

(1973) 02 CAL CK 0030

In the Calcutta High Court

Case No : Appeal from Original Order No. 721 of 1972

State of West Bengal

APPELLANT

Vs

Surendranath Mondal and Others

RESPONDENT

Date of Decision : 04-02-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 226(1)

Citation : 78 CWN 988

Hon'ble Judges : S.K. Hazra, J;A.N. Sen, J

Bench : Division Bench

Advocate : Gouri Mitra, Somendra Chandra Bose, Hari Narayan Mukherjee and Hari Narayan Das, for the Appellant; S.C. Mitter, Monoranjan Bhattacharjee, P.K. Bandopadhyaya, M.Q. Ashaka and A.K.M. Hassanuraman, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Sen, J.—On the 11th of January 1971 the following notification was issued by the Government of West Bengal.

Formal portions Omitted * * * *

No. 67/MIM-96/70, dated, Calcutta the 11th January 1971.

NOTIFICATION

Whereas in the opinion of the Governor the affairs of the Budge Budge Municipality in the district of 24-Parganas are not properly managed :

And whereas the Governor considers it desirable in the Public interest to declare that the said Municipality shall have an Executive Officer for the period hereinafter mentioned.

2. Now, therefore, in exercise of the power conferred by sub-section (1) of Section 67A of the Bengal Municipal Act, 1932 (Bengal Act XV of 1932) the Governor is pleased to declare that the said Municipality shall have an Executive

Officer for a period from the date on which he takes over charge upto the 30th June 1971.

3. In exercise of the powers conferred by sub-section (2) and (3) of section 67A of the said Act, the Government, is further pleased hereby to appoint Shri S.K. Roy Chowdhury, W.B.C.S. Magistrate 1st Class Alipore to be the Executive Officer of the Budge Budge Municipality, in addition to his own duties, with effect from the date of his taking over charge and to direct that the said Executive Officer, shall during the period of his office, exercise and perform--

(a) the powers and duties of the Chairman and of the Commissioners of the said Municipality, whether at a meeting or otherwise by sections 69, 112, 114, 123B, 122F, 129, 130, 131, 135, 136, 138, 140, 141, 142, 154, 155, 156, 157, 159, 160, 161, 162, 165, 165A, 176, and 189 of the said Act and the powers of the said Chairman and the Commissioners to grant leave to their officers and servants under the rules framed by them in exercise of the power conferred on them by section 76 of the said Act;

(b) all the powers of the said Chairman and the Commissioners conferred by the said Act and the rules thereunder relating to the creation of posts, appointment, duties, leave disciplinary action including imposition of fines on and suspension and removal of, Municipal Officer and servants, powers and performance of the duties conferred on the said Executive Officer.

4. On the 27th of January, 1971 there was another notification issued by the Government of West Bengal and the said notification reads as follows :

Formal portions omitted * * *

No. 268-6/71 dated, Calcutta 27th January, 1971.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 67A of the B.M. Act, 1932 (Bengal Act XV of 1932), the Governor is pleased to make the following amendment in Govt. Notification No. 67/MIR/96/70 dated the 11th January 1971 published in the Calcutta Gazette, Extra-Ordinary of the date, relating to the appointment of an Executive Officer in the Budge Budge Municipality in the District of 24 Parganas namely : --

Amendment for the name and words "Shri S.K. Roy Chowdhury, W.B. C.S. Magistrate, 1st Class, Alipore occurring in the 2nd para of the aforesaid notification substitute the name and words "Shri B.J. Majumdar W.B.C.S. Magistrate, 1st Class, Alipore.

By this Notification the personnel of the Executive Officer was merely changed and Shri B.J. Majumdar was appointed the Executive Officer in place of Shri S.K. Roy Chowdhury mentioned in the first Notification. Shri B.J. Majumdar as such Executive Officer took charge in the forenoon of the 15th of February 1971.

5. On the 17th of June 1971 the following further Notification was issued : --

Formal portions omitted * * *

No. 2201/M3p-29/71 dated, Calcutta the 17th June 1971.

