
(1981) 09 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 1324 and 1391 of 1981

Raghunath Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-09-1981

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 385, 4, 5, 6
Bihar Municipal Corporation Act, 1978 — Section 1, 2, 2(3)
Bihar Panchayat Raj Act, 1948 — Section 3(3)
Constitution of India, 1950 — Article 14, 21, 226, 245, 40

Citation : AIR 1982 Patna 1 : (1982) 30 BLJR 88 : (1982) PLJR 49

Hon'ble Judges : V. Mishra, J;S.K. Choudhuri, J

Bench : Division Bench

Advocate : Balbhadra Pd. Singh, P.R. Mridul, Uday Pratap Singh and Rajballabh Pd. Pandey, Radha Raman, for the Appellant; K.P. Verma, General, R.N. Roy, Jr. Counsel to A.G., Chunni Lal, Government Pleader No. 5 and Santosh Kuamr, Jr. Counsel to Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Mishra, J.—These are applications under Articles 226 and 227 of the Constitution of India for quashing Annexure 1 which is copy of a notification declaring constitution of municipal corporation at Muzaffarpur and also for quashing the order appointing Sri Madan Mohan Jha respondent No. 7 as Administrator of the Municipal Corporation (copy of order not annexed). Since the reliefs sought in both the applications are the same, they have been heard together.

2. The petitioners of C. W. J. C. No. 1324 of 1981 are the Chairman and the Commissioners of the erstwhile Muzaffarpur Municipality. Through a petition filed on 11-5-1981. 19 persons came to intervene out of whom 9 are Mukhiyas and 6 are surpanchas of some of the Gram Panchayats which have been included within the limits of the porporation. There is also one punch of a" Gram Panchayat. Petitioners Nos. 16 and 17 are the Secretary and General Secretary of the

Taxation Bar Association, Muzaffarpur, petitioner No. 18 is the General Secretary of the Bar Association, Muzaffarpur and petitioner No 19 is the Convenor of Sawami Sahajanand Saraswati Smarak Samiti. They also support the original petitioners. On the date of the admission of the application itself a caveat was filed by 9 persons of whom caveator No. 9 ultimately backed out, They include the Vice-President of the Bar Association, Muzaffarpur, Chairman Citizens Assistance Council, Secretary District (Cong. I) Committee, Chairman, Town Congress Committee, two Mukhiyas and two villagers. They oppose the application. The petitioners of C. W. J. C. No. 1391 of 1981 are two Mukhiyas of Gram Panchayats. Their case is also same as of the petitioners of the other case. Amongst the respondents, apart from State of Bihar and certain officers, Dr. Jagannath Mishra, Chief Minister of Bihar and Sri Ramesh Jha, Urban Development Minister, Government of Bihar have been specially named. There are certain allegations of malice against the Chief Minister.

3. The notification (annexure 1) dated 16-4-81 has been issued by respondent No. 1 (State of Bihar) in exercise of powers u/s 2 of the Bihar Municipal Corporations Act (Bihar Act 12 of 1978) (hereinafter referred to as the Corporation Act). This is a general Act under which a municipal corporation can be established in any city. According to Sub-section (3) of Section 1, it can come into force in any city having a population of 2 lakhs or more. Section 2 of the said Act authorises the State Government to include in the corporation any area of a municipality or notified area committee, or any other areas as may be specified in the notification. The last census records the population of Muzaffarpur Municipality as 1,89,765, which is less than 2 lakhs. Hence in order to make up the population, the State Government included some suburbs of the city in which Gram Panchayats existed from before. The total population of the corporation thus records more than 2 lakhs. Annexure 1 (the notification) gives the boundaries of the additional areas included within the Municipal Corporation.

4. Before issuing the said notification an enquiry was made from the Commissioner of Muzaffarpur in this regard. Annexure 3 is the copy of the letter dated 14th April, 1981, written by the Deputy Secretary of the Urban Development and Housing Department to the Commissioner of Muzaffarpur. The letter says that there is a proposal to upgrade the Muzaffarpur Municipality but the same can be done only if its population be 2 lakhs or more. Hence the population of Muzaffarpur Municipality was required from him. He was further told for considering if the corporation could be constituted only of the area within the Muzaffarpur Municipality or it would be necessary to include some other areas which might have assumed urban character. A map of the proposed corporation area was also required. Annexure 4 is the copy of the reply of the Commissioner dated 9-4-1981 giving the population of Muzaffarpur Municipality as one lakh eightynine thousand and odd. The Commissioner gave the details of the suburban areas which have assumed urban colour and recommended for including, them within the limits of the corporation. It was also mentioned that the suburban areas suggested to be included fell within the jurisdiction of

Muzaffarpur Improvement Trust. A map and details of the areas to be included were all given. It was first placed before the Cabinet on 14-4-1981 as would appear from Annexure 5, but it was postponed. Ultimately on a fresh memorandum it was again placed on 12-5-1981 when it was approved as would appear from Annexures B1 and B2 to the supplementary counter-affidavit of the respondents. Annexure 1 is the notification which" followed after the said Cabinet approval. Respondent No. 7 was appointed Administrator and he took charge on 18-4-1981 i. e., within two days of the notification,

5. The petitioners namely Chairman and Commissioner of the Muzaffarpur Municipality and the Mukhiyas of the Panchayats, who are all elected officebearers have challenged the constitution of the Muzaffarpur Corporation on the ground that their period to continue in their respective offices have been cut short by taking recourse to an undemocratic method. Petitioner No 1 of C. W. J. C. No. 1324 of 1981, Sri Raghunath Pandey, the Chairman of the Municipality, has attributed motive to the Chief Minister, respondent No. 2, for this action. The details of mala fide have been given in paragraphs 7 to 16 of his petition. It is said that both the Chief Minister and the Chairman belong to the same party but there had been some difference between them on account of implementation of 20 point programme. On account of that difference, the Chief Minister perhaps became hostile to him and started creating impediments in the smooth functioning of the municipality. An Executive Officer (Sri Saran) was posted against his will who was not functioning properly and honestly. Sri Pandey had also filed C. W. J. C No. 1193 of 1981 pointing the mala fides in the posting of that Executive Officer. In March, 1981 the petitioners had sent a memorandum to the Prime Minister charging the Chief Minister of his acts and omissions. The Chief Minister, it is said, getting annoyed on account of that, had deputed some vigilance officers to report against the working of the Municipality but they failed to find anything against it. When however" the Chief Minister did not succeed in his attempt, he is said to have taken recourse to this indirect method which amounts. to supersession of the municipality without observing the rules therefor, and that also in such great haste that his mala fide intentions have been exposed. In support of his application it has also been mentioned that there are four towns namely Jamshedpur, Gaya, Bhagalpur and Bokaro which have population of more than two lakhs each, but none of them was touched, whereas the Municipality of Muzaffarpur which had not the required population was made a corporation -- obviously because of personal grudge of the Chief Minister against the Chairman.

6. So far the Gram Panchayats are concerned under the Bihar Panchayat Raj Act. 1947 (hereinafter called P. R. Act) there is a specific provision for seeking opinion for including any area in or excluding any area from a Panchyat. It has been urged that by including certain panchayats within the limits of corporation, there has been violation of the above provisions of the P. R. Act. Similarly so far municipal area is concerned, there is a provision under the Bihar and Orissa Municipal Act (hereinafter called Municipal Act) for seeking opinion for

constituting a municipality or altering its areas. That law also is said to have been violated by an undemocratic method. There is no dispute on the point that the opinion of the people residing out of the municipal limits or within the panchayat was not taken in any manner. Further argument has been that it was their fundamental right to continue till their term of election and if that has been infringed that would amount to civil consequence, and as such, even in administrative action, rule of audi alteram partem (a rule of natural justice) was required by law to be followed, which was not followed, and hence constitution of the corporation must be struck down. It has also been argued that the suburban areas included in the corporation do not at all bear any urban character and as such they could not have been included in the corporation. The action of the State Government is also said to be in violation of Articles 14, 19 and 21 of the Constitution.

7. After the Advocate General had concluded his argument on behalf of the respondents a supplementary affidavit on behalf of the petitioners was filed which was not accepted on the objection raised by the Advocate General.

8. Counter-affidavits have been filed on behalf of the respondents in both the cases. It is admitted that the population of Muzaffarpur Municipality fell short of the requirement for converting it into a municipality (Corporation?) and so the suburban areas were included to make up the requirement. It is, however, stressed that the suburban areas included have all assumed urban character and the total population has become more than two lakhs. Such inclusion is claimed to "be permissible in law. The suburban areas are said to be electrified, they have pitched roads, some have drainage and water supply, and most people are engaged in non-agricultural work. The names of quite a number of firms falling within the suburban areas have been given in para 4 of the counter-affidavit. So far the letters written to the Commissioner and the reply thereof are concerned they are claimed to be bona fide. All allegations of mala fides against the Chief Minister have been refuted. A corporation is said to have been established at Bhagalpur on the very date on which Muzaffarpur corporation was constituted. A corporation at Ranchi and Gaya were also under active consideration (perhaps corporation at Ranchi has already been constituted). As for Jamshedpur and Bokaro it is said that they are industrial towns and are so well managed that it has been not considered necessary to bring them within any corporation. It is said that this is a case of upgradation of municipality and the law does not require any seeking of opinion for the same. The creation of the corporation is said to be in the interest of the general public as it is bound to bring all round improvement in the area. Violation of any article of the Constitution is denied,

9. The caveators have also shown their happiness over the creation of the corporation. They have also enumerated a number of institutions which lie within the suburban areas (para 4 of their petition). Sri Radha Raman who has argued on their behalf has supported the learned Advocate General appearing for the respondents.

10. Mr. P. R. Mridul who advanced the main argument on behalf of all the petitioners supplemented by Sri Balbhadra Prasad Singh raised the following points:--

(1) The notification Annexure 1 is ultra vires of the Corporations Act because :

(a) the city of Muzaffarpur had not the population of 2 lakhs.

(b) the suburban areas could not be included, as they do not bear urban character.

(c) the areas of Gram Panchayats were also included in violation of the provision of the P. R. Act.

(d) when the alteration of the existing boundaries of the municipality were involved the provisions of Section 2 (3) of the Corporations Act were attracted which were not followed.

(2) Since civil consequence of the petitioners are involved and since it is a case of delegated legislation the principles of natural justice are attracted which have not been followed.

(3) If the rules of natural justice be excluded Section 2 (1) of the Corporations Act will become unconstitutional as being violative of Articles 14 and 21.

(4) The notification is factually arbitrary and is hit by Article 14 of the Constitution.

(5) The mala fide motive of the Chief Minister has vitiated the entire action.

11. For appreciating the first point (page 8) it is necessary to refer first two sections of the Corporations Act. The English rendering of the sections is as follows :--

"1. Short title, extent and commencement.-

(1) This Act may be called the Bihar Municipal Corporations Act, 1978.

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

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

2. Constitution of corporation and specification of the area thereof.-

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

(2) The State Government may, from time to time, by notification in the official

Gazette, alter the limits of such Municipal Corporations so as to include therein or exclude therefrom such area or areas as may be specified in the notification.

(3) The notification under Sub-section (2) shall be issued subject to the following conditions, namely :--

(a) A draft of the proposed notification shall be published in the official Gazette for the information of all persons likely to be affected thereby inviting objections and suggestions, within six weeks from the date of such publication of the said draft;

(b) On expiry of the said period of six weeks and after considering any objection or suggestion which may be received by the State Government within the said period, the State Government may make such amendment in the draft or alter the boundaries of the Municipal Corporation (proposed to be) established under Sub-section (1) of this section as it may consider necessary".

The words "proposed to be" within brackets under Clause (b) of Sub-section (3) of Section 2 have been omitted with retrospective effect and, therefore, these words have not to be read. The petitioners have also not based any argument on these words. We have, therefore, to take this section as if the words "proposed to be" within brackets are not there.

12. From Section 1 (3) it would appear that provision of the Act in question can be applied "In any city having a population of two lakhs or more". At this stage I may also refer to the long title which shows that the Act was provided "for the establishment of the Municipal Corporation for big cities in the State of Bihar". But what is a "big city" is shown by Sub-section (3) of Section 1, according to which it would be a city having a population of 2 lakhs or more. Undisputedly the erstwhile Muzaffarpur within its municipal limits had a population of about 10,000 less than that what is required, and so ordinarily a corporation could not have been constituted, but there is another relevant clause in Sub-section (3) itself and that gives the date on which the population should be 2 lakhs or more, and that date is the date of notification. It, therefore, comes to this that on the date of notification the population should be 2 lakhs or more. Obviously the difficulty, if for any reason the Government choose to have a corporation at any place lesser population, can be overcome by extending the area of the city itself. Whether this can be legally done or not is provided in Section 2. This section says which areas can constitute a corporation. The opening sentence itself shows that corporation may be declared for "any area". It is further made clear by saying that it may include (a) the area of any municipality or notified area and (b) such other areas as may be specified therein (underlining mine). If the population of the municipal area of the notified area falls short of the required population "such other" areas round about it may also be included in the corporation for making up the deficit population. After including such other areas in any municipal area if the population comes to 2 lakhs or more, the requirement of the law will be deemed to be met for constituting the corporation.

Exactly that has been done in the instant case. When the area of Muzaffarpur municipality was found to be less than 2 lakhs, about 19 Gram Panchayats have been added. So on the date of the notification the city consists not only of the municipal limits of Muzaffarpur but also of the suburban areas included in the notification. Prima facie, therefore, the notification is quite in order.

13. It has, however, been contended on behalf of the petitioners that the suburban areas added could not have been legally added. The argument is that by bringing them in corporation that area becomes a part of a city. A city as contemplated in the booklet "Census of India 1981" given to us. is a town having population of 1 lakh or more. So the city in turn becomes a town. What is a city and what is a town has been the subject matter of discussion in an unreported Bench decision of this Court in C.W. J. C- number 3302 of 1979, D/- 14-10-1980: Since reported in Kamakhya Narain Singh Vs. State of Bihar and Others, . That is a case where a writ was filed in respect of the constitution of the corporation at Ranchi. After referring to certain authorities and the Patna Municipal Corporation Act it has been held that the word town has to be understood in the same sense in which a common man understands it, the houses must be in clear proximity, there should be concentration of large number of people in comparatively small areas, and the engagement of the bulk of the population be non-agricultural pursuits. On basis of this the parties have conceded that the inclusion of suburban areas would be quite justified if they have assumed urban character, It is, therefore, for consideration now if the areas added to the limits of the Muzaffarpur Municipality bear urban character or not. This is a question of fact and the State Government have to be satisfied about their bearing urban character before including them within the limits of the corporation. Of course it is not for this Court to take evidence on this question from both the parties and come to its independent decision. On the materials placed on affidavit the Court can find if the State Government were justified in holding that those areas had come to assume urban character. The caveators in paragraphs 3 and 4 of the caveat have said that the areas included are mostly within the radius of about 4 to 5 miles of the heart of the town. The newly added areas according to them contain various institutions and offices like L. N. Mishra Institute of Business Management, office of the Director of the Animal Husbandry, M. P. Singh Science College, Medical College, Aerodrome, office of the Chief Engineer, Gandak Project, Engineering College, police line etc. etc., The counter-affidavit on behalf of the respondents also shows in paragraph 4 that they are all urbanised, electrified connected with pitch road at various places, some of them having drainage and water supply and other facilities. It also says that quite a number of factories, schools, mills, shops, police line, furniture mart, cold storage, housing colony, aluminium factory etc. etc. are there. Over and above, it has been said that the people there are engaged mostly in non-agricultural works. Reference may be made to Annexures 3 and 4 of the petition through which enquiry on the point was made by the State Government and reply was given by the Commissioner of Muzaffarpur. In Annexure 3, the State Government had said

that if the population of Mazaffarpur Municipality be less than 2 lakhs only such area could be included which are taking the shape of town. The Commissioner in Annexure 4 while suggesting the areas which could be added has clearly said that "ye sabhi gram sahari parivesh dharan karte ham tatha vyavaharik drishtikon se mukhya saher ke ang hain" i. e., they have assumed urban character and from practical point of view they are part of the main town. It has further been said that the newly added portions were also within the then Muzaffarpur Improvement Trust. Further after these writs were filed an enquiry also seems to have been made as would appear from Annexure A to the counter-affidavit. That is a letter written by the State Government to the Advocate General reiterating the old information that they had assumed urban character. In this annexure also there are details of any number of industrial undertakings, institutions and mills etc., situated within the newly added areas. These assertions have not been refuted before us. I may, however, repeat that after the close of the respondents' argument, a rejoinder to the counter-affidavit was given, which being objected to by Advocate General has not been accepted, and we have therefore not looked to the same even though Mr. Mridul wanted to refer to it.

14. Mr. Mridul argued that the area of culturable land in the suburban area is so huge that it will constitute about 90 per cent of the total area of the corporation and that being agricultural it cannot be said to assume urban character. I am afraid there is no valid material before us to enable us to give any finding on this argument. Whatever land may be there it may be continued to be cultivated. If the people have been urbanised, if so many institutions are there the natural conclusion would be that the area has acquired urban character. At this stage itself reference was made to Article 48 of the Constitution which requires the State to endeavour to organise agriculture and animal husbandry on modern and scientific lines. It was argued that the agriculture of the area is likely to be ruined if it is brought within the corporation. The Constitution, however, requires efforts for organising agriculture on modern and scientific lines: the chances thereof are surely better if the area is within corporation. Hence Article 48 of the Constitution is not violated by bringing suburbs within the corporation limits. In my opinion, therefore, the suburbs added bear urban character and the State Government have rightly satisfied themselves on the point.

15. It has further been argued that the inclusion of the Gram Panchayat is in violation of P. R. Act. Section 3 of that Act deals with the establishment and constitution of the Gram Panchayat. The first two Sub-sections deal with initial constitution of the Gram Panchayat and the next two Sub-sections deal with inclusion and exclusion of any portion from that area. For better appreciation I would quote the first four Sub-sections of Section 3 of the P. R. Act. They are as follows:--

"Establishment and constitution of a Gram Panchayat:--

(1) For every village or part of different villages, the Government may, by

notification, establish a Gram Panchayat:--

Provided that the Government may, if it thinks fit, establish one Gram Panchayat for a group of contiguous villages or more than one Gram Panchayat in a big village consisting of several Tolas.

(2) The Government shall specify the name and the local limits of the jurisdiction of Gram Panchayat in the notification mentioned in Sub-section (1).

(3) The . Government may, by notification in the official Gazette, alter the local limits of the jurisdiction of any Gram Panchayat by including therein, or excluding therefrom, any village or part of a village and also alter the name of such Gram Panchayat:

Provided that before making any alteration in the local limits of the jurisdiction of any Gram Panchayat, the Government shall, in the prescribed manner, ascertain the views of the people of the area affected by such alteration, (4) Upon the issue of a notification under Sub-section (3), the Gram Panchayat shall be deemed to have been established under Sub-section (1) with its local limits so altered."

It would appear from Sub-sections (1) and (2) that the Government may straightway issue a notification constituting a Gram Panchayat for a group of contiguous villages or may constitute more than one Gram Panchayat in any big village consisting of several tolas. The name and local limit of jurisdiction will have to be given in the notification. Thus there is no provision for eliciting the opinion of the public regarding the constitution of the Panchayat. But if after constitution any area is sought to be included or excluded the Government have to ascertain the views of the people of the area affected by such alteration as required by Sub-section (3) quoted above. Mr. Mridul has contended that bringing the Panchayat within the fold of the corporation amounts to altering the areas and so it was incumbent on the State Government to ascertain the views of the people of that area. The Advocate General on the other hand has argued that this provision is applicable only where an area is desired to be taken out from one panchayat and put in another panchayat and not in a situation where the entire panchayat is included within a corporation. He has relied upon certain cases where actually some areas from one panchayat were put in another panchayat but instead of issuing one notification of exclusion and inclusion two notifications were made defining the limits of the two panchayats. It was held that in such situation it was not necessary to obtain the views of the people. It all depends upon the notification that is issued. The cases referred to are reported in 1965 B. L. J.R. 227 (Ramautar Mahton v. Sub-divisional Officer, Begusarai 1965 B. L. J. R. 397 (Daroga Singh v. State of Bihar) and 1966 B. L. J. R. 779 (Baalal Prasad v. State of Bihar). The first two are single Judge cases but the third one is a Division Bench. Brijlal Prasad's case was dismissed on the . ground of delay but the earlier two single Bench decisions have also been noticed. Mr. Mridul has challenged these decisions on the ground that there is violation of

natural justice by taking recourse to such a method, and merely issuing two notifications in a different garb instead of one, gives the colour of contrivance which is unconstitutional. The learned Advocate General has submitted that if the notification can be supported by the P. R. Act it can never be said that they are unconstitutional until and unless the provision itself held to be ultra vires. The argument of the Advocate General is supported by the decision of this very Court and as such it cannot be said that issuing of notification would be unconstitutional. It would thus follow that the opinion of the Panchayats as or in the manner laid down in Sub-section (3) of Section 3 of the P. R. Act, was not required to be elicited before including those panchayats within the limits of the corporation, and the notification (Annexure 1) is not in violation of any provision of the P. R. Act. Attention was also invited to Article 40 of the Constitution which says that "the State shall take steps to organise village panchayat and endow them with such powers and authority as may be necessary to enable them to function as unit of self-Government". It has been argued that the directive principles require the State to develop panchayat as unit of the self-Government, and hence it would be against the directive principles to obliterate the Gram Panchayat by bringing them within the fold of corporation. The argument is not appealing because it could never be the intention of the constitution, while laying down directive principles, to rule the whole country through panchayats and panchayats alone. If the intention in any act of the State Government be to stultify the progress of the gram panchayat, then of course Article 40 might be attracted but where better privileges are given to particular area, better administration and all round improvement is envisaged in any act, I do not think Article 40 is any way offended. If of course the constitution of the corporation is held to be unconstitutional the question would be otherwise. :

16. It has further been urged that the constitution of the corporation means alteration of the existing boundaries of the municipality and in that view the provision of Section 2 (3) of the Corporation Act should have been followed which was not done. Attention has been invited to Sections 4, 5 and 6 of the Municipal Act in this regard which run as follows:--

"4. Declaration of intention to constitute or alter limits of municipality.-

(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.

(c) When the Commissioners at a meeting have made a recommendation in this behalf, the State Government may declare its intention to include within a municipality any area contiguous to the same or to subdivide any municipality into two or more municipalities.

(d) When the Commissioners of each of the municipalities concerned at a meeting have made a recommendation in this behalf, the State Government may declare its intention to unite two or more municipalities so as to form one municipality.

(2) Every declaration under this section shall be published in the Official Gazette and in such other manner as the State Government may direct. .

(3) If any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment, no declaration under this section shall be made.

5. Consideration of objections.-- The State Government shall take into consideration any objection submitted through the District Magistrate within six weeks from the date of the publication of a declaration u/s 4, by any inhabitant of the town or area, or any rate-payer of the municipality concerned, and in the case of a declaration under clause (a) of Sub-section (1) of the said section, by the district board of the district in which the town is situated.

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."

The Government before constituting municipality for any town has to declare its intention together with or exclusive of any railway station, village, land or building in the vicinity of such town. u/s 5, the Government has to consider any objection submitted through various agencies. It is after consideration of those objections that the notification constituting the municipality issues u/s 6. Section 4 (1) (b) (c) and (d) contemplates inclusion or exclusion of any area from an existing municipality. It is the recommendation of the Commissioners which is of importance in this regard. Section 6 contemplates even a notification in regard to

inclusion or exclusion. Mr. Mridul has argued that inclusion or exclusion would mean alteration of the area and if it has to be altered by any means, it can be done only in the manner contemplated by Sections 4, 5 and 6. By bringing the whole municipality within the corporation and by adding some suburban areas the State Government have, as argued, adopted a contrivance for by-passing the law for changing the limits of a municipality. The learned Advocate General has, however, contended that the argument could have force only if Muzaffarpur municipality had been allowed to continue as a municipality, and the provisions mentioned above have no application at all in a case like this, when the constitution of a corporation is under the Corporation Act which does not provide for any such notification declaring the intention and inviting objections. Of course the intention of the State Government in this regard is further made clear by the repeal of the words "proposed to be" from Section 2 (3) (b) of the Corporation Act as mentioned in para 11 of this judgment. When the legislature has laid down an unambiguous law, it is submitted, there is no use to trying to camouflage it with reference to the provisions of any other Acts.

17. Mr. Mridul has further contended with reference to the provision of the Municipal Act and P. R. Act already discussed that when the legislature enacted the Corporation Act but did not lay down a rule for inviting objection from existing municipalities and panchayats in respect of alteration of other areas, it would be presumed that the legislature did not desire to depart from the existing requirements (under P. R. Act and Municipal Act) while constituting the corporation under the Corporation Act. In this view propounded by him, it was argued that Sub-sections (2) and (3) of the Corporation Act (inviting objection for including or excluding any area from the corporation and disposing them of) would be attracted even when the initial notification of constitution of the corporation u/s 2 (1) is made, To use Mr. Mridul's words, Sub-sections (2) and (3) of Section 2 telescope into Sub-section (1). This principle of telescoping is said to be a well recognised method of interpretation and it is in consonance with the doctrine of pragmatic construction and contemporaneous construction. I am afraid these doctrines have no application in the instant case when the legislation is unambiguous on the point - particularly made unambiguous by the repeal of the words "proposed to be" from Sec. 2 (S) (d) of the Corporation Act. When there was a provision in the Municipal Act for inviting objection, and if the legislature would have desired to have those provisions even while constituting corporation, there was no impediment in the way of legislature in specifically providing for It.

18. On behalf of the petitioners our attention was also invited to Section 385 of the Municipal Act which runs as follows :--

"Power to supersede Commissioners in case of incompetency, default or abuse of powers --

If, in the opinion of the State Government, the Commissioners of any municipality are not competent to perform, or persistently make default in the

performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers. the State Government may, by an order published with the reasons for making it, in the Official Gazette, declare such Commissioners to be incompetent or default or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order or may, after giving notice to the Commissioners of its intention, by a like order, direct that the offices of the Commissioners shall be deemed to be vacant as from a date to be specified in the order and that a fresh election shall be held on or before that date".

On basis of this it has been argued that the constitution of the corporation at Mazaffarpur means supersession of the municipality, but for superseding the municipality certain conditions are laid down in Section 385, and unless they are fulfilled the municipality could not be superseded, and if it ceases to exist by the notification of the corporation, it amounts to the supersession of the municipality by a contrivance which is unconstitutional. This argument is also challenged on the very same ground on which the arguments based on Sections 4, 5 and 6 of the Municipal Act have been refuted Obviously the situation envisaged in Section 385 of the Municipal Act is quite different from the situation under which corporation is constituted. While the situation in Section 385 gives strong stigma to the commissioners, no such stigma is involved against them in constitution of corporation.

19. It would thus appear that the grounds on which the vires of the notification (annexure 1) is challenged are not tenable in law and as such the notification is not ultra vires but intra vires the Corporation Act.

20. Coming to the second point (at page 9 of the judgment) with the creation of the corporation, the municipality and some gram panchayats have no doubt ceased to function. The Chairman and Members of the Committee as also the Mukhiyas had a right to continue for the period they were elected. They were endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. Therefore the consequences they may personally suffer may be civil consequences. The question however is as to whose civil consequences will be taken into account -- those of a few persons who may choose to come to Court of law, or of the mass which is going to be affected or benefited in other words it should be for examination if the general public will be benefited by the corporation or they will suffer on account of it. Whenever any act, even beneficial is done, it is hardly possible to find that somebody has not suffered. If a pitch" road is constructed the bullockcart-walas who had a right to carry their own profession suffer. When buses are allowed to ply on the road the ricksha-walas do suffer. When tram-lines are laid, the bus-owners suffer. When circuit Bench of High Court is created at any place the counsel of the parent Court suffer and raise their voice against it When a new school or college is opened, the older institutions suffer, as the students who would have usually gone there, go to new institutions. When a new

district is carved out some residents of parent district do suffer. Similar is the case when a new judgship is carved out from an old one. But in all these cases it is the advantage to the general public which is kept in view. If there is a gain to the mass the loss to a few individuals is insignificant. The civil consequences of a few individual should not be considered in isolation, where any act is for benefit to the general public. It was argued that the villagers of the area included within the corporation have their own right of cultivating their lands, which they might loose by bringing the area within the corporation. This argument does not cut any ice, because whether it is a corporation or a municipality or a village, if the land is agricultural no body can be stopped from cultivating it: rather by bringing it under corporation, better facilities of cultivation may be made available to them. In cases like this, therefore, a pragmatic view of the whole thing should be taken. The inspection hole should not be narrow. The Chairman and the Commissioner may also have better chances and better prospects with the corporation coming in. There will be so many electoral posts for which they may contest and those who succeed will certainly have higher status than the present one, What would have happened if the population of Muzaffarpur would have been 2 lakhs? The Corporation Act would have applied straightway, the Chairman and Commissioners would not have been heard at all. even though they would have suffered the same consequence, which they are suffering now. How can the same consequence be civil in one case only to enable them to raise the plea? In my opinion whether it is a case of civil consequence or not should be determined on facts of individual cases and the answer to this question must be given after considering not only the rights of a few but the rights of the general public going to be affected, and for the simple gains of a few the advantage to the mass must not be sacrificed. Taking a pragmatic view of the situation, I am of opinion that the consequences which the petitioners may suffer will be such a small drop in the ocean, that in the larger interest it should be held that the petitioners also do not suffer from any civil consequence,

21. Certain authorities have been cited to say that where civil consequences follow the rule of natural Justice (*audi alteram partem*) has to be followed even in an administrative action. Assuming for the sake of the argument that the petitioners will suffer civil consequences in this case. I would show with reference to the authorities cited that they are absolutely different on facts and have no application to the present writ applications. Before I proceed to discuss them I would like to emphasise on the point that in all the cases which have been cited it will be found that by the impugned action either a stigma had been caused on the person affected or some specific provision had been violated directly or indirectly. No authority has been cited in which the rule of natural justice has been asked to be followed when there is no stigma on the person affected or where there is no violation of any law, I now proceed to discuss the cases in their chronological order.

(i) The first one is the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . Dr. Miss Dei had given different dates of birth on different occasions. An

enquiry was held on basis of which a notice was given to her by the Health Department, Orissa as to why the Government should not accept April 10, 1907 as her date of birth which was one of the dates given by her. The copy of the report of the Additional Director was not given to her and she was compulsorily retired taking her date of birth to be April 10, 1907. She was entitled to an enquiry under Article 311 of the Constitution. That enquiry was not held. According to rules framed under Article 309, she could not be removed from office before superannuation "except for good and sufficient reasons". It was held by the Supreme Court in such circumstances that because civil consequence followed, rule of natural justice applied. It was no doubt a case of individual and a case where she was entitled to an enquiry under the law. By being asked to retire earlier, a stigma was, no doubt, cast on her. In the instant case, however, no stigma is cast on any of the petitioners of the two cases. This case has, therefore, no application here.

(ii) The other case relied upon is the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . There a special selection board was constituted for selecting officers of the forest department for appointment to the Indian Forest Service. Mr. N. who was an acting Chief Conservator of Forest, Jammu and Kashmir was one of the members and he was himself a candidate also. Ultimately his name came at the top of the recommendations. Of course Mr. N had not taken part in the deliberations when his name was being considered but he had certainly taken part when his contestants (some of whom were even senior to him) were discussed. Mr. N was a Judge in his own case, which is abhorrent to concept of justice. In this circumstance it was held that there was miscarriage of justice caused by non-observance of the rule of natural justice. Here the natural justice was not the rule of audi alteram partem but it was rule according to which Mr. N should not have been a member of the board. It has been mentioned in this very authority that rules of natural justice are not embodied rules and what particular rule should apply to a given case must depend on facts and circumstances of the case. The learned counsel for the petitioners has cited this authority only for showing that in administrative enquiries also rule of natural justice should follow. Selection of Mr. N certainly cast a stigma on officers senior to him. On facts the case is entirely different and has no application whatsoever.

(iii) In the case of Daud Ahmad Vs. The District Magistrate, Allahabad and Others, , Daud Ahmad had a house in Allahabad which was requisitioned for the residence of the Chief Justice. Daud himself was residing in another small house. Daud has some difficulty in his small house and he, therefore, requested the District Magistrate to allow him to occupy the house when vacated by the Chief Justice. The Chief Justice also recommended his case. When the Chief Justice vacated the house he made over the same to Daud Ahmad. Some time later, the District Magistrate passed another order of requisition with respect to that house for Justice Mathur. Section 3 of the Requisition Act had a proviso according to which if a man was in actual possession of the house the District Magistrate had

to satisfy himself that suitable accommodation existed for him, before requisitioning that house. This enquiry was not done by the District Magistrate. It was held that the requisition was bad as natural justice was violated. In this, case there was a specific requirement of audi alteram partem which was not followed. It would thus appear that it was a particular provision laying down the rule of natural justice which had not been followed. This case has also, therefore, no similarity with the present case.

(iv) In the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the passport of Maneka Gandhi was impounded u/s 10 (3) (c) of the Passport Act "in the interest of general public". The reason was not furnished to her. In the counter-affidavit that was filed the Union of India took the plea that if she made a representation against the impounding it would be disposed of within two weeks. The reason for impounding that was given in the counter-affidavit was that her presence was likely to be required in a commission of enquiry. It was observed that even in administrative proceeding which involved civil consequence the principle of natural justice applied. The order of impounding was, however, not interfered with by the Supreme Court in view of the assurance given by the Union of India about the consideration of her representation. As said above, Maneka Gandhi's movements were restricted by the impounding and as such it was necessary to give her an opportunity of showing cause and of being heard. The lacuna was, however, taken as fulfilled by the subsequent opportunity given to her. The present case is quite distinguishable on facts. While Maneka Gandhi had in her possession a passport, the citizens of Muzaffarpur had not got any such thing of which they are being deprived. Upgradation of municipality or even panchayat should not be taken as entailing civil consequences. The petitioners here cannot be said to represent the entire population of the corporation area. They are elected bodies for certain purpose under the Bihar and Orissa Municipal Act or P. R. Act. If at all they suffer any loss that would be absolutely negligible as indicated earlier. Apart from that, if they or the members of any portion thereof are aggrieved by the creation of corporation, there is a provision in the Act for taking that area out of corporation. If, therefore, they have any grievance it is not that there is no provision for redressal. If it be held that in all administrative actions rule of audi alteram partem shall be applied, that can be taken as cured by the provision of exclusion given in the Act itself. In Maneka Gandhi's case even when there was no provision the lacuna was taken as filled up by the assurance of reconsideration. This case has also, therefore, no application.

(v) In the case of S.L. Kapoor Vs. Jagmohan and Others, the Lt, Governor of Delhi u/s 12 of the Punjab Municipal Act 1911, as applicable to New Delhi, appointed nine non-officials and four ex officio members of the New Delhi Municipal Committee to hold office for one year with effect from 4-10-1979. On 27-2-1980 a notification issued u/s 238 (1) of the said Act superseding that committee on grounds of incompetence, abuse of powers, wastage of municipal funds etc. S. L. Kapoor and another filed writ against supersession but lost. In

the appeal before the Supreme Court the main point raised was that the supersession was in violation of the rule of natural justice and total disregard of fair play because no notice to show cause had been given to the committee and the committee had no opportunity to meet the charges. Ultimately it was held that the very wordings of Section 238 (1) contemplated an enquiry before superseding, and since that enquiry had not been held, the notification was bad, Since, however, only a few days more of the life of the committee were left the Supreme Court did not quash the notification. The appellants felt satisfied by the observation itself, as the stigma cast on them was removed. It would thus appear that on facts even this case is entirely different. No stigma is cast on the petitioners.

(vi) Much reliance has been placed in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . On April 13, 1978 the Government of India under Clause (a) of Sub-section (1) of Section 18AA of the Industries Development and Regulation Act 1951 authorised the National Textile Corporation Ltd. to take over the management of six industrial undertakings which were all cotton mills at different places under the management of Swadeshi Cotton Mills. A writ was filed in the Delhi High Court which was first placed before a Division Bench. At their request it was placed before a larger Bench (three Judges) and ultimately before a still larger Bench (five Judges) for considering if prior hearing was necessary, in other words, if the principle of audi alteram partem was attracted before the undertakings were taken over. In the set up of Section 15 to Section 18AA of that Act the question was whether Section 18AA excluded the giving of a prior hearing. Ultimately it was held that the rule of prior hearing was not specifically excluded rather a prior hearing in the context of that case should have been given. This case is a trump card of Mr. Mridul, but as I am going to show on facts and also on law the case has no application to the instant case. The scheme of that Act has been given in paragraphs 45 to 51 of the report. Section 15 gives power to the Central Government, to cause investigation to be made into a scheduled industry or industrial undertaking before taking over the same. So before the industrial undertaking is taken over an investigation has to be made -- this is of importance. Section 16 empowers the Central Government to issue proper direction to the industrial undertaking on completion of the investigation. The directions that can be given are all indicated there. The investigation and the directions obviously required sufficient time. It was felt that the Government could not take over the management of any industrial undertaking even in a situation calling for emergent action without first issuing directions to it and waiting to see whether or not they were obeyed. In order to remove such difficulty Sections 18A to 18F were introduced in the I, D. R. Act. Even these provisions were found insufficient to cover certain contingencies and, therefore, Section 18AA was inserted with heading " "power to take over industrial undertakings without investigation under certain circumstances". The heading is quite in accordance with the objects and reasons enacted in paragraph 45-50 of the report. Without quoting Section 18AA in extenso, it may be mentioned that

Government can take over the industrial undertaking without investigation only in certain conditions. Broadly speaking the Government can take action if it is found that the persons in charge have made reckless investments, created unnecessary encumbrance, have brought about a situation which would affect the production of the articles and if it is satisfied on facts that immediate action is necessary to prevent such a situation. There are other similar conditions (vide para 51 of the report) to which I need not refer. It would thus appear that it is the mismanagement of the firm (a great stigma to it) which gives the power to the Government to take over the undertaking. In that case also there was a survey report on basis of which the Government took a decision (vide para 18 of the report). The Swadeshi Cotton Mills had not been given any opportunity to meet that report. In this context a question had arisen whether Section 18AA excluded the rule of natural justice. The majority view of the Supreme Court was in negative (one Hon"ble Judge dissenting). The features in the reported authority are thus widely different from the features in the instant case. Before discussing the authorities, I have said that they belong to two classes, namely, where a stigma is caused to the person aggrieved or where the law directly or indirectly requires a prior hearing. This case may come within both the categories.

Before parting with this case, I may with advantage refer to the observation made in paragraph 31 of the report which runs as follows:--

"The next general aspect to be considered is : Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule....."

In the instant case, I think that the intention of the legislature to exclude the rule of natural justice is more than clear, and that is shown by omission of the word "proposed to be" from Section 2 (3) (b) of the Corporation Act. If those words had been left there it would have been obligatory on the part of the State Government to seek the view of the people affected. By omitting those words the intention is clear that the legislature did intend to include the provision of eliciting opinion. Eliciting prior opinion is a rule of natural justice, parallel to or the same as the rule of audi alteram partem. The rule of natural justice is not a codified rule, it varies from situation to situation. "

The phrase is not capable of a static and precise definition. It cannot be imprisoned in the strait-jacket of a cast-iron formula" (para 24 of the report -- Swadeshi Cotton Mills). Needless to repeat that by constitution of the Muzaffarpur corporation absolutely no stigma is caused against the petitioners (as could have been caused in the case of supersession of the municipality) nor any requirement of law has been violated. The case of Swadeshi Cotton Mills. therefore, also does not help the petitioners.

22. Thus the impugned notification (Annexure 1) does not offend against the principle of natural justice, on the ground that the petitioners would suffer civil consequences.

23. I would now examine if the notification has been issued under a delegated legislation and if it suffers from the vice of excessive delegation. The argument of the petitioners counsel is that if notification has been issued under delegated legislation it may be struck down if the delegation be excessive. Further argument is that in case it is delegated legislation, the rule of natural justice will be attracted. The Advocate General has contended that it is a piece of conditional legislation and not a delegated one, and in such a case the rule of natural justice is not attracted. It has been so held in the case of *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, . This position in law as laid down in *Tulsipur* case is also conceded by Mr. Mridul.

For appreciating the difference between the conditional legislation and delegated legislation reference has been "invited to the cases of *Sardar Inder Singh Vs. The State of Rajasthan*, and *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, . The distinction pointed being almost the same in both the decisions, I would refer only to the case of *Hamdard Dawakhana* (para 29 of the report) where it has been observed:--

"The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective : *Hampton & Co. v. United States*, (1927) 276 US 394, and the latter involves delegation of rule making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion , of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend....."

"Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation....."

It would appear from above that in a conditional legislation the law is complete in itself and certain conditions are laid down as to how and when the law would be applied by the delegate. In other words the delegate, namely the State Government here, has only to be satisfied if what it is going to do, is in conformity with the conditions laid down in the law. On the other hand, in a delegated legislation only some broad principles and policy are laid down and the details have to be filled up by the delegate namely the State Government. To give concrete example, when a law authorises the State Government to frame rules for carrying on the purposes of the Act, those rules that are framed are under delegated powers, and it is only when those rules are framed that the Act becomes complete.

In such cases while framing the rule if the delegate exceeds the limits and goes beyond the principle and policy it will be hit by the vice of excessive delegation. Where, however, the legislation is complete in itself and the delegate has only to act within the framework of the same it cannot but be only a case of conditional legislation. In the instant case the conditions for constituting a corporation are laid down in the Corporation Act itself, and when those conditions are satisfied or are made to be satisfied (in accordance with the Corporation Act), the Act would apply. The State Government have only to see whether the conditions obtain in accordance with the provisions of the Act. Addition of areas is prima facie within the ambit of the legislation u/s 2 (1) of the Corporation Act. In the case of Tulsipur Sugar Co. (ibid) the Supreme Court has held that a notification making an Act applicable to a geographical area is in the nature of a conditional legislation and it cannot be characterised as a piece of subordinate legislation. The Corporation Act, therefore, is out and out a piece of conditional legislation and as such the argument advanced by Mr. Mridul in this regard does not need any further consideration.

24. It is thus clear that in the instant case (a) petitioners do not suffer from any civil consequence, (b) even if they suffer, the law of natural justice will not be attracted, and (c) it is not a case of delegated legislation at all : rather it is a piece of conditional legislation, where law of natural justice does not operate.

25. Points 3 and 4 at page 9 of the judgment may be taken up together. It has already been said that the rule of natural justice is not attracted in this case. It has further to be considered if Section 2 (1) of the Corporation Act violates Articles 14 and 21 of the Constitution. That will answer both the points. I would first discuss Article 21 which reads as follows:--

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

There is no question of deprivation of anybody's life or personal liberty here. If by personal liberty the right to carry on the profession or the right to be governed by village panchayats is concerned, the State has the right to interfere with it by law. I have shown above and I am also going to show hereafter that

the Act by which it has been done is quite constitutional. Article 14 of the Constitution runs as follows :--

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

Mr. Mridul who has taken both the Articles together has assailed the Corporation Act on the grounds which I am now going to discuss.

(i) The first argument is that Councillor and Mukhiyas will be visited with civil consequence and no procedural safeguard has been provided for regulating the exercise of power of the State Government. This point I have already discussed in detail and hence I need not dwell upon it any further. I may only say that what has been done is perfectly authorised by the Corporation Act.

(ii) The next argument is that the provision is not reasonable because in the cognate statutes namely P. R. Act and Municipal Act there are provisions for safeguarding the interest of the public. In the P. R. Act there is no provision for eliciting opinion of people for initial constitution of the panchayat. In Municipal Act which is of 1922, there is of course some provision, but that does not seem to have been followed in recent years. Even the P. R. Act which is of 1947 has stood the test of time, This argument also therefore, fails.

(iii) The other ground of attack is that even the people of the suburban areas have a civic right to be governed by a unit of self government of their choice and their right of franchise is their civic right. I do not understand how a citizen can have his own choice of the form of government. I have already discussed the impact of directive principles under Articles 40 and 48 of the Constitution in this case. A gram panchayat cannot say that it will always remain a gram panchayat or it has a right to refuse any better form of self government. This is a matter to be decided by the legislature and so long the law laid down by the legislature is within the framework of the Constitution it cannot be assailed. The, right of franchise of anybody is not being taken away. If one had a right to choose a Mukhiya he may have now a right to choose a mayor or councillor. In this connection reference has also been made to the case of John Wikes from "Parliamentary Practice" by Sir Erksine May, which only shows that the House of Lords recognised the right of franchise of the electors of a particular constituency as far back as 1764. There is nothing to dispute this right. Needless to repeat that the civic right of the inhabitants of Muzaffarpur Corporation are in no way going to be affected. This argument therefore also fails.

26. The notification (Annexure 1) has been characterised as arbitrary because (a) the city of Muzaffarpur had not the required population and recourse has been taken to a collateral device for making up the same, (b) it is contrary to the mandate of Articles 40 and 48, (c) it destroys the village self government, (d) the objects of the Act may be laudable but the means adopted are illegal, and lastly (e) the State Government have not adduced materials before the court and have not given cogent reasons for its action. Except the last one, all the points

have already been discussed and rejected. So far the materials and reasons are concerned, the Advocate-General in the course of the argument submitted that formerly the whole of State had been divided into four commissioneries, namely, Tirhut, Patna, Chotanagpur and Bhagalpur. Out of these Patna and Ranchi had already been converted into corporations. Both these were in South Bihar. The Government from administrative point of view thought it desirable to have at least one in the North Bihar also, and with this end in view the case of Muzaffarpur was taken up first, because in North Bihar there is no town with a higher population. Of course simultaneously with Muzaffarpur, a corporation at Bhagalpur was also constituted. When law for constitution of the corporation is satisfied, I think the reasons given by, the Advocate-General do deserve consideration. This is a step for satisfying the people of the different parts of the State. This objection also therefore is to be ruled out.

If the Corporation Act is constitutional and if the notification (Annexure 1) has been issued in conformity with the provision of the Act (as discussed above), the notification cannot be said to be arbitrary.

27. It is thus clear that the Corporation Act is quite constitutional, it does not violate Articles 14 and 21 of the Constitution and the impugned notification (Annexure 1) is not arbitrary and is not hit by Articles 14 and 21 of the Constitution. Both the points are accordingly answered against the petitioners.

28. Coming to the last point at page 9 it has to be considered if the Chief Minister had any mala fide motive in creation of Muzaffarpur Municipality. In the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, it has been observed that though an order passed in exercise of the power under statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. But the mala fide has to be established by the petitioners to the satisfaction of the court. The only thing worth mentioning is that the Chairman of Muzaffarpur Municipality (petitioner No. 1 in C. W. J. C. No. 1324 of 1981) had political difference with the Chief Minister. That the Chief Minister or the State Government took steps to find out if a corporation could be constituted at Muzaffarpur or if the municipality was running satisfactorily, cannot lead the court to come to a conclusion that the Chief Minister was actuated with any malice in doing so. In the case of *S. Pratap Singh Vs. The State of Punjab*, a Civil Surgeon was victimized by the State Government. The Civil Surgeon was recalled from leave preparatory to retirement, suspended and proceeded against. During his leave, he had obviously sponsored an article in *Blitz* casting aspersions against the Chief Minister. The Supreme Court felt satisfied that the dominant motive of the Government was to wreak vengeance on him, and hence found the impugned order to be vitiated by mala fides. There is absolutely no similarity between that case and these writ petitions. Mr. Mridul also conceded towards the end of the argument that if the creation of the municipality is otherwise found to be valid the question of malice will become subsidiary and of

little importance. He has, however, laid stress on the fact that in the instant case the counter-affidavit should have been sworn by the Chief Minister himself and not by Sri Sayeeduz Zafar, an Assistant in the Urban Development Department. The argument is that the nature of allegations made against the Chief Minister are personal in nature and so the best person to swear the affidavit is the Chief Minister. He has referred to the cases of G. Sadanandan Vs. State of Kerala and Another, and the case of Mohammad Ibrahim Vs. B. Rama Rao, . In the case of Sadanand it has been held that where allegations are specifically made against an authority then if the denial is by anybody else the conclusion should be of mala fide. In the instant case the allegation of political rivalry is too vague to be called specific. In the case of Mohammad Ibrahim an Executive Engineer was reverted as an Assistant Engineer and in the writ filed against that, counter-affidavit was sworn by an Assistant Secretary disclosing some charges. Their Lordships of the Supreme Court deprecated the practice of the affidavits being sworn by the junior officers. Their Lordships hoped that the higher officers of the State Government would cease to utilise lower ones to provide an alibi for their own want of care. In that case the counter-affidavit gave out certain charges against the appellant but in this case there is only denial of the allegation made. It was argued that if the Chief Minister had sworn the counter-affidavit he could have been summoned by the court for cross-examination and the petitioners would have been able to elicit from him the truth about the allegation of mala fide. There is hardly anything which can be called a legal evidence in support of the allegation which needed a specific denial by the Chief Minister personally. Apart from that the deponent of the counter-affidavits has clearly said that it was learnt from the Chief Minister that he had never expressed" displeasure with regard to the implementation of the 20 point programme. It is important to refer in this connection to the application in C. W. J. C. No. 1324 of 1961, para 7 where the Chairman petitioner No. 1 has made personal allegations against the Chief Minister. Though the allegations are personal in nature, the affidavit has been sworn by Sri Asgar Hussain Ajazi, petitioner No. 12, and not by the Chairman himself. Petitioner No. 12 while referring to para 7 has only said in the affidavit portion that it is to his knowledge. Referring to the nature of allegation unless the deponent says that he was present on relevant occasions, it cannot be an affidavit in accordance with law. I fail to understand, when the Chairman himself has not come to take oath, how can he compel the Chief Minister to rebut the same. He cannot be allowed to escape himself and net the Chief Minister. Perhaps realizing this position, Mr. Mridul became lukewarm while arguing this point. In such a situation the creation of corporation at Muzaffarpur cannot be struck down on the ground of mala fides.

29. It would thus appear that all the points urged by the petitioners of both the applications to challenge the constitution of Muzaffarpur corporation (through a notification Annexure 1) have failed. If Annexure 1 has stood the scrutiny of law, the order appointing respondent No. 4 as Administrator of the corporation has also to be upheld. As a matter of fact no argument has been advanced to

challenge his appointment if the creation of corporation is upheld.

30. In view of my discussions aforesaid it is clear that there is no merit in any of the writ applications and as such they are dismissed. In the circumstances, parties shall bear their own costs.

S. K. Choudhuri, J.

31. I agree.