

(1982) 12 CAL CK 0003
In the Calcutta High Court
Case No : C. O. No. 5536 (W) of 1981

Samaresh Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-12-1982

Acts Referred:

Bengal Municipal Act, 1932 — Section 134, 16, 2, 3, 6
Constitution of India, 1950 — Article 14

Citation : (1982) 12 CAL CK 0003

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : Ashutosh Ganguly and P.L. Shome, for the Appellant; Tapash Roy and Sunit Kumar Panja for Respondent No. 1 and Samir Ghosh for Respondent Nos. 2 to 22, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Roy, J.—This matter is heard as a contested application upon notice to the respondents and the respondents have appeared and contested the writ petition by filing separate affidavits. The writ petition is directed against formation of Jadavpur Municipality and consequential Notifications being Notification dated 30th March, 1978, published in the Calcutta Gazette Extra-Ordinary dated 1st April, 1978, Notification dated 14th May, 1980 published in the Calcutta Gazette Extra-ordinary on the same day, Notification dated 14th May, 1980 published in the Calcutta Gazette Extra-ordinary dated 15th May, 1980, Memo No. 750(12) dated 29th May, 1980 of the Block Development Officer, Jadavpur-Behala Block, Notice dated 27th January 1981 and 21st January 1981 issued by Jadavpur Municipality and notice dated 28th February, 1981 u/s 134 of the Bengal Municipal Act issued by the Jadavpur Municipality. The petitioners Nos. 1 to 4 were residents and taxpayers of village Kamdahari under Kamdahari Anchal Panchayat and the petitioner No. 5 was a resident and taxpayer of the village Bansdroni under Bansdroni Anchal Panchayat and the said village Kamdahari and the village Bansdroni have been included in the newly formed Jadavpur

Municipality and the petitioners contend that such constitution of Jadavpur Municipality is illegal and without jurisdiction.

2. The petitioners contend that by Notification dated 30th March, 1978 published in the Calcutta Gazette Extra-ordinary dated 1st April, 1978, an intention was expressed by the State Government to constitute a Municipality to be called Jadavpur Municipality under the Bengal Municipal Act consisting of certain areas mentioned in the schedule to the said notice. According to the petitioners, no clear idea could be obtained from the schedule as to whether a complete block would be formed with the areas mentioned in the schedule to the notice. A copy of the notice has been annexed to the writ petition as Annexure "A". The petitioners contend that no public proclamation was made by beat of drum throughout the Municipality or the local areas proposed to be included in the Municipality or in the areas where the petitioners reside. The petitioners also contend that no copy either in English or in Bengali of the said Notification issued under sub-section (1) of section 6 of the Bengal Municipal Act was posted up anywhere in the office of the District Magistrate. Accordingly there was no question of inspection of the scheme for the proposed Municipality by any person although such inspection is required to be given under sub-section (2) of section 6 of the Bengal Municipal Act. The petitioners contend that the petitioners did not get opportunity to file objection u/s 7 of the Bengal Municipal Act because of the failure to give public proclamation for the said proposed Municipality and In not giving publication of the notice in accordance with the provisions of sub-section (2) of section 6 of the Bengal Municipal Act.

3. The petitioners further contend that by notification dated 14th May, 1980 published in the Calcutta Gazette Extraordinary dated 14th May, 1980, the State Government purported to constitute the areas described in the schedule to the said notification to be a municipality named as Jadavpur Municipality. The petitioners contend that from the schedule given to the said notice it is quite clear that the areas mentioned in the said notice do not comprise a compact block and as such a Municipality cannot be constituted for want of a compact block. According to the petitioners, there is no link road from the Kamdahari Anchal to other areas of Jadavpur on the east and north except through part of Sonarpur which is included in Garia Anchal Panchayat on one side or from Netaji Subhas Chandra Bose Road and Raja S.C. Mullick Road which are within Corporation of Calcutta on the other side. The petitioners further contend that as a result there are two separate and independent blocks without any link road between them. It is also contended that Jadavpur Municipality has been sought to be constituted by taking two such separate blocks which are also not contiguous to each other and the Garia Anchal Panchayat intervenes between the two blocks. The petitioners have annexed a plan of the area referred to in the said Notification for the constitution of the Jadavpur Municipality being Annexure "C" to the writ petition and from the map it transpires that in between the Mouza Kamdahari on the south and part of Mouza Baishnavghata to the north of the Tolly's nullah, a compact area between the boundary of Mouza Kamdahari and of