NOTIFICATION

Government in their notification No. 67/MIM-96/70 dated 11th January 1971 as subsequently amended by-Notification No. 268/M21-6/71 dated 27th January 1971, issued an order u/s 67A of the Bengal Municipal Act 1932 (Bengal Act XV of 1932) declaring that the Budge Budge Municipality in the District of 24 Parganas should have an Executive Officer with effect from the date of his taking over charge upto 30th June 1971 to exercise and perform such powers and duties of the Chairman and of the Commissioners of the said Municipality as specified in the said notification.

6. And whereas the Governor appointed Shri B.J. Majumdar W.B.J.C.S. Magistrate, 1st Class, Alipore, the said Executive Officer in addition to his own duties:

7. And whereas said Shri B.J. Majumdar, W.B.J.C.S., took over charge as the said Executive Officer in the forenoon of 15th February 1971.

8. And whereas it has not been possible to hold a general election of the Commissioners of the said Municipality even after the expiry of the extended term of office of the present Commissioners.

9. And whereas in the opinion of the Government the Commissioners have been responsible for various irregularities in connection with the administration of Municipal affairs.

10. And whereas in the opinion of the Government it is desirable in the public interest to vest the Executive Officer with all the powers of the Commissioners and of the Chairman for the purpose of managing the affairs of the said Municipality in succession with law.

11. Now, therefore, in exercise of the powers conferred by section 67A of the Bengal Municipal Act 1932 (Bengal Act XV of 1932) and in modification of Notification No 67/MIM/-96/70 dated 11th January 1971 as subsequently amended by notification No. 268/M2L-6/71 dated 27th January 1971, the Governor is hereby pleased to direct that said Shri B.J. Majumdar, W.B.J.C.S., Magistrate, 1st Class, Alipore and Executive Officer. Budge Budge Municipality, in addition to his own duties, shall exercise and perform with effect from the date of this notification, all the powers and duties of the Chairman and of the Commissioners under the said Act whether exercisable at a meeting or otherwise.

12. This Notification dated the 17th of June 1971 came to be challenged in a writ petition under Art 226 of the Constitution by the respondent No. 1 Dr. Surendra Nath Mondal who is the Chairman of the Budge Budge Municipality and the other

respondents Nos. 2 to 8 who are all Commissioners of the said Municipality. The said petition came up for final disposal before Sabyasachi Mukherji, J. and the learned Judge, for reasons stated in his judgment dated 26th September, 1972 allowed the said petition. The learned Judge ordered--"In the premises the said notification is hereby quashed and the respondents are restrained from giving any effect to the same. Let writs in the nature of certiorari and mandamus accordingly. The Rule is made absolute to the extent indicated above". Against the said Judgment and order passed by Sabyasachi Mukherji, J. On the 26th September 1972, the State of West Bengal has preferred the present appeal.

13. The facts of the case have been set out in the judgment of the learned trial Judge and the same may be briefly stated--

The last general election of the Budge Budge Municipality under Bengal Municipal Act 1932 appears to have been held on the 15th of November 1964. On the 4th of May 1965 the Municipal Board was constituted. On the 26th of October 1970 there was a report of one Shri S.K. Chanda, Inspector of Local Bodies, mentioning certain irregularities. On the 28th of November 1970 the State Government by its orders removed the former chairman Shri Nrishikesh Panda, on the 28th of December, 1970, the present Chairman Dr. Surendra Nath Mondal the respondent No. 1 in the present appeal was elected Chairman of the Municipality. On the 11th January 1971 the first notification was issued appointing the Executive Officer u/s 67A of the Bengal Municipal Act 1932, empowering him to exercise the powers in respect of specific sections mentioned in the said notification which has already been set out. On the 27th of January 1971 there was a second notification amending the first notification dated the 11th of January 1971 and by the second notification the personnel of the Executive Officer appointed by the first notification was changed. The Second notification has also been earlier set out. On the 15th of February 1971, the Executive Officer appointed by the State Government took charge pursuant to the order of the State Government as per notification dated the 11th of January 1971 as amended on the 27th of January 1971. On the 13th of May 1971 the second report was made by Sri S.K. Chanda, Inspector of the Local Bodies, reporting about certain deplorable conditions about the administration of the Budge Budge Municipality. On the 9th of January 1971, certain rate payers of the Budge Budge Municipality moved an application under Article 226 of the Constitution challenging the legal rights of the Chairman and the Commissioners to continue in office mainly on the allegations that the period of extension of the terms of their office as provided under S. 56(5) of the Bengal Municipal Act 1932 had expired. The Rule issued in the said proceeding came to be discharged and the said application was dismissed by this court on the 9th of March 1972. The impugned notification which I have already set out in its entirety came to be issued on the 17th of June 1971.

