the respective parties therein. I shall refer to the other cases only hereinafter.

2. In the above Civil Rule No. 1905 (W) of 1969 the petitioners to this Court are (1) Midnapore Zilla Parishad, (2) Sri Rash Behari Pal, Chairman, Midnapore Zilla Parishad and (3) Sri Prodyot Kumar Mohanti, Vice-Chairman, Midnapore Zilla Parishad. There is no dispute that this Zilla Parishad was constituted on November 30, 1964. It is claimed by the petitioners that the Parishad took charge of office on December 17, 1964 and since then had been functioning as such until the impugned order dated April 23, 1969 put the Parishad under the control of an administrator appointed by that order. It is not disputed that the Administrator was appointed by the State Government in exercise of its powers u/s 109A of the said Zilla Parishad Act which section was introduced for the first time by an Ordinance on April 19, 1969 called the West Bengal Zilla Parishads (Amendment) Ordinance 1969 (West Bengal Ordinance No. 4 of 1969) (hereinafter referred to as the said Ordinance). Section 109A so introduced by the Ordinance runs as follows:

Appointment of an Administrator where Zilla Parishad or Anchalik Parishad unable to function for defect of constitution, etc.

109A. (1) Where by reason of any judgment, decree or order of a competent Court holding the constitution of a Zilla Parishad or an Anchalik Parishad to have become defective or for any other reason a Zilla Parishad or an Anchalik Parishad is unable to function until it is reconstituted in accordance with the provisions of this Act, the State Government may, by order, appoint a person to act as the Administrator for the Zilla Parishad or the Anchalik Parishad, as the case may be.

(2) When an order has been made under sub-section (1) appointing an Administrator in respect of a Zilla Parishad or an Anchalik Parishad, then with effect from the date of the order?

(a) all members and associate members of the Zilla Parishad or the Anchalik Parishad and members of the Standing Committees thereof shall vacate their respective offices;

(b) all the powers, duties and functions which may by or under this Act or any other law for the time being in force be exercised and performed by the Zilla Parishad or the Anchalik Parishad or any Standing Committee thereof or by the Chairman or Vice-Chairman of the Zilla Parishad or the President or Vice-President of the Anchalik Parishad shall be exercised and performed by the Administrator in such manner and under such conditions as the State Government may direct.

(3) The appointment of an Administrator under sub-section (1) in respect of a Zilla Parishad or an Anchalik Parishad shall terminate on the completion of the reconstitution of the Zilla Parishad or the Anchalik Parishad, as the case may be.

(4) The State Government may fix a remuneration for the Administrator appointed under sub-section (1) and direct that such remuneration shall be paid from the Zilla Parishad fund or the Anchalik Parishad fund, as the case may be.

3. It is also not disputed that immediately after the introduction of the aforesaid provision by one and similar set of orders which are uniformly in same terms the State of West Bengal superseded the members of the different Zilla Parishads and put each of them in the hands of an Administrator and in each case the Chief Executive Officer of the respective Zilla Parishad was appointed the administrator. It is necessary that I should set out the order that was passed as hereunder:

GOVERNMENT OF WEST BENGAL DEPARTMENT OF PANCHAYATS ORDER

No. 1989 AZP/2A-16/69

Dated Calcutta, the 23rd April, 1969.

Whereas according to the decision of the Calcutta High Court in the case of Nandadulal Jana and others v. Sub-Divisional Magistrate, Contai and others, Civil Rule 703 (W) of 1965, the present constitution of the Zilla Parishads & Anchalik Parishads established under the West Bengal Zilla Parishads Act, 1963 (West Bengal Act XXXV of 1963) (hereinafter referred to as the said Act), has become defective so that they cannot function until they are reconstituted in accordance with the provisions of the said Act.

And whereas the existing vacancies in the class of members of the Zilla Parishads referred to in Sub-Clause (b) of clause (i) of section 4 of the said Act and in the class of members of the Anchalik Parishads referred to in subclause (b) of clause (i) of section 52 of the said Act, both of which are to be filled by the representative of Adhyak-shas, cannot be so filled before holding the general election of Gram Panchayats and the election of new Adhyakshas under the provisions of the West Bengal Panchayats Act, 1957 (West Bengal Act I of 1957), inasmuch as the term of office of the present Adhyakshas cannot be extended under the law.

Now, therefore, in exercise of the powers conferred by section 109A of the West Bengal Zilla Parishads Act, 1963 (West Bengal Act XXXV of 1963) as amended by the West Bengal Zilla Parishads (Amendment Ordinance. 1969 West Bengal Ord. IV of 1969), the Governor is pleased hereby to appoint the Executive Officer, Midnapore Zilla Parishad to act as the Administrator for the said Zilla Parishad in addition to his duties as such Executive Officer and to direct that he shall exercise and perform the powers, duties and functions referred to in clause (b) of sub-section (2) of the said section in accordance with such directions as may be issued by the State Government from time to time.

BY ORDER OF THE GOVERNOR Sd/-. A.K. Dutt, Secretary to the Government of West Bengal.

4. The petitioners before me have disputed the bona fides as also the legality of

the aforesaid order. They have also disputed the bona fides of the legislation itself. According to the petitioners members affiliated to the Indian National Congress and all India Political Party, held a clear majority in the Parishad. But when in June 1967 members of the other political parties constituting United Front held a majority in the legislature and came in power by forming a Ministry they tried to liquidate these Parishads. At first they issued a notice for supersession u/s 108 of the said Zilla Parishad Act which was challenged in an appropriate proceeding in this court and the same is still pending. This Court, however, by an order of injunction restrained the State of West Bengal from giving effect to the said show cause notice. Thereafter the said legislature was dissolved and a fresh election was held in February 1967 wherein also the said United Front came in power. This time the members of the said United Front being politically motivated and in order to remove members affiliated to the Indian National Congress from all these self-governing institutions incorporated the above new provision viz. Section 109A in the Zilla Parishad Act by the aforesaid Ordinance and forthwith passed the impugned order the only result whereof is to supersede the members constituting the Zilla Parishad and to bring the Zilla Parishad administration under the Government's own control through the Administrator. On the aforesaid pleadings the petitioners claimed that both the legislation as also the impugned order are clearly malafide and politically motivated. Apart therefrom they have also disputed the validity of the amendment and have most seriously contended that even if the amendment be upheld the order itself cannot be upheld as the same is ultra vires the powers conferred by Section 109A of the said Zilla Parishad Act so brought in by the amendment. I shall refer to the contentions raised on behalf of the petitioners in more details hereinafter in this judgment when I shall deal with points raised by the learned Counsel in support of the applications.

5. On behalf of the Respondents an affidavit has been filed sworn by Sri Anil Chandra Biswas, the Deputy Secretary of Panchayats, Government of West Bengal to contest the claim put forward by the petitioners. It is stated in the said affidavit that it is not correct to suggest that the State Government proceeded out of any improper motive either to introduce the amendment by the Ordinance or to pass the impugned order. According to the Respondents the same was necessary in view of the decision of this Court in the case of Nanda Dulal Jana v. Sub-Divisional Magistrate (C.R. 703 (W) of 1965 disposed by A.K. Sinha, J. on 6-11-68) as in the opinion of the Government the constitution of the Zilla Parishads and Anchalik Parishads in the State had become defective in the light of the decision of this Court in the above case. In this affidavit the respondents have further denied that there was any impropriety in the earlier show cause proceedings and have asserted that the allegation of persisting harassment of the Parishad by the present Ministry is not correct. In this affidavit further objection as to maintainability of the application has been taken and the right of the petitioners to move this Court has been disputed.

6. Mr. Nani Coomer Chakraborty and Mr. Jamini Kumar Banerjee appeared in

support of this rule on behalf of the petitioners. Mr. Ranadeb Chaudhuri and Mr. Saradindu Samanta have appeared on behalf of other sets of petitioners. As the points taken by the learned Counsel are over-lapping, I shall consider the points raised by them in considering the issues raised in this rule.

7. Before considering the individual points in details it will be necessary to refer to the relevant provisions of the said Zilla Parishad Act as also the provisions of the West Bengal Panchayat Act, 1957 (hereinafter referred to as the said Panchayat Act) to appreciate the constitution, term of office and mode of functioning of the different self-governing institutions particularly the Zilla Parishads. To quote the words of Mr. Sengupta, who is appearing on behalf of Respondents, the self-governing institutions, as introduced in West Bengal, are in four tiers.

8. Lowest in the ladder is the Gram Sabha constituted u/s 3 of the Panchayat Act. All the eligible voters for the Legislative Assembly of the area constitute the Gram Sabha. Gram Panchayat is the administrative machinery for every Gram Sabha. It is a body corporate. Members not being less than nine and not exceeding fifteen elected by the members of the Gram Sabha together with associated members appointed by the State Government constitute the Gram Panchayat. The elected members elect from among themselves an Adhyaksha and an Upadhyaksha at the first meeting of the Gram Panchayat. The normal tenure of office of members of the Gram Panchayat is four years and similar is the normal tenure of office of Adhyaksha and Upadhyaksha. Notwithstanding the expiry of the term, the members of the Gram Panchayat however continue to hold office until the new Panchayat comes in office. u/s 22 one third of total number of members of the Gram Panchayat constitute the quorum.

9. The next in the hierarchy is the Anchal Panchayat. u/s 25 of the Panchayat Act the State Government is to establish an Anchal Panchayat comprising of as many contiguous gram sabhas as it may, by notification, fix in each case. Each Anchal Panchayat consists of (a) Adhyakshas of all Gram Panchayats within its jurisdiction, ex-officio and (b) such number of members of Gram Sabha within its jurisdiction elected by the Gram Panchayat concern as prescribed by Section 26 (1) (b) of the Panchayat Act. The term of office of every elected member of Anchal Panchayat extends from the date of the first meeting of the Anchal Panchayat till the first meeting of the next newly constituted Anchal Panchayat. The term of office of the Adhyaksha members are naturally limited to their term as such Adhyaksha as they hold the membership by virtue of their office. The Anchal Panchayat at its first meeting elects from among its members a Prodhan and a Upa-Prodhan. The term of office of Prodhan and Upa-Prodhan is clearly the residue of his term of office as a member of the Anchal Panchayat subject to the proviso that they continue in office until a new Prodhan or Upa-Prodhan is elected. The Anchal Panchayat also acts on a quorum of one third of the total number of members and is a body corporate as the Gram Panchayat.

10. Next in the hierarchy is the Anchalic Parishad. u/s 50 of the Zilla Parishad Act

the State Government divides a district into Blocks each comprising such Anchals as are specified in the notification. u/s 51 thereof the State Government establishes an Anchalik Parishad for each block which like the other self-governing institutions is also a body corporate. The Anchalik Parishad is constituted of two types of members namely, ordinary members and Associate Members. The Associate Member is the Block Development Officer who has no right to vote. The ordinary members consists of-

- (a) Prodhans and Presidents of the Union Boards within the Block, ex-officio.
- (b) One Adhyaksha from the territorial limits of each Anchal Panchayat elected by the Adhyakshas of that area from among themselves.
- (c) Members of the House of People, Legislative Assembly elected from a constituency comprising a block or a part thereof, not being a Minister and the members of the Council of State and Legislative Council not being a minister having a place of residence in the block.
- (d) Two women and two persons belonging to a backward community having a place of residence in the Block, appointed by the State Government.
- (e) Two persons having knowledge of or experience in social work and rural development having a place of residence within the block, co-opted by the members.

11. Sec. 54 of the Zilla Parishad Act provides for the tenure. Prodhans and Presidents of the Union Boards have no special tenure fixed but they being ex-officio members naturally remain members of the Anchalik Parishad so long as they remain the Anchal Prodhan or the President of the Union Board. The Adhyaksha members have a maximum tenure of 4 years but subject to their remaining the Adhyakshas of the Gram Panchayat. The members of the Parliament, the Legislative Assembly or Legislative Council have no fixed tenure and as such they remain members of the Anchalik Parishad so long as they hold their qualifying offices. The members appointed by the State Government have a tenure of four years subject to a proviso that such a member continue to hold office on the expiry of the said term until another member is appointed by the State Government in his place. The co-opted members have a fixed tenure of four years. u/s 55 of the Zilla Parishad Act, the ordinary members of the Anchalik Parishad elect from among themselves a President & a Vice-President. Section 55(2) thereof provides for the term of office of the President and Vice-President and is in the following terms: The President and the Vice-President shall, subject to the provisions of Section 57 and to his continuing as a member, hold office for a period of four years:

Provided that a President or Vice-President shall continue in office after expiry of the said period until a new President or Vice-President is elected and assumes office.

12. Section 55(6) provides that if a Prodhan or an Adhyaksha is elected the

President or Vice-President of an Anchalik Parishad he vacates the office of the Proddhan or the Adhyaksha as the case may be but shall, notwithstanding the same, continue to be a member of the Anchalik Parishad for the full term of his office as President and Vice-President thereof. Section 57 of the Zilla Parishad Act provides under what circumstances the President or the Vice-President can be removed from the office either by the State Government or by the members of the Anchatte F"arishad. Similarly section 60 thereof provides how a member of the Anchalik Parishad can be removed from the office or under what circumstances he ceases to be a member. u/s 62 thereof the Parishad acts on a quorum of one third of the total number of members.

13. Zilla Parishad is the highest in the hierarchy of these self-governing institutions. It is established by the State Government u/s 3 of the Zilla Parishads Act for each district. It is also a body corporate and may by its name sue and be sued. u/s 4 thereof every Zilla Parishad shall have the following members and associate members:

I. Members-

(a) Presidents of Anchalic Parishads-Ex-officio

(b) Two Adhyakshas-one from each of two such constituencies comprised in a sub-division of the district as may be specified by notification, elected by the Adhyakshas in each constituency from among themselves.

(c) Members of the House of People and Legislative Assembly elected from a constituency comprising the District or any part thereof not being a minister and members of the Council of States or the Legislative Council, not being a minister having a place of residence in the district.

(d) A Chairman of a Municipality appointed by the State Government.

(e) President of the District School Board ex-officio.

(f) Two women having place of residence in the district appointed by the State Government.

II. Associate members-the Sub-Divisional Magistrate of each sub-division of the District and the District Panchayat Officer. The associate members have no right to vote.

14. Section 5 thereof provides for prohibition of simultaneous membership and also provides that in case any one who has been elected a member of the Zilla Parishad as an Adhyaksha is subsequently elected as a member of either House of the Parliament or becomes a member of either House of the State Legislature he shall cease to be a member of the Zilla Parishad as an Adhyaksha representative. Section 6 thereof provides for the tenure. Although it prescribes a tenure for persons elected or appointed under the two provisos to section 4(1) (a), it does not provide for any fixed tenure for the Presidents of the Anchalic Parishads members. They, however being ex-officio members continue to remain

members in my opinion so long as they hold the office of the President of the Anchalic Parishad. The Adhyaksha members hold office for a period of four years or for so long as they continue to be Adhyakshas whichever is earlier. Section 6 provides for no tenure for the members of the Parliament or the State Legislature and they, in my opinion, continue to remain members of the Zilla Parishad so long as they remain members of the Parliament or the State Legislature. The Chairman of the Municipality appointed by the State Government has a tenure of four years or so long as he holds the office of the Chairman whichever is earlier. No fixed tenure is provided for the President of the District School Board but he being an ex-officio member remains a member so long as he holds office. The women members appointed by the State Government have a tenure of four years but they continue till their successors are appointed by the State Government. Section 7 of the Zilla Parishads Act provides that the members of the Zilla Parishad are to elect from amongst the members coming under sub-clause (a)(b)(c) and (f) of Section 4(1) a Chairman and a Vice-Chairman for the Zilla Parishad. Section 7(2) provides for the term of office of the Chairman and the Vice-Chairman and it provides as follows: "(2) The Chairman and the Vice-Chairman shall, subject to the provisions of Section 9 and to his continuing as a member hold office for a period of four years: Provided that a Chairman or Vice-Chairman shall continue in office after expiry of the said period until a new Chairman or Vice-Chairman is elected and assumes office". Section 7(6) thereof provides that if a President of an Anchalic Parishad or an Adhyaksha is elected the Chairman or the Vice-Chairman of the Zilla Parishad he shall vacate the office of the President of Anchalic Parishad or of Adhyaksha but notwithstanding the same, shall continue to be a member and the Chairman or the Vice-Chairman of the Zilla Parishad for the full term of his office as such Chairman or Vice-Chairman thereof. Section 8 of the Zilla Parishad Act provides for the powers, functions and duties of the Chairman and the Vice-Chairman. Section 9 of the Zilla Parishad Act provides for removal of a Chairman or a Vice-Chairman by the State Government or by the members and Section 10 provides for filling up the consequent vacancies. Sec. 11 thereof provides for disqualifications of members and Section 12 provides for the removal of a member of the Zilla Parishad and/or his ceasing to remain a member of the Zilla Parishad. Section 15 thereof provides for meetings and it further provides that not less than one third of the total number of members shall form the quorum for such a meeting. Section 17 to 27 thereof provide for the powers, functions and duties of the Zilla Parishad. Section 28 to 32 thereof provide for the establishment of the Zilla Parishad. Sections 33 to 38 thereof provide for the standing committees and sections 39 to 49 provide for the property, finance and taxation. To complete the study it is necessary to refer to a few sections of part IV of Zilla Parishad Act. Section 93 is the validation section which provides that no act or proceedings of a Zilla Parishad or an Anchalic Parishad or any standing committee thereof shall be deemed to be invalid merely by reason of existence of any vacancy in the Zilla Parishad or the Anchalic Parishad or in any Standing Committee thereof or any defect or irregularity in the constitution of the Zilla Parishad or Anchalic Parishad or any Standing Committee

thereof. Section 107 provides that under certain circumstances the State Government may by an order in writing rescind any resolution passed by the Zilla Parishad, Anchalic Parishad or any Standing Committee thereof. It further provides that State Government can do so only after affording an opportunity to show cause against such an action. Section 108 empowers the State Government to supersede a Zilla Parishad or an Anchalic Parishad on the ground of its incompetence, default or abuse of its powers. Such supersession, however cannot exceed a period of two years and no such order can be made except after giving an opportunity to the Parishad to make a representation against the proposed action. Section 109 provides for the consequence of supersession; the members vacate their offices and all the powers, duties and functions of the Parishad are vested in the hands of an Administrator, to be appointed by the State Government. This in substance is the scheme of constitution, tenure and functions of these self-governing institutions.

15. As stated hereinbefore on April 19, 1969 the new provision of section 109A was introduced by the said Ordinance and the Ordinance itself was replaced by the West Bengal Zilla Parishads (Amendment) Act 1969 (West Bengal Act 13 of 1969) (hereinafter referred to as the said Amending Act 1969). By this amending Act the aforesaid Section 109A was incorporated into the Zilla Parishad Act and the amendment was given retrospective effect from the date of the Ordinance. The application on which the above rule was issued having been moved at a time when this Amending Act had not come into force there was an application for amendment consequent to the Amending Act 1969 which was allowed by me and the hearing of the Rule was concluded only after such amendment.

16. Now I shall proceed to consider the specific contentions of the learned counsel put forward either to support or to oppose the Rule. In doing so I shall first dispose of a few preliminary objections raised by Mr. P.K. Sengupta on behalf of the respondents. Mr. Sengupta has first raised an objection that the Zilla Parishad itself cannot in any way be aggrieved by the order impugned in the application and as such the present application on its behalf is not maintainable. To be more precise according to Mr. Sengupta unlike Section 108 Section 109A of the Zilla Parishads Act does not provide for supersession of the Zilla Parishads but only provides for putting the Parishad in the hands of an administrator in the circumstances set out in sub-section (1) thereof. Mr. Sengupta therefore contends that notwithstanding the order made u/s 109A the body corporate remains as it was and continues to discharge all its functions but only through the administrator. In my opinion, however, there is little substance in this objection raised by Mr. Sengupta on the case made by the petitioners. It is true that if a Parishad ceases to function for reasons as set out in sub-section (1), section 109A provides for filling up the vacuum by appointment of an administrator. But normally and under the constitution as framed by the Zilla Parishads Act, the Parishad has a right to function and act through its members untill they are removed in accordance with law. So if as in the present case the complaint of the Parishad be that the powers, duties and functions of the

Parishad are being illegally taken away from the hands of the members constituting the Parishad and are being vested in an authority appointed by the State Government in exercise of powers ultra vires the provisions of Section 109A of the Zilla Parishads Act or in exercise of powers conferred by an invalid piece of legislation, I find no reason why the body corporate itself cannot have a legal right to come before this Court asking for an appropriate relief against such an order. In this view I must necessarily overrule the first preliminary objection raised by Mr. Sengupta.

17. The next objection taken by Mr. Sengupta is that the petitioners 2 and 3 the Chairman and the Vice-Chairman had no subsisting rights either as a member of the Zilla Parishad or as holder of the office they were holding on the date of the application and as such the present application on their behalf is not maintainable in law. According to Mr. Sengupta the Zilla Parishad was first constituted in the year 1964 with Sri Ajoy Kumar Mukherjee as the Chairman and Shri Rash Behari Paul as the Vice-Chairman. It is not disputed that Sri Mukherjee vacated the office of Chairman and Sri Rash Behari Paul was elected the Chairman and Sri Prodyot Kumar Mohanti was elected the Vice-Chairman. According to Mr. Sengupta by the combined effect of Section 10(2) and Section 7(2) the Chairman and the Vice-Chairman can hold office only upto a period of 4 years from 1964 and as such on the date of the application they could not claim any right either as the Chairman or the Vice-Chairman of the Parishad. Mr. Sengupta has further contended that the petitioners Nos. 2 and 3 even ceased to remain members of the Zilla Parishad on the date when they moved this application and at least on the date of hearing so that they had no subsisting right even as members to sustain the present application. This objection is strongly contested by Mr. Chakravarty as also by Mr. Chaudhuri who are representing the petitioners before me. Mr. Chaudhuri has rightly drawn my attention to the proviso to Section 7(2) of the Zilla Parishads Act which provides that notwithstanding the expiry of four years tenure as prescribed by sub-section (2) the Chairman and the Vice-Chairman shall continue in office until a new Chairman or a Vice-Chairman is elected and assumes office. In the present case it is not disputed that no such new Chairman or Vice-Chairman is either elected or has assumed office. Mr. Sengupta however has contended that the term of four years and the extension thereto as provided under the proviso is subject to the pre-condition of the incumbent continuing as a member of the Parishad; so that according to Mr. Sengupta the incumbent to the office of President or Vice-President ceases to be a member of the Zilla Parishad, notwithstanding the fact that the period of four years had not expired or notwithstanding the fact that such incumbent may otherwise be entitled to continue in office by virtue of the proviso as he cannot do so because of his loss of membership itself. In my opinion this interpretation put by Mr. Sengupta to Section 7(2) of the Zilla Parishad Act is a correct interpretation but that will not help Mr. Sengupta in supporting the objection raised by him. In my opinion even if I accept the interpretation put forward by Mr. Sengupta, unless he can establish the fact that

either of the two petitioners 2 and 3 ceased to remain a member, they not only continue to possess all their rights as members but also continue to hold their respective offices of Chairman and Vice-Chairman by virtue of the proviso. In the present case it is not disputed that the petitioner No. 2 was a member of the Zilla Parishad by virtue of the fact that he was a member of the Legislative Council of the State of West Bengal. Mr. Sengupta has drawn my attention to the fact that this Legislative Council was abolished with effect from July 31, 1969 so that since thereafter the petitioner No. 2 ceased to be a member of the Legislative Council & as such also ceased to remain a member of the Zilla Parishad in his capacity as such u/s 4(1)(c) of the Zilla Parishad Act. He could not have been an elected member of the Zilla Parishad in any other capacity because of the provisions of section 5 and 53 of the said Act nor does he claim membership in any other capacity. In this view Mr. Sengupta succeeds to this extent namely that although the petitioner No. 2 had a subsisting right on the date when he moved this application he has since ceased to have such right with effect from August 1, 1969 and as such this application in so far as it is on his behalf must fail on that ground. But although Mr. Sengupta succeeds in part with reference to the petitioner No. 2 he has not been able to establish how the petitioner No. 3 ceased to remain a member of the Zilla Parishad. It does not appear clear from the pleadings in what capacity the petitioner No. 3 became a member of the Zilla Parishad. Mr. Sengupta has contended that he must have been a member either as a President of Anchalic Parishad or as an Adhyaksha of a Gram Panchayat. According to Mr. Sengupta if he is a member as an Adhyaksha he ceased to be a member on the expiry of four years by virtue of Section 6(3) of the Zilla Parishad Act; and in any event, whether he is a member as a President of Anchalic Parishad or an Adhyaksha u/s 7(6) he ceases to be President or the Adhyaksha on his election as a Vice-Chairman and by losing the qualifying office he loses the right to remain a member. Mr. Sengupta may be right in his contention that an Adhyaksha member ordinarily would have a limited tenure as a member of the Zilla Parishad but I am unable to accept the other contention of Mr. Sengupta. In my opinion to accept the other contention of Mr. Sengupta would lead to this absurd result that as soon as the President of the Anchalic Parishad or an Adhyaksha is elected Chairman or a Vice-Chairman he loses the membership of the Zilla Parishad by the combined effect of Section 4(1) (a) and Section 7(6) so that he forthwith vacates the office of Chairman and Vice-Chairman because of the provisions of section 7(2) of the Zilla Parishad Act. This contingency was thought of by legislature and avoided by the specific provision of Section 7(6) of the Zilla Parishad Act. In my opinion Mr. Chaudhuri and Mr. Chakraborty are right in their contention that the President of Anchalic Parishad or the Adhyaksha, when elected a Chairman or a Vice-Chairman, no doubt vacates the office which gave him the membership but such vacating the representative office does not make him lose the membership because the latter part of this sub-section provides that notwithstanding the provisions of section 4(1) and 7(1) such a member continues to be the member and the Chairman or the Vice-Chairman of the Zilla Parishad even after he had vacated the

representative office. I accept the contention of the learned Counsel for the petitioners that this sub-section confers a membership so to say to such incumbents who by virtue of its terms are made to vacate the representative offices which had initially conferred them the membership. On my conclusions as above I must overrule this objection of Mr. Sengupta so far as it relates to the petitioner No. 3 and I must hold that on the materials before me there is nothing to show that the petitioner No. 3 has ceased to be a member or to hold the office of Vice-Chairman of the Zilla Parishad. I also hold that by virtue of section 7(3) of the Zilla Parishad Act the petitioner No. 3 continues to exercise all the powers and perform all the functions and discharge all the duties of a Chairman since August 1, 1969.

18. The next objection that has been taken by Mr. P.K. Sengupta on behalf of the respondents is to the effect that the petitioners not having filed an affidavit of competency as required under Rule 15 of the Writ Rules framed by this Court, the application, in so far as it is on behalf of the body corporate viz. the Zilla Parishad is not maintainable. In none of the rules except Civil Rule No. 3250 (W) of 1969 (*Howrah Zilla Parishad v. The State*) did the petitioners file any affidavit of competency. In the rule now under consideration an attempt was made to put in an affidavit of competency at a very late stage but even then, I agree with Mr. Sengupta, the resolution of the Parishad disclosed and relied on by the deponent for his competency does not confer any authority to initiate or prosecute this proceeding or verify the pleadings thereof. On these facts, I am now to consider whether the application in so far as it is on behalf of the Parishad should fail or not.

19. Order 6, Rule 14 of the CPC provides that every pleading shall be signed by the party and his pleader or where the party is unable to do so due to absence or other good cause, by any person duly authorised by him. Rule 15 thereof provides that every pleading should be verified by the party or one of the parties or by some other person proved to the satisfaction of the Court to be acquainted with the facts. The first part of Rule 15 of the Writ Rules, which is similar in character to Rule 8, Chapter 7 of the Original Side Rules of this Court, only lays down that the authority and fitness of the person signing or verifying a pleading on behalf of a Company or Corporation should be proved by an affidavit. Language used in Rule 15 of the Writ Rules is however not so mandatory as that in Rule 8, Chapter 7 of the Original Side Rules. It has now been held by this Court that although Order 29, Rule 1 of the CPC may apply to such pleadings, the said provision does not supersede the application of the other rules referred to above: (1) *International Continental Caoutchoue Capagnie v. Mehta & Co.* 31 CWN 1030. The basic intention of such a rule is only to prove or establish in the proceedings the authority and the fitness of the person verifying. Mr. Chaudhuri has therefore contended that where such an authority and fitness is patent on the statute by which such a body has been incorporated, this Court may very well look to the statutory provisions to satisfy itself about it. Mr. Chaudhuri has drawn my attention to the provisions of section 8 of the Zilla Parishad Act. This

provision undoubtedly shows that the Chairman is in over-all control of the Parishad. Clause (d) further empowers the Chairman to exercise powers, perform functions and discharge duties as may be exercised, performed or discharged by the Zilla Parishad except those which are to be exercised, performed or discharged by the Zilla Parishad at a meeting. Section 3(2) of the Zilla Parishad Act has empowered the Zilla Parishad to sue. In my opinion, the power of the Zilla Parishad to initiate and prosecute a proceeding like the one before me does come within the scope of statutory delegation u/s 8 of the Zilla Parishad Act. When this is so, I am in agreement with Mr. Chaudhuri that where the pleading has been signed and verified by the Chairman, his authority and fitness to sign and verify is clearly established by the Statute of incorporation itself. Mr. Sengupta no doubt relies on the decision of Banerji, J. in the case of (2) Ukhara Forests and Fisheries Ltd. Vs. Sub-Divisional Land Reforms Officer, Asansol and Others, to contend that notwithstanding the provisions of the statute of incorporation, the requirement of Rule 15 of the Writ Rules is so mandatory that an application on behalf of a Corporation is bound to be thrown away by this Court if the first part has not been complied with. In my view, however, if the authority and fitness of the person signing or verifying the pleading follows or appears from the Statute itself, it would be wholly unreasonable to call upon such a person to prove by an affidavit his authority and fitness because he would only do so by referring to and relying on the very same provisions of the Statute. In the case under consideration by Banerji, J. no issue as in the present case came up for decision and in my view the decision of Banerji, J. too cannot be read to lay down any principle as contended for by Mr. Sengupta. I do not consider the provisions of Rule 15 of the Writ Rules to be so orthodox or rigid that even where a Statute has conferred competency on a person to sign or verify a pleading, he would still be required to file an affidavit of competency.

20. In the particular case now under consideration the verification was made by Prodyot Kumar Mohanti, the Vice-Chairman. There is no material before me to show how, when on that date the Chairman was still in office, the Vice-Chairman was authorised to verify the pleading in the present case. I have already found that belated affidavit of competency too does not prove his competency in respect of the present proceedings. So, I have come to the conclusion that Mr. Sengupta succeeds in his objection that the application in so far as it is on behalf of the petitioner No. 1 is concerned must fail and be dismissed.

21. Mr. Chakraborty appearing in support of the application has in the first place assailed the Ordinance and the Amending Act 1969 on two-fold grounds namely, that the Legislation itself is politically motivated and as such colourable and secondly on the ground that in the absence of President's assent it cannot be a valid piece of legislation. Mr. Chaudhuri has supported Mr. Chakraborty in the second part of his contention. Mr. Sengupta appearing for the Respondents has contested both these points.

22. I can shortly dispose of the first part of this contention of Mr. Chakraborty. In

my opinion it is beyond my powers to go into the question of the motive behind the legislation or to adjudicate whether a particular piece of legislation was made out of any improper or mala fide motive. It may be true that at times the Court has declared a particular piece of legislation to be void on the ground that it is colourable but that is always with reference to the jurisdiction or legislative competence of the legislature. It may be open to this court to look into the substance of a particular piece of legislation to adjudicate whether the same comes within the competence of the legislature concerned or not and in the process of such adjudication if it is found that in disguise the legislature seeks to transcend its limits it may be struck down as colourable but nonetheless it is so struck down only on the ground that it is beyond the competence of the legislature. But if the legislation is within the competence of the legislature it is not open, in my view, to this court to question the propriety or the motive of the legislature which has made the law. That is specifically beyond the purview of the jurisdiction of the court. Reference may be made to the cases (3) K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, and (4) B.R. Shankaranarayana and Others Vs. The State of Mysore and Others, .

23. The next part of the contention put forward by Mr. Chaudhuri and Mr. Chakraborty is that under Article 213(1)(b) the Governor could not have promulgated the said Ordinance except with instructions from the President. Similarly it has been argued with reference to the Amending Act, that it could not have been passed except, in terms of Article 254(2) of the Constitution, with the assent of the President. As the Ordinance stands superseded by the Amending Act, it would be sufficient if I consider the objection on the basis of Article 254(2) of the Constitution. The specific objection raised in this respect is that under the chapters 4 and 7 of the Zilla Parishads Act, the Zilla Parishad is invested with the right to acquire, hold and dispose of properties and enter into contracts. The impugned amendment which vests the Zilla Parishad in the hands of the Administrator naturally involves statutory transfer of these rights from the Zilla Parishad to the Administrator. It is contended that it involves transfer of property and as such would be repugnant to existing laws made by the Parliament or to pre-Constitution laws still prevailing on matters enumerated in the concurrent list. On this basis it is contended that before the Amending Act was passed it was necessary to reserve the same for consideration by the President and also to obtain his assent thereto. In my opinion, however, there is little substance in this contention. In the first place even if I accept this contention it would not invalidate the legislation....totally. The only result is that the provisions of this Amending Act to the extent of repugnancy would be void. Secondly this contention on behalf of the petitioners is based on an assumption that this Amending Act infringes or intrudes upon any of the existing laws made by the Parliament regarding transfer of property or the like. In my opinion, however, there is no foundation for this assumption. The Amending Act only provides that if under circumstances enumerated in sub-section (1) of Section 109A the Parishad itself becomes unable to function an administrator is appointed to take

charge of the Parishad. This appointment of an administrator does not annul the corporate body nor does it take away any of its properties. The body corporate remains as it originally was under the Act, only in the absence of the members an administrator looks after its affairs. This in my opinion does not involve any transfer of proprietary right from Parishad to the Administrator nor does it operate as repugnant to any of the laws made by the Parliament. Accordingly I must overrule this contention raised on behalf of the petitioners and hold that the impugned order cannot be struck down on the ground that it was made under a void legislation.

24. The next contention on behalf of the petitioners is that even if the amendment be valid the impugned order is ultra vires the powers conferred by newly incorporated section 109A of the Zilla Parishad Act. In order to decide this issue it would be necessary to interpret Section 109A(1) of the Zilla Parishad Act and appreciate the true scope thereof. According to Mr. Chaudhuri and Mr. Chakrabarty under the aforesaid section when a competent court has by a judgment, decree or order held the constitution of a particular Zilla Parishad or Anchalik Parishad to have become defective the State Government may in exercise of its power u/s 109A(1) as aforesaid appoint an Administrator for that particular Zilla Parishad. According to the learned Counsel it is not open to the State Government to infer or come to its own decision as to whether the constitution of a particular Zilla Parishad is defective or not on the basis of any judgment, decree or order which does not relate to that particular Zilla Parishad or Anchalik Parishad. Mr. Sengupta for the respondents, however, has sought to oppose such a restricted interpretation of section 109A(1) of the Zilla Parishads Act and has contended for the contrary view. I am, however, unable to agree with Mr. Sengupta. In my opinion it would be more appropriate to accept the interpretation put forward by Mr. Chaudhuri and Mr. Chakrabarty so far as first part of the aforesaid section 109A(1) is concerned. It speaks of any judgment, decree or order of a competent court holding the constitution of a Zilla Parishad or Anchalik Parishad to have become defective and it then provides that the State Government may appoint an Administrator for the Zilla Parishad. It leaves no manner of doubt that the judgment, decree or order must relate to the Zilla Parishad for which the Administrator is to be appointed and as such in the absence of any such judgment, decree or order in respect of a particular Zilla Parishad for which an administrator is being appointed it is not within the power of the State Government to exercise its powers under the first part of Section 109A and appoint an administrator on its own decision arrived at on the basis of any judgment, decree or order not relating to that Zilla Parishad.

25. The second part of the aforesaid section 109A(1) provides for the other ground which confers the jurisdiction on the State Government to exercise its power to appoint an administrator. It speaks of inability of Zilla Parishad or Anchalik Parishad to function for any other reason until it is reconstituted in accordance with the provisions of this Act. In the Act itself I find no provision for reconstitution except as in section 109(4) of the Zilla Parishad Act which,

however, has got no application to cases coming u/s 109A. However the implication of the second part in my opinion is quite explicit that for some reason or other the Zilla Parishad must be unable to function. It is this inability which alone can empower the State Government to appoint an administrator and such inability must be based on express reasons. Mr. Chakrabarty had contended before me that any other reason should be interpreted on the principles of ejusdem generis with reference to judgment, decree and order of a competent Civil Court. I am, however, unable to accept this contention of Mr. Chakrabarty because on the language used the aforesaid principle has got no application. In my opinion it is not a case where the distinct genus or category is provided by the language followed by specific words connoting objects belonging to the said genus or category. Here, however, the words used are not such that the two parts can be linked together to mean that both contemplate one category. Though I do not accept the aforesaid interpretation suggested by Mr. Chakraborty, I agree with him as also with Mr. Chaudhuri in their contention that any other reason referred to in the second part of the said section is limited and restricted by the terms following the same namely that such reason must be a reason to establish the inability of the Parishad to function. In substance the true import in my opinion of this newly added section is that where by any judgment, decree or order a particular Zilla Parishad is held not to be legally constituted or because of any other intervening circumstance the constitution of the Zilla Parishad becomes such that it cannot function in accordance with the provisions of the Statute itself-the result of both leading to making the Parishad defunct, the State Government may invoke its power u/s 109A(1) of the Act.

26. Next thing that is to be noted of this section is that the conditions which confer the power to the State Government are objective and have not been left in the subjective decision of the authority empowered to act. Therefore the principles laid down in cases like (5) The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , (6) Rohtas Industries Vs. S.D. Agarwal and Others, become, more appropriately applicable and the impugned order is open to challenge on the ground that conditions conferring the jurisdiction were not in existence when the order was made.

27. In the light of aforesaid conclusion I shall now consider the contention put forward on behalf of the petitioners that the impugned order is wholly ultra vires the powers of the State Government. I have set out the order itself hereinbefore. The order in the first two paragraphs professes to set out two grounds on which the State Government had purported to act. I shall now consider whether and how far the two grounds come within the sanction of the provision itself. The first ground refers to the decision of this court in the case of Nanda Dulal Jana (supra) and recites that according to the said decision the present constitution of the Zilla Parishad and Anchalik Parishad has become defective so that they cannot function until they are reconstituted. It is not disputed by Mr. Sengupta appearing for the respondents that the aforesaid decision in the case of Nanda Dulal Jana docs not relate to the petitioner Zilla Parishad nor is there any

particular judgment, decree or order holding the constitution of the petitioner Zilla Parishad to be defective. That being the position in my opinion the first ground set out in the order does not come within the sanction of the first part of section 109 A(1) of the Zilla Parishad Act.

28. Secondly it should be noted that the aforesaid decision not only does not relate to the petitioner Zilla Parishad but also does not relate to constitution of any Zilla Parishad whatsoever. In that case co-option of a particular member and the subsequent election of the said member as the President of a particular Anchalik Parishad was disputed as not made in accordance with law. The facts of that case further indicates that contrary to the mandatory provisions of Section 52(1) of the Zilla Parshad Act, the Anchal Prodhans who are ex-officio members of the Anchalik Parishad were illegally excluded. It is in the background of the aforesaid facts that this court discharged the rule holding it to be infructuous on the ground that since dissolution of the Legislative Assembly the Anchalik Parishad concerned ceased to function. It may very well be that members coming within the purview of section 52(1)(a) and major part of the members coming within the purview of Section 52(1)(c) having been excluded the Anchalik Parishad concerned might have been reduced to such a strength that it might not have the minimum quorum to function so that under such circumstances this court came to the conclusion that the Anchalik Parishad ceased to function. But in my opinion there is no authority in that decision for a proposition that on the dissolution of the Legislative Assembly every Anchalik Parishad must necessarily suffer such defect in the constitution that it ceases to function. As a matter of fact in the said decision this court made specific reservation that if the Anchalik Parishad continues to function after the mid-term election to the Legislative Assembly, the petitioner in that case would have liberty to move this Court again on identical grounds. On the above view I am definitely of the opinion that there is nothing in the said judgment which can lead one to the conclusion that the constitution of all Anchalik Parishads in the State of West Bengal has necessarily become defective. Far less can there be any sanction for a conclusion on the basis of the said decision that the Constitution of the Zilla Parishads also has become defective. This Court in the said case had not at all taken up for consideration the validity or invalidity of, or defect or otherwise in the Constitution of any Zilla Parishad whatsoever. In this view even if we proceed on the wider construction advocated for by Mr. Sengupta of the first part of 109A(1) of the said Act to mean that the judgment, decree or order need not necessarily refer to the particular Zilla Parishad, still there is no sanction for the conclusion that by the aforesaid decision this court had held the constitution of Zilla Parishad to be defective.

29. Appreciating this defect Mr. Sengupta who is appearing for the Respondents has sought to contend that reference to the judgment is made only as a pointer which may very well be overlooked and the real basis of the order is defect in the constitution of the Zilla Parishad in law leading to its inability to function due to such defect. Mr. Chaudhuri appearing on behalf of the petitioners has, however

rightly pointed out, on the authority of the decision of the Supreme Court in the case of (7) Commissioner of Police, Bombay Vs. Gordhandas Bhanji, that this court must accept the reason as set out in the order and should not substitute the said reason by any other reason suggested or sought to be incorporated by the respondents at the hearing. There is great substance in the objection of Mr. Chaudhuri. But in my opinion even if I overlook such an objection still I am unable to find how the Constitution of the Zilla Parishad had become so defective that it was unable to function. I have referred to in great details the different provisions relating to the establishment, constitution and functioning of Zilla Parishads. In the scheme the Parishad once established is to exist all along. There is no particular fixed tenure or limit leading to total dissolution of the Parishad. Though some of the members have a fixed tenure others hold office ex-officio so that the members representing the different categories come and go at different times but the Parishad itself continues to function so long it does not lose the minimum quorum of one-third of the total number of members. Mr. Sengupta has not been able to satisfy me how on the day when the impugned order was passed the Constitution of the Zilla Parishad was so defective that it was unable to function. He may be right that the Adhyaksha members as contemplated by Section 4(1)(b) may not be there, but absence of such members by itself does not make the constitution defective. Mr. Sengupta has tried to contend very strongly that in the hierarchy of the self-governing institutions if the Gram Panchayat itself stands dissolved and the Adhyakashas do not exist it would be contrary to the scheme of the Act to allow the Zilla Parishad to function. With greatest respect I am unable to accept this contention as on my reading of the Act the scheme is otherwise. The scheme is as I have pointed out hereinbefore that the Parishad should go on functioning notwithstanding the fact that some of its members may or may not exist at a particular moment or point of time. It should be noted that on the day when the impugned order was passed the mid-term election was over and the members of the Zilla Parishad contemplated by Section 4(1)(c) were already there so also the Presidents of the Anchalik Parishad and some or other of the other members. There is no evidence before me to show that on the total strength of the members existing there was lack of minimum quorum. Nor is it suggested in the impugned order. Mr. Sengupta has tried to contend that members of the Zilla Parishad who were there as the Presidents of Anchalik Parishad had also ceased to be the members of the Zilla Parishad inasmuch as they ceased to be the President on the expiry of four years from the date of their election as President. But that is not normally so inasmuch as by virtue of the provisions of proviso to section 65(2) of the Zilla Parishad Act notwithstanding the expiry of the period of four years such Presidents continue to hold their offices until new Presidents are elected. There is no material on the pleading before me to show that these members of the Zilla Parishad ever lost their qualifying offices of Presidents of Anchalik Parishad by ceasing to be a member of the Anchalik Parishad. In this view I must overrule this contention of Mr. Sengupta and hold that there is no ground for supporting the conclusion that the Constitution of the Zilla Parishad had in any way been so

defective as to make it unable to function. The result of the aforesaid conclusion of mine is that the first ground specified in the order affords no sanction for exercise of powers u/s 109A(1) of the Zilla Parishad Act.

30. The second ground set out in the impugned order is still more unsubstantial and extraneous. It only recites that there are in existence vacancies in the class of members of the Zilla Parishads referred to in Section 4(1)(b) of the Zilla Parishad Act and such vacancies cannot be filled up before holding general election for the Gram Panchayat. This part of the order does not even suggest that existence of such vacancies make the constitution so defective that it is unable to function. In this view it is very difficult to appreciate how the second ground recited in the order can support exercise of powers u/s 109A(1) of the Zilla Parishad Act. Further on the conclusion referred to hereinbefore I am unable to accept the view that even existence of a few vacancies of the Adhyaksha members in the Zilla Parishad would make the Parishad illegally constituted or unable to function.

31. On the findings as aforesaid I must accept the contention of the petitioners that the impugned order is wholly ultra vires the powers of the Government conferred upon it by Section 109A of the Zilla Parishad Act. This conclusion by itself will be sufficient to dispose of this rule.

32. But in view of the other points raised by Mr. Chakraborty and Mr. Chaudhuri I shall shortly refer to the same. On the facts set out hereinbefore the learned Counsel had strongly contended that the impugned order is highly malafide and politically motivated. Though the circumstances and particularly the manner in which such an amendment was introduced and stereotyped orders were issued to all, meant to cover up Zilla Parishads and Anchalik Parishads, still it would be difficult for this Court to come to a definite conclusion that the impugned order was made only out of improper motive. In my opinion, the State Government must have misguided itself as to the effect of the decision of this Court in the case Nanda Dulal Jana (supra) in thinking that because of the said decision, constitution of all Anchalik Parishads and Zilla Parishads must have become defective and it is such misconception which lead to the promulgation of the Ordinance and issue of the orders now complained of. In this view I must overrule the contention of the petitioners that the impugned orders had been made in malafide exercise of powers.

33. Mr. Chaudhuri and Mr. Chakraborty have lastly contended that the impugned order should be struck down at least on the ground that the State Government could not have made such an order without first affording an opportunity to the Parishad and its members to show cause why such an order should not be made. According to the learned Counsel, it is immaterial whether the impugned order is administrative or quasi judicial. According to them, the impugned order unmistakably is to the prejudice of the Parishad and its members who virtually stand superseded by the order. The learned Counsel have contended that it is true that there is no parallel provision in Section 109A to the provision of the

proviso to Section 108(1) of the Zilla Parishads Act. But it has been strongly contended by them that absence of any such specific provision is not always a decisive factor and this Court ought to hold that a similar provision is implied in Section 109A of the Zilla Parishads Act when that Section empowers the State Government to make an order which would involve civil consequence. The learned Counsel have relied on the decision of (8) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . Mr. Chaudhuri has also drawn my attention to the decision of the Supreme Court in the case of (9) A.K. Kraipak v. Union of India, 1969(1) SCA 605 in support of his contention that the dividing line between administrative power and quasi judicial power is being gradually obliterated and that principles of natural justice are also invoked in the making of administrative orders where such orders are likely to affect other persons.

34. Mr. Sengupta appearing for the respondents without controverting the well recognised principles laid down by the Supreme Court has strongly contended that when an order u/s 109A is to be made because of a judgment, order or decree of a competent court annulling the constitution or when the Parishad itself becomes otherwise defunct, the order made u/s 109A is nothing but a consequential order to fill up the gap which has resulted otherwise than by the order. According to Mr. Sengupta when an order u/s 109A of the Zilla Parishad Act is made under such circumstances there can be no scope for giving any opportunity to show cause inasmuch as the inability of the Parishad to function is not the decision of the Government nor does it emanate from the order itself.

35. Considering the respective contentions I have come to the conclusion that there is substance in the contention of Mr. Sengupta. I have come to this conclusion only on the interpretation that I have put to the provisions of Section 109A hereinbefore. In my view the conditions which confer the jurisdiction to the State Government to make an order u/s 109A of the Zilla Parishad Act are all objective. It is not within the decision or opinion of the State Government that such conditions exist. The State Government cannot annul the Parishad or set aside the Constitution, it only fills up the temporary vacuum. So far as the Parishad and its members are concerned, the civil consequences do not follow from the order. If that is the position in law there hardly remains any scope for giving any opportunity to the Parishad or its members to show cause. If for example the Constitution of a Zilla Parishad is set aside by an order or decree of a competent Court or if the Parishad loses the minimum quorum because of death, resignation or expiry of tenure of majority of its members and the State Government is to make an appointment u/s 109A I do not find there could be any scope for any adjudication or decision on any issue which could entitle the parties to have an opportunity to show cause. In this view with great respect to the learned Counsel for the petitioners though I may agree with them that in certain cases even making of an administrative order may invoke application of principles of natural justice, I must hold that the present case does not fall within the said sphere. Accordingly, I overrule this last contention put forward on behalf of the petitioners.

36. On the conclusions as above I must hold that although the present application is bound to fail in so far as the same is on behalf of the petitioners 1 and 2 on the grounds set out hereinbefore, it is bound to succeed in so far as it is on behalf of the petitioner No. 3. In my opinion, the petitioner No. 3 as a rightful member of the Parishad and the Vice-Chairman thereof has a personal right of his own to continue in the office held by him as such and such a right has been infringed by an ultra vires order of the State Government which is impugned in this application. So notwithstanding the fact that the application may fail in so far as it is on behalf of the petitioner Nos. 1 and 2 nonetheless the impugned order must be declared void. This Rule accordingly succeeds in part in so far as it is on behalf of the petitioner No. 3. Let a writ in the nature of mandamus do issue commanding the respondents not to give effect to or any further effect to the order dated April 23, 1969 made u/s 109A of the West Bengal Zilla Parishad Act, 1963 in respect of the petitioner Zilla Parishad. The contesting respondents must pay costs to the petitioner No. 3, hearing fee being assessed at five gold mohurs.