the said Mouza Baishnavghata under Sonarpur Police station falls under the Garia Panchayat and the said compact area has not been included in the Jadavpur Municipality and there is also no link road from the Kamdahari and the areas to the west of Kamdahari Anchal to other areas of the said Jadavpur Municipality to the north of Tolly's nulla. The petitioners contend that by another Notification dated 14th May, 1980, the respondent Nos. 2 to 22 were appointed as Commissioners by the State Government under the first proviso of section 16 of the Bengal Municipal Act. The petitioners contend that such appointment of the Commissioners was not made bonafide but in colourable exercise of power. The State Government appointed the said respondents from a particular group and they do not represent the interest of other persons belonging to other groups and sections and some of them also are not qualified to be appointed as Commissioners. The petitioners contend that the said respondents purported to elect the Chairman and the Vice-Chairman of the municipality and from the letter dated 29th May, 1980 issued by the Block Development Officer, Jadavpur-Behala Blocks, it appears, that by virtue of the Notification issued on 14th May, 1980, the anchals mentioned in the said letter were included within Jadavpur Municipality and as such, such anchals become defunct and inoperative from the date of Notification.

4. An affidavit-in-opposition was initially filed on behalf of the State of West Bengal affirmed by Sri Subimal Datta the Deputy Secretary of the Government of West Bengal and it has been stated in the said affidavit-in-opposition that the District Magistrate, 24-Parganas was requested to take necessary action as required under sub-section (1) of section 6 of the Bengal Municipal Act, 1932. Moreover, a press note relating to the proposed establishment of Jadavpur Municipality with the area comprising of twelve anchals of Jadavpur-Behala Blocks was published in the Daily Jugantar dated 2nd April, 1978 and such news was also broad-cast by the All India Radio. The Government also received some objection petitions in connection with the proposal for the formation of the Jadavpur Municipality. It has also, been stated in the said affidavit-in-opposition that from the map of the proposed Municipality furnished by the Sub-Divisional Officer, Sadar Alipore it will appear that all the mouzas included within the Municipality are contiguous to each other and as such the Municipality has been constituted with a compact block. It has also been stated that Mouza Baishnavghata and Mouza Kamdahari meet on Kulpi Road and therefore, it is not correct to contend that there is no link road from the Kamdahari Anchal to other areas of Jadavpur on the east. It is also contended in the said affidavit-in-opposition that it is not necessary that an appointed Commissioner must be a taxpayer of the Municipality and the Commissioner appointed u/s 16 of the Bengal Municipal Act fulfils the conditions of the said section. The State Government has also denied the contention that the Commissioners belong to any particular group or section. It may be noted in this connection that the State Government did not furnish any material before the Court to show that besides the publication in the daily Jugantar about the proposal to form Jadavpur

Municipality and the broad-cast of the said news by the All India Radio, any proclamation by beat of drum was made in the locality in accordance with the provisions of section 6 (2) of the Bengal Municipal Act. Any material showing publication in the notice board of the District Magistrate about the formation of the said Jadavpur Municipality has also not been placed before the Court. In the affidavit-in-opposition affirmed by the State of West Bengal it has only been stated that the District Magistrate was requested to take necessary action as required under the provisions of section 6 of the Bengal Municipal Act for the constitution of the Jadavpur Municipality, but whether such action was actually taken by the District Magistrate or not has not been stated in the affidavit-in-opposition and records relating thereto have also not produced before the Court.

5. It, however, appears that during the pendency of the hearing of the writ proceeding, an Ordinance was promulgated by the Governor of West Bengal, namely, West Bengal Ordinance No TV of 1982 published in the Calcutta Gazette Extraordinary dated February 11, 1982. The said Ordinance No. IV of 1982 is named as The Bengal Municipal (Amendment) Ordinance, 1982. Relevant provisions of the said Ordinance are set out as hereunder:

2. In the Bengal Municipal Act, 1932, in Section 6, -

(a) in sub-section (1), the words "and by such other means as it may determine." shall be omitted and shall be deemed always to have been omitted;

b) after sub-section 2), the following sub-section shall be inserted and shall be deemed always to have been inserted.

(3) The provisions of subsection (2) shall not apply in the case of a notification issued under clause (a) of, read with clause (i) of the proviso to, sub-section (1).

6. It also appears that by the Bengal Municipal (amendment) Second Ordinance, 1982 published in the Calcutta Gazette Extra-ordinary dated April 16, 1982, same provisions as in section 2 of the Original Ordinance were passed and in section 3 of the said Bengal Municipal (Amendment) Second Ordinance it has been stated that "The Bengal Municipal" (Amendment) Ordinance, 1982 is repealed. But notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Bengal Municipal (Amendment) Ordinance, 1982 shall be deemed to have been validly done or taken under the principle Act as amended by this Ordinance as if this Ordinance were in force on the day on which such thing was done or such action was taken." It further appears that another Ordinance was promulgated namely The Bengal Municipal (Amendment) Third Ordinance, 1982 published in the Calcutta Cazette Extraordinary on 22nd July, 1982 containing same provisions as in Section 2 of the First Ordinance and Second Ordinance. In section 3 of the Third Ordinance it has been provided that the Second Ordinance, 1982 is repealed, but notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the Bengal Municipal (Amendment) Second Ordinance, 1982 shall continue in

force and shall be deemed to have been validly done or taken under the principal Act as amended by this Ordinance.

7. For the purpose of appreciating the scope and import of the original section 6 of the Bengal Municipal Act as sought to be amended by the said Ordinance, subsection (1) and sub-section (2) of section 6 of the Bengal Municipal Act are set out hereunder:

6. Declaration of intention to constitute, abolish or alter limits of municipality. (1) The State Government may, by notification, and by such other means as it may determine, declare its intention-

(a) to constitute any town, together with, or exclusive of, any railway station, village, land or building in the vicinity of any such town or municipality under this Act or

(b) to withdraw any municipality from the operation of this Act or

(c) to exclude from a municipality any local area comprised therein and defined in the notification; or

(d) to include within a municipality and local area contiguous to the same and defined in the notification or

(e) to divide any municipality into two or more municipalities or

(f) to unite two or more municipalities so as to form one municipality or

(g) to define the limits of any municipality or

(h) to revise the boundaries of two or more contiguous municipalities or

(i) to alter the number of Commissioners of a municipality in consideration inter alias of the increase or decrease in the population, income, number of voters and commercial and general importance of the place:

Provided that a declaration shall not be made

(i) under clause (a), unless the State Government is satisfied that three-fourths of the adult male population of the town to which it refers are chiefly employed in pursuits other than agriculture, and that such town contains not less than three thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town

(ii) under clause (b) and clauses (d) to (g) in the case of any municipality in which the condition specified in proviso (i) are complied with, except after taking into consideration the views of the Commissioners of the Municipality or each of the municipalities concerned at a meeting

(iii) where any local area is to be excluded from a municipality under clause (c) of which area three fourths of the adult male population are chiefly employed in pursuits other than agriculture and in which area the average number of

inhabitants is not less than one thousand to the square mile, except after consideration of the views of the Commissioners at a meeting

(iv) under clause (d), unless the State Government is satisfied that three-fourths of the adult male population of the local area to which it refers are chiefly employed in pursuits other than agriculture;

(v) under clause (h), except, after consideration of the views of the Commissioners of each of the municipalities concerned at a meeting;

(vi) where any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment

(2) A copy, both in English and in Bengali, of every notification issued under sub-section (1) shall be posted up in a conspicuous place in the office of the Commissioners of the Municipality or municipalities concerned, or in the case of a notification under clause (a) of that sub-section, in the office of the District Magistrate, and in such office public places as the Commissioners or the District Magistrate, as the case may be, may direct;

And a public proclamation shall be made by beat of drum throughout the municipality or local area concerned that such copy has been so posted up, and is open to inspection in such office.

8. The state of Bengal has subsequently filed an supplemental affidavit in opposition incorporating some other facts and an affidavit-in-reply to such supplementary affidavit has been made by the petitioners. In the supplementary affidavit-in-opposition it has been stated by the State of West Bengal that the object of establishing a municipality in a particular urban area is to improve and develop the urban area and create a better living condition for the people of the said area through the local self-government to be run by the representatives of the people of the area. From the experience of the Government, since a long time in the past, it has been observed that the agricultural belt in the country should be kept as rural area because in the agricultural belt the need and way of living of the people is little different than the need of the people in a non-agricultural belt. The area where three-fourth of the adult male population are not chiefly employed in agricultural pursuits, is considered to be urban area and is required to be developed as an urban area and the State Government feels that the ways and means for developing the urban area is through a municipal administration in the area by establishing a municipality in the area and from time to time the Government created Municipality in a particular area or areas to achieve the aforesaid object. It also appears that the Government is of the view that the object of creation of a Municipality and for providing Municipal administration cannot be achieved fruitfully unless at least the area contains 10,000 inhabitants with an average number of not less than 2000 inhabitants in 2.59 sq. miles where creation of Municipality is considered necessary in view of the fact that the Municipalities are to depend on the income as and by way of tax and other levies to be collected and realized from the inhabitants of the area.

9. Having considered the aforesaid aspects as provided in sub-clause (1) and the proviso to section 6 of the Bengal Municipal Act and being satisfied that the conditions as stated hereinbefore permit the creation of a municipality in the Jadavpur area with the areas mentioned in the notification issued by the State Government u/s 6(1) of the Bengal Municipal Act, the Government declared its intention to constitute the Jadavpur Municipality with the localities and areas mentioned in the said notification. Twelve anchors were notified for constitution of the proposed Municipality. After the said notification u/s 6(1) of the Bengal Municipal Act was published, suggestions and objection were received by the Government. Thereafter, such representations, objections and suggestions were duly considered in different levels and ultimately it was decided to constitute the Municipality by making some additions and alternations to the mouzas comprised in twelve anchors mentioned in the notification declaring the intention of the Government to form a Municipality. Thereafter on 14th May, 1980 the notification constituting Jadavpur Municipality was published and in the said notification the particulars of the mouzas were included in the newly constituted Municipality. As some mistakes crept in the said notification dated 14th May, 1980, a corrigendum dated February 16, 1981 was published correcting the boundary of the Municipality by mainly including certain mouzas which were left out through inadvertence and also excluding a small portion of an area which were within the Corporation of Calcutta. Such copy of the corrigendum has also been annexed as Annexure "C" to the supplementary affidavit-in-opposition filed by the State Government. A map showing the areas constituting Jadavpur Municipality has been prepared by the office of the District Magistrate, 24-Parganas with reference to the maps of the mouzas constituting the Municipality. It has been stated that the maps of 22 moujas out of total number of 30, constituting the Municipality were in the record room of the District Magistrate, 24-Parganas and the maps for the remaining mouzas were in the office of the Director of Land Records, West Bengal. A copy of such map-showing all the areas included in the Jadavpur Municipality has also been annexed in the supplementary affidavit-in-opposition being annexure "D" to the said affidavit. It has been stated in the supplementary affidavit-in-opposition that a reference to the map will establish that the western portion of the Municipality consisting of Purba Putiari, Chakdaha, Bansdrani, Brahmapur, Rainagar, Kamdahari are connected with the rest of the area of the Municipality through motor-able road and several bridges over Tolly's nulla. It has been contended in the supplementary affidavit-in-opposition that the said portion of the Municipality is contiguous to the remaining portion. It has also been submitted in the supplementary affidavit-in-opposition that under the law it is not necessary that each portion of the Municipality should be contiguous with the other portion being connected through the land strip. There are Municipalities in West Bengal a portion of which is not contiguous to other because of bifurcation of areas by the river as for example Jangipur Municipality which is bifurcated by the river Ganges and areas on both sides of the river Bhagirathi constitute Jangipur Municipality.

10. Mr. Roy, the learned Counsel appearing for the State Government, has submitted that the areas comprising Jadavpur Municipality constitute a compact block and are well connected. He has submitted that for the purpose of constitution of a municipality, it is not necessary that all the road and connecting links between different areas of the Municipality must also fall within the same Municipal limit. The said contention of Mr. Roy has, however, been seriously disputed by Mr. Ganguly, the learned Counsel appearing for the petitioners. Mr. Ganguly has submitted that for the purpose of constitution of a Municipality all the areas must constitute a compact block and shall also form part of the municipal limits of the proposed Municipality. It, however, appears from clause (a) of sub-section (1) of Section 6 that the State Government may by notification, and by such other means as it may determine, declare its intention to constitute any town, together with, or exclusive of any railway station, village, land or building in the vicinity of any such town or a municipality under this Act. From the provisions of clause (a) of sub-section (1) of Section 6 of the Bengal Municipal Act it also appears to me that a Municipality can be constituted by including any town either together with or exclusive of any railway station, village, land or building in the vicinity of any such town. In the circumstances, it cannot be contended that if two portions of the Municipality are interconnected by any land or road or bridge or a river which does not fall within the limits of the Municipality itself, no Municipality can be constituted. It appears to me that in fact, all the said areas comprising Jadavpur Municipality form a compact block and such compact block has connecting link roads between the different parts. In my view for the purpose of constitution of the Municipality, it will be immaterial if a connecting road between two parts of the Municipality falls within the area of another Municipality or Anchal. The learned Counsel for the State has also contended that for the purpose of constitution of a Municipality the provisions of sub-section (2) shall not apply in respect of a notification issued under clause (a) read with clause (i) of the proviso to sub-section (1) because of the Bengal Municipal (Amendment) Ordinance followed by the subsequent Ordinances viz. The Bengal Municipal (Amendment) Second Ordinance, 1982 and The Bengal Municipal (Amendment) Third Ordinance, 1982. It also appears to me that in view of the said Ordinances the manner of publication of the said notice and the requirement of proclamation of such notice by beat of drum as contained in the proviso to sub-section (1) of section 6 of the Bengal Municipal Act are not necessary for the purpose of constitution of a Municipality under clause (a) of section 6 (1) of the Bengal Municipal Act.

11. Mr. Ganguly has however seriously contended that the said Ordinances are not only mala fide and colourable piece of legislation, but the same are ultra vires the Constitution. Mr. Ganguly has contended that long before the promulgation of the Ordinance, the State Government purported to constitute Jadavpur Municipality in complete violation of the provisions of Section 6(1) (a) and section 6 (2). The petitioners challenged the said illegal action of the State Government in purporting to constitute Jadavpur Municipality before this court

and the instant writ proceeding was also heard in part on number of days, but the same was adjourned mainly at the instance of the learned Counsel for the State. It was only to frustrate the writ petition and to salvage the illegal action taken by the State Government in constituting the Jadavpur Municipality, the said Ordinance was promulgated followed by two subsequent ordinances as referred to hereinbefore. Mr. Ganguly has contended that the life of the Ordinance came to an end because the West Bengal Legislative Assembly was in session on two occasions and there was no occasion either to continue the Ordinance having the maximum period of life for six months or to pass subsequent Ordinances to keep alive the effect of the first Ordinance.

12. The learned Counsel for the State, has however, produced the records of the State Government to show that on 8th March, 1982. Minister-in-charge of the local Government & Urban Development gave notice to the Secretary, West Bengal Legislative Assembly that the Minister intended to introduce Bengal Municipal Bill 1982 in the current session of the West Bengal Legislative Assembly. A statement under Rule 72(1) of the Rules of Procedure and Conduct of Business in West Bengal Legislative Assembly enclosed with the said notice dated 8th March, 1982 was also given by the Minister in charge of local Government & Urban development to the Secretary, West Bengal Legislative Assembly. In the statement made under Rule 72(1) of the Rules of Procedure and Conduct of Business in West Bengal Legislative Assembly regarding proclamation of Bengal Municipal (Amendment) Ordinance 1982, it has been stated that a number of new municipalities were created in the recent past. Before the creation of such municipalities, a preliminary notification under sub-section (1) of section 6 of the Bengal Municipal Act was issued declaring the intention of the State Government to constitute the municipality. It had been observed from the recent judicial pronouncement that non-observance of the formality of proclamation by beat of drum in respect of notification for creation of Municipalities under sub-section (2) of section 6 of the Bengal Municipal Act, 1932 had affected the very creation of the Municipality being challenged in many cases. It created a lot of administrative problems. The amendment was urgent in order to solve the administrative problems and to enable the municipalities concerned to perform the normal functions under the Act, and as the Houses of the Legislature were not in session, the amendment had to be made by promulgation of the Bengal Municipal (Amendment) Ordinance, 1982 (West Bengal Ordinance No. IV of 1982).

13. From the records produced before this Court by the learned Counsel appearing for the State Government at the time of hearing of this matter, it appears that the notice given by the Minister-in-charge addressed to the Secretary, Legislative Assembly for introducing a bill and a statement under Rule 72(1) of the Rules of Procedure and Conduct of Business were sent to the Assembly and the bill was circulated by the Legislative Assembly. But the Assembly session was for a very short period viz. from 6th March 1982 to 13th March, 1982 and no time could be allowed for introduction of the bill. The first

Ordinance was to lapse after 15th April, 1982. Hence, there was necessity for the second Ordinance. Second Ordinance was drafted by the Legislative Department and the Legislative Department tendered the required technical advice and the said Second Ordinance was thereafter promulgated on 14th April, 1982. In the next session of the Assembly which continued from 14th June, 1982 to 24th June, 1982, there was also no time to introduce the amendment Bill though a bill was drafted by the Legislative Department. It was ascertained from the Assembly Secretariat that as there was no time for introducing any bill, no notice was given and as the Second Ordinance was to lapse on 25th July, 1982, the Third Ordinance had to be promulgated. The learned Counsel for the State has therefore submitted that the said Ordinances had to be promulgated because of the urgency of the matter and because it was not possible for the Assembly to consider the Amendment Bill and to enact the proposed amendment of the Bengal Municipal Act. Mr. Roy has, therefore, submitted that there was neither any malaise intention on the part of the State Government or the Governor in promulgating the Ordinances nor there was any abuse of the power by the Governor in promulgating the Ordinances.

14. Mr. Ganguly the learned Counsel for the petitioners has however contended that the proposed amendment of the provisions of the Bengal Municipal Act by the aforesaid Ordinances in the matter of constitution of a new Municipality is ultra virus because a discrimination has been made without any reasonable nexus to the object of the Act in the matter of constitution of a new Municipality and in the matter of withdrawal of any Municipality from the operation of the Act or to exclude from a Municipality any local area comprised therein or to include within a Municipality any local area contiguous to the same or to divide any municipality into two or more municipalities or to unite two or more municipalities so as to form one municipality or to define the limits of any municipality or to revise the boundaries of two or more contiguous municipalities as referred to in clauses (b) to (i) of Section 6(1) of the Bengal Municipal Act. Mr. Ganguly has contended that a reference to clauses (a) to (i) of sub-section (1) of Section 6 will make it clear that in all cases where either a new Municipality is proposed to be constituted or areas of two or more contiguous municipalities are proposed to be altered or some areas are proposed to be excluded from the municipal limits a wide notification and proclamation by beat of drum in the locality have been provided for. There is no reason that for the purpose of constitution of a Municipal area such requirement of wide publicity and proclamation by beat of drum as contained in sub-section (2) of Section 6 of the Act should not be followed, but in all other cases as covered by clauses (b) to (i) of Section 6(1) such wide publicity and proclamation by beat of drum in accordance with the sub-section (2) of Section 6 are to be followed.

15. From the reference to all the said clauses (a) to (i) it is quite clear that in the matter of constitution of a new municipality or bringing any change in the existing municipality or municipalities, a wide publicity has been intended by the Legislature so that the persons sought to be affected by such constitution of new

municipality or bringing some changes in the existing municipality or Municipalities may give proper representations and objection against the proposed action. There is no rational basis for differential treatment in the matter of constitution and/or effecting any change in the existing Municipality or Municipalities Mr. Ganguly therefore submits that the Amendment Ordinances in so far as the same provides for doing away with the requirement of sub-section (2) of section 6 in the matter of constitution or formation of a new municipality suffers from the vice of discrimination and thus offends Article 14 of the Constitution. Mr. Roy the learned Counsel appearing for the State has disputed the said contentions of Mr. Ganguly and has submitted that for the purpose of creation of a new municipality, the consideration is entirely different and it is only when the State Government feels that three-fourth of the adult male population do not follow the agricultural pursuits as the main source of livelihood and the State Government feels that establishment of a municipality will ensure better development of such urban area, a new municipality is constituted. In such circumstances, the formation of the opinion of the State Government is the sine qua non for constituting a municipality. It is felt that the publicity and/or proclamation by beat of drum in the locality as referred to in sub-section (2) is not necessary in the case of constitution of a Municipality because for the purpose of constitution of a Municipality the consideration is entirely different and concerns the State Govt, primarily. He, therefore, submits that cannot be contended that same consideration governs in the matter of formation and/or creation of a new municipality and also in the matter of effecting changes in the cases of existing municipality or municipalities. Hence, there cannot be any question of discrimination because two unequal, have been treated unequally. In my view, there is enough substance in the said contentions of Mr. Roy. In the matter of formation or constitution of a new municipality, the consideration to be made by the State Government is related to socio economic condition of the locality question namely as to whether or not three- fourth of the adult male population follows agricultural pursuits as their principal mode of living. If on consideration of the said aspect and also on consideration of some other relevant factors, the State Government feels that establishment of a Municipality will be more helpful for developing the said areas which, according to the State Government, really forms not a rural but an urban area, the State Government will constitute a municipality and in such cases the State Government may feel that publicity as required to the given in other cases in accordance with the provisions of sub-section (2) of section 6 need not be followed. There is no manner of doubt that the view of the public in the matter of proposed constitution of a new municipality cannot be ignored. Rather such view should also be taken. But the extent of publicity may be different in such a case and wisdom of the Legislature in this regard cannot be questioned in the court. In the instant case, such intention to form Jadavpur Municipality was broad cast by the. All India Radio and a publication was also made in one of the leading dailies of West Bengal namely the Daily Jugantar. According to the affidavit of the State Government, several objections and representations were also received against

the proposed constitution of the Jadavpur Municipality. Whether it is wiser or desirable to give wider publicity and proclamation by beat of drum in the locality as referred to in sub-section (2) of section 6 of the Bengal Municipal Act in the matter of formation of a new Municipality, is a matter of policy and such policy and wisdom of its must be left with the legislature. There is no manner of doubt that under the Constitution of India the Governor has been given power to legislate under certain conditions by promulgating Ordinances, and in the instant case, such power has been exercised by the Governor in promulgating the Ordinances in question. As the case of constitution or formation of a municipality involves different considerations and may be treated differently from the cases for effecting changes in the existing Municipality or Municipalities it cannot be contended in law that the Ordinances in question in so far as the same omits the application of the provisions of sub-section (2) of section 6 of the Bengal Municipal Act in the matter of constitution of a new Municipality are discriminatory in nature and as such ultravires.

In the aforesaid circumstances, no action is warranted by the Writ Court and the Writ petition, therefore, fails and is dismissed. But I make no order as to costs.