14. Various points including the point of malafide on the part of the State Government were taken in this Writ petition. The learned Judge, however, did not

consider it necessary to go into all the points which were urged before him. The learned Judge referred to and relied on an earlier Judgment delivered by him on the 5th of June 1972 in Civil Rule No. 2855(W) of 1971 (Sailendra Nath Bhowmick and ors. v. The State of West Bengal and ors.). In his judgment in the instant case, the learned Judge has observed--

In support of this application various points were taken including the point of malafide on the part of the State Government. It is however not necessary for me to go into these in the view I have taken of this application. The question of the power of the State Government under S. 67A and S. 553 of the Bengal Municipal Act 1932, has been considered by me in the Judgment on the 5th of June 1972. I had held therein that provisions of Section 553 of the Bengal Municipal Act 1932 were intended for separate and different occasions. I had held that where the main reasons for holding that the affairs of the Municipality could not be managed in accordance with law or not properly managed was the failure of the Commissioners to perform their duties or negligence or misconduct on their part, action cannot be taken under S. 67A of the Act, but resort had to be made to the provisions of Section 553. Though in the instant case, it is stated that it is not possible to hold general election and further it is desirable in the public interest to vest the Executive Officer with all the powers of the Commissioners and the Chairman it has been further stated that the cause for the action was the opinion of the State Government that the Commissioners had been responsible for the various irregularities in connection with the administration of the Municipal affairs. That would be also clear from the affidavit of Kalyan Prosad Gorai, Deputy Secretary of West Bengal Local Self Government affirmed on the 20th July 1971 in this Proceeding wherein it is stated in paragraph b" that the State Government got sufficient materials before it to believe and irresistibly conclude that the Board of Commissioners had indulged in malpractices and misuse of the powers and that the affairs of the Municipality could not be properly managed in accordance with law. Therefore, the Government had decided to vest the Executive Officer with all the powers of the Commissioners and the Chairman by issuing the impugned notification. Therefore, it is clear from the aforesaid that for formation of the belief that the affairs of the Municipality cannot be managed in accordance with law and that it was desirable in the interest of the public to have an Executive Officer with all the powers the State Government had relied on the opinion it had formed about the misuse of the powers by the Board of the Commissioners. In accordance with my judgment in the aforesaid case referred to hereinbefore such an opinion cannot be the basis for action u/s 67A of the Bengal Municipal Act 1932. If the Government desires to act on such an opinion resort had to be made to the provisions of section 553 of the said Act. Therefore, the impugned notification is illegal and contrary to the provisions of section 67A of the Bengal Municipal Act.

15. In the case of Sailendra Nath Bhowmick and ors. v. State of West Bengal and Ors. (C.R. No. 2855(W) of 1971) the learned Judge had to consider the question of validity of an appointment of an Executive Officer u/s 67A by the State

Government in respect of Ranigunge Municipality. The State Government by a notification u/s 67A had appointed an Executive Officer of the Ranigunge Municipality, in the District of Burdwan, and vested the said Executive Officer with all the powers of the Chairman and the Commissioner, whether exercisable at a meeting or otherwise under the provisions of the Bengal Municipal Act, 1932. The said order of appointment of Executive Officer was under challenge in the said Writ petition and amongst various grounds urged it was also urged before the learned trial Judge that section 67A of the Bengal Municipal Act 1932 was ultra vires. The contention was that section 67A and section 553 of the Act covered the same field and the same situation and that there was no guiding principle provided to invoke the provisions of section 67A which were more onerous than the provisions of section 553 inasmuch as there was no guiding principle indicated in what contingency provisions of section 67A could be involved. On the aforesaid basis in the said case of Ranigunge Municipality it was contended before the learned Judge that section 67A was violative of Article 14 of the Constitution, as it resulted in giving discriminatory and arbitrary power to the State Government and it was further argued that Section 67A of the Act amounted to excessive delegation of the essential legislative functions. While dealing with the question of vires of section 67A of the Bengal Municipal Act, the learned Judge after an analysis of the various relevant provisions of the Act, including the provisions contained in section 67A and section 553, has held that section 67A and 553 are mutually exclusive and they operate in different spheres with different consequences. The view of the learned Judge appears to be that section 67A has no application to acts of defaults, omissions and commissions on the part of the Commissioners of any Municipality resulting in the affairs of the Municipality not being properly managed or becoming incapable of being managed in accordance with law and is only applicable to cases of mis-management of a Municipality not arising from any defaults on the part of the Commissioners, and the learned Judge appears to be of the opinion that in case of any mis-management arising out of any defaultts on the part of the Commissioners, section 553 is applicable. The learned Judge observes:

Reading the different provisions, specially in view of the two different chapters in which these sections appear, it appears to me that proper construction of these two sections would be to state that the expression "the affairs of the Municipality are not properly managed" or "for whatsoever reason it cannot be managed in accordance with law" is a residuary clause, residuary in the sense it covers situations or conditions where the affairs of the Municipality are not properly managed even though facts are such that it could not be said that there was incompetency or failure on the part of the Commissioners. It is to cover the residuary contingency not mentioned in section 553 or section 552 that the provisions of section 67A of the Bengal Municipal Act 1932 were incorporated. In view of the fact that the conditions have been differently mentioned and in view of the fact that the sections are different it appears to me that the Legislature did not intend giving different powers in section 67A and Section 553 or 552 to cover

the same contingencies. If that is the true interpretation of these two provisions", then no question arises of giving unguided powers in section 67A of the Act. The two different sections were meant to be utilised in two different contingencies and as such it cannot be said that the two different sections giving different powers had been given to the State Government to be utilised in the same contingency and without any principle indicating one should be resorted to and not the other.

16. In the instant appeal, the learned Trial Judge on the basis of his aforesaid view has held that Section 553 was the section applicable and section 67A could not have been applied.

17. The learned Advocate General appearing on behalf of the State, has submitted that the learned trial Judge went wrong in relying on his earlier decision in Ranigunge Municipality case in the facts of the instant case. The learned Advocate General has argued that in the case of Ranigunge Municipality, the appointment of the Executive Officer by the State Government u/s 67A(1) was under challenge, but in the instant case the appointment of the Executive Officer by the State Government u/s 67A(1) by the Notification dated the 11th of January 1971, and as amended by the Notification dated the 27th of January 1971 has not been questioned and the Executive Officer has lawfully taken charge by virtue of the aforesaid Notifications. It is the argument of the learned Advocate General that in the present case what has been challenged is the third Notification dated the 17th June 1971 under which "all the powers and duties of the Chairman and of the Commissioner under the said Act whether exercisable at a meeting or otherwise were conferred u/s 67A(3) of the Act on the Executive Officer, already appointed". The learned Advocate General, therefore, submits that the decision in the Ranigunge Municipality case dealing with the question of appointment of an Executive Officer u/s 67A(1) cannot be considered to be any authority for deciding the question of validity of powers conferred u/s 67A(3) of the Act on the Executive Officer already appointed u/s 67A(1). The learned Advocate General has drawn our attention to section 67A which reads as follows :

(Section 67A is here set out) * * * *

18. On the basis of the aforesaid provisions contained in section 67A the learned Advocate General argues that sub-section (1) deals with the question of appointment of the Executive Officer and lays down the conditions which have to be satisfied before an Executive Officer can be appointed by the State Government u/s 67A. The requirements of sub-section (1) have to be satisfied, argues the learned Advocate General, before an Executive Officer is appointed by the State Government and the requirements relate to the validity of the appointment of the Executive Officer. It is the argument of the learned Advocate General that once an Executive Officer has been validly appointed u/s 67A(1), it is open to the State Government under sub-section (3) to confer on the Executive Officer such powers of the Chairman or of the Commissioner whether exercisable at a Meeting or otherwise by notification and for the purpose of

conferring any such power on the Executive Officer which the State Government is empowered to do under sub-section (3), the Legislature has not thought it fit to prescribe or lay down any further condition and it is open to the State Government to confer any such power by mere notification. The learned Advocate General argues that notification conferring any such powers may be issued by the State Government from time to time at its discretion according to the necessities of particular cases. The learned Advocate General contends that there is nothing in section 67A to suggest that notification cannot be issued from time to time conferring any such powers on the Executive Officer already appointed for meeting the necessities of any particular case and that there will have to be only one notification conferring necessary power on the Executive Officer at the time of his appointment u/s 67A(1). It is the contention of the learned Advocate General that on the other hand the scheme of the said section 67A clearly indicates that such power, as may be considered by the State Government to be necessary, may be conferred on the Executive Officer from time to time by notification after an Executive Officer has been properly appointed u/s 67A(1). The learned Advocate General has argued that "such powers" as mentioned in sub-s. (3) of section 67A can include all the powers of the Chairman and the Commissioner and in this connection the learned Advocate General has referred to the decision of the learned Judge in the case of Ranigunge Municipality and has relied on the following observations made by the Learned Judge in his Judgment in Ranigunge Municipality's case. I am also unable to accept the contention that the expression "such powers" cannot mean all powers as has been done in this case. The expression "such powers" is a qualifying term and must be construed in the context in which it is used. The expression "such powers" in this context means those mentioned in the notification. Therefore, if all the powers of the Commissioners are mentioned in the notification, then the expression "such powers" would cover all powers. The learned Advocate General points out that in the instant case the validity of the appointment of the Executive Officer u/s 67A is not in dispute and is not under challenge and the learned Advocate General argues that as the appointment of the Executive Officer u/s 67A(1) is not under challenge, it is open to the State Government u/s 67A (3) to confer such powers including all powers of the Chairman and the Commissioner on the Executive Officer by notification and the validity thereof cannot be questioned and the decision of the learned Judge in the case of Ranigunge Municipality on which he has relied is of no assistance. The learned Advocate General has further contended that the decision of the learned Judge in the case of Ranigunge Municipality in so far as it purports to lay down that section 67A and section 553 are mutually exclusive and they operate in different spheres, is erroneous and incorrect. The learned Advocate General has argued that there is no warrant for this limited construction of section 67A as placed by the learned Trial Judge in the case of Ranigunge Municipality. It is the argument of the learned Advocate General that section 67A provides for appointment of an Executive Officer by the State Government, if in the opinion of the State Government the affairs of a Municipality are not properly managed or

cannot for failure of a general election or for any other reason, whatsoever be managed in accordance with law and if in the opinion of the State Government it is desirable in the public interest to appoint an Executive Officer. The learned Advocate General has submitted that section 67A was introduced by way of an amendment of the Bengal Municipal Act in 1955 and the Legislature thought it fit to introduce this particular provision notwithstanding the provisions contained in Section 553, 552, being already there in the statute. It is the argument of the learned Advocate General that the Legislature never intended to place any restrictions on the State Government in the matter of forming its opinion as to whether the affairs of a Municipality are not properly managed or cannot for failure of a general election or for any reason whatsoever be managed in accordance with law. The learned Advocate General has argued that there may not be proper management of the affairs of the Municipality due to defaults of the Chairman and the Commissioners and also due to other factor; and all that the State Government need to be satisfied, is that the affairs of a Municipality are not properly managed or cannot be managed in accordance with law. The learned Advocate General has pointed out that the powers conferred on the State Government to appoint an Executive Officer u/s 67A are intended to meet all contingencies and more particularly in an emergency and indeed for a temporary period. It is the argument of the learned Advocate General that mis-management may result due to acts of the Chairman and the Commissioner and it may be necessary to deal with the situation immediately without any delay and in such a case it cannot be possible to have recourse to the other provisions contained in the Bengal Municipal Act for dealing with such defaults of the Chairman and the Commissioner, because of the time lag involved in having recourse to the said other provisions and incalculable mischief may in the meantime be done. The learned Advocate General, therefore, submits that the learned Trial Judge in the instant case was not right in allowing the petition and in quashing the order by making the Rule absolute.

19. Mr. Banerjee, learned Counsel appearing on behalf of the respondent Chairman and the Commissioners, has submitted that the learned Trial Judge in the instant case was right in allowing the petition of the Chairman and the Commissioners and in making the Rule absolute. In support of his submissions that the learned Trial Judge was right in allowing the petition and in making the Rule absolute. Mr. Banerjee has raised the following contentions : --

(1) On a true construction of section 67A its scope and effect, section 67A and section 553 must be held to be mutually exclusive and section 67A cannot be applied to cases of any mismanagement arising from any default on the part of the Chairman and the Commissioners.

(2) It is not open to the State Government to confer power on the Executive Officer u/s 67A(3) piecemeal from time to time and power must be conferred on the Executive Officer by one notification either at the time of the appointment of the Executive Officer or immediately thereafter.

(3) The impugned order of the State Government conferring all the powers of the Chairman and the Commissioner is violative of the principles of natural justice.

(4) The expression "such powers" in section 67A(3) cannot include all powers of the Chairman and the Commissioners. There are certain obligations and duties cast upon the Chairman under various provisions of the Bengal Municipal Act and such duties and obligations are not powers which can be conferred on the Executive Officer.

On his first point Mr. Banerjee has mainly relied on the decision of the learned Trial Judge in the instant case and also on his decision in the case of Ranigunge Municipality. He has argued that unless the said two sections, namely, section 67A and section 553 are held to be mutually exclusive section 67A must be held to be ultra vires on the basis of the reasonings of the learned Trial Judge in his Judgment in the Ranigunge Municipality case. It is his argument that though the question as to whether section 67A is ultra vires or not has not been raised in the present proceeding, yet in view of the decision of the learned Trial Judge, the construction put forward by the learned Advocate General would render the said section ultra vires and this court should not put any such construction which will render the said section 67A ultra vires. He submits that for the purpose of upholding the validity of Section 67A, this Court should adopt the construction given by the learned Judge in his decision in the Ranigunge Municipality case and this court should hold that section 67A and section 553 of the Bengal Municipal act are mutually exclusive and the said two sections do not cover the same field and section 67A cannot apply in a case of any mismanagement in the affairs of the Municipality due to any defaults on the part of the Chairman or the Commissioners. Mr. Banerjee has also argued that section 67A cannot be considered to be temporary in nature in its application as the power to extend the time or period of the Executive Officer is contained in the said section. It is the argument of Mr. Banerjee that by virtue of the provisions contained in section 67A(1) with regard to extension of the term or period of the Executive Officer appointed under the said section, the appointment of the Executive Officer under the said section cannot be considered to be temporary as by granting such extension the Executive Officer can be continued for an indefinite period. Mr. Banerjee has pointed out that in the instant case the impugned notification and the statements made in the affidavit of Kalyan Prosad Gorai to which the learned trial Judge has referred in his Judgment clearly indicate that section 67A cannot apply and recourse should have been taken to section 553 of the Act.

20. Mr. Banerjee has next contended that the State Government is not competent u/s 67A to confer on the Executive Officer various powers from time to time by different notifications and the State Government can confer power on the Executive Officer only once at the time of or immediately after the appointment of the Executive Officer under S. 67A(1). Mr. Banerjee has argued that u/s 67A(3) no provision has been made for conferring powers on the Executive Officer from time to time. He has drawn our attention to section 67A

(2), where provision has been made for extending the period of the Executive Officer from time to time and he has argued that there is no such provision for conferring powers on the Executive Officers from time to time by notifications in section 67A(3). It is the argument of Mr. Banerjee that lack of any such provision in the matter of conferring power on the Executive Officer from time to time particularly in the context when express provisions has been made with regard to extension of the period of the Executive Officer from time to time u/s 67A(1) clearly indicates that the legislature did not contemplate that powers would be conferred on this Executive Officer from time to time by notifications issued by the State Government. It is his argument that the Executive Officer is appointed for redressing or remedying particular acts of Mis-management for a particular term and is clothed with the necessary powers at the time of or immediately after his appointment; and if within the period fixed, the Executive Officer is not in a position for some reasons, or other to complete his task, the State Government is authorised to extend the said period. He, however, contends that fresh or further acts of mis-management are not contemplated by the legislature when the Executive Officer has already been appointed and taken charge, and the Legislature has, therefore, not considered it fit or necessary to make any provision for conferring any further or other powers on the Executive Officer already appointed.

21. The next contention of Mr. Banerjee is that the impugned order of the State Government conferring all the powers of the Chairman and the Commissioners on the Executive Officer is violative of the principles of natural justice. Mr. Banerjee has argued that the notifications and affidavit of Kalyan Prosad Gorai clearly establish that these further powers were conferred on the Executive Officer as the State Government has formed the opinion that the Commissioners have been responsible for various irregularities in connection with the administration of Municipal affairs. It is the argument of Mr. Banerjee that formation of any such opinion without giving the Commissioners a hearing and an opportunity of explaining the alleged acts of irregularities complained of is clearly violative of all principles of natural justice, as the said Commissioners are really being condemned without being afforded any opportunity of being heard.

22. Mr. Banerjee has finally argued that "such powers" in section 67A(3) cannot include all powers of the Chairman and the Commissioners. Mr. Banerjee contends that if "such powers" be construed to mean all powers of the Chairman and the Commissioners, the Chair-mans and the Commissioners really become functus officio and mere figure heads and the said section 67A does not and cannot contemplate such a situation. It is the argument of Mr. Banerjee that u/s 67A the Executive Officer is appointed for the specified purpose of setting right particular acts of mis-management and the Executive Officer is appointed for the specified purpose of setting right particulars acts of mis-management and the Executive Officer is clothed with the necessary power and in other spheres the Chairman and the Commissioners continue to function and section 67A does not contemplate and make any provisions for depriving the Chairman and the

Commissioners of all their powers. He argues that if an occasion arises when the State Government is of the opinion that the Chairman and the Commissioners are to be deprived of all their powers, the State Government should take recourse to section 553 and supersede the Municipality. Mr. Banerjee further submits that under various provisions of the Bengal Municipal Act various duties and obligations are cast upon the Chairman without any powers and the Chairman and Commissioners cannot be prevented from performing the same and the said duties and obligations cannot be cast upon the Executive Officer. In this connection Mr. Banerjee has referred to the following sections namely, 112, 113, 114, 124(1) (3), 125, 126, 135, 136; 137; 142; 145(2), 147, 149, 155, 157; 159; 173; 177, 179, 189(2), 229, 230; 246; 257; 278 read with 281, 285, 300, 381, 450; 456; 457; 464 and 530. Mr. Banerjee has submitted that the learned trial Judge in the instant case was, therefore, perfectly justified in allowing the Writ petition.

23. I have earlier set out the provisions contained in Sec. 67A of the Bengal Municipal Act and before dealing with the respective contentions of the parties, it will be convenient to set out section 553 of the said Act. The said section is in the following terms:

(Sec. 553 is here set out) * * * *

Section 552 referred to in section 553 reads as follows : * * * *

24. Apart from the provisions contained in section 552 and 553 there are various other sections in the Act which empower the State Government to interfere in the affairs, of any Municipality and to require the Commissioners of the Municipality to do various acts. Mention may be made of section 548, 549 and 550, u/s 67 of the Act the State Government may require the Commissioners of any Municipality to appoint an Executive Officer amongst other Officers mentioned in the said section within the time fixed by the State Government and in default of compliance with the requirements of the State Government, the State Government itself is empowered to appoint an Executive Officer by virtue of the provisions contained in sub-section (4) of section 67.

Notwithstanding many such provisions contained in the Bengal Municipal Act 1932 whereby various powers have been conferred on the State Government, the Legislature thought it fit to introduce section 67A by way of amendment and section 67A came to be incorporated in the statute in 1955, by section 18 of the Bengal Municipal (Amendment) Act, 1955 (West Bengal Act XXVII of 1955).

25. An analysis of section 67A which consists of 4 several sub-sections indicates:

(1) Sub-section (1) deals with and makes provisions for appointment of the Executive Officer by the State Government. It prescribes the conditions which have to be satisfied before an Executive Officer can be appointed by the State Government. The conditions prescribed are--

(i) in the opinion of the State Government (a) the affairs of a Municipality are not

properly managed, or (b) cannot, for failure of a general election or for any other reason, whatsoever be managed in accordance with law and

(ii) in the opinion of the State Government it is desirable in the public interest to appoint an Executive Officer, This sub-section also lays down how the appointment is to be made and it provides that the appointment of the Executive Officer will be by notification issued by the State Government and it also provides that the appointment will be for a term. As it prescribed that the appointment will be for a term, it also provides for the term being extended.

(2) Sub-section (2) deals with and provides for payment of the remuneration of the Executive Officer so appointed by the State Government under sub-section (1)

(3) Sub-section (3) deals with the powers of the Executive Officer of a Municipality appointed by the State Government under sub-section (1) and provides that the Executive Officer shall exercise such power of the Chairman or of the Commissioners whether at a meeting or otherwise as may be conferred on him by notification by the State Government and on such notification such powers shall cases to be exercisable by the Chairman or by the Commissioner, as the case may be. This sub-section, therefore lays down that the Executive Officer appointed by the State Government under Sub-section (1) will enjoy such powers of the Chairman or the Commissioner conferred on the Chairman or the Commissioner under the provisions of the Act, whether exercisable at a meeting or otherwise as may be conferred on him by notification by the State Government and with the vesting of any such power on the Executive Officer by the State Government by such notification such power shall cease to be exercisable by the Chairman or by the Commissioner, as the case may be. The effect of this sub-section is that the Executive Officer appointed by the State Government under sub-section (1) may be clothed by the State Government with such powers of the Chairman or of the Commissioner as are enjoyed by the Chairman or the Commissioner under the provisions of the Act and with the vesting of any such power of the Chairman or the Commissioners on the Executive Officer, the Chairman or the Commissioners become deprived of the said powers and the said powers conferred on the Executive Officer cease to be exercisable by the Chairman or by the Commissioners as the case may be -

(4) Sub-section (4) confers on the State Government the power to punish an Executive Officer appointed by the State Government under sub-section (1) and provides that the State Government may at any time suspend, remove, dismiss or otherwise punish an Executive Officer.

26. The aforesaid analysis shows that the conditions which are required to be satisfied before an Executive Officer can be appointed u/s 67 A are--

(1) In the opinion of the State Government (a) the affairs of a Municipality are not properly managed or (b) cannot, for failure of a general election or for any other reason, whatsoever, be managed in accordance with law.

(2) In the opinion of the State Government it is desirable in the public interest to have an Executive Officer of the Municipality.

27. The language of the section does not state that in the opinion of the State Government the affairs of a Municipality are not properly managed, or cannot, for failure of a general election or for any other reason, what's ever, be managed in accordance with law because of any defaults on the part of the Chairman or the Commissioner. The Legislature has not chosen to put any such limitation and the legislature in its wisdom has thought it fit and chosen to confer the power on the State Government, whenever in the opinion of the State Government the affairs of the Municipality are not properly managed or cannot be managed in accordance with law irrespective of any question or consideration of the sources or causes which may lead to the said state of affairs. It is also to be borne in mind that when the Legislature thought it fit to introduce this particular section 67A by way of amendment in 1955, the provisions contained in Section 553 were already in existence. In my opinion, when the express language of the section does not permit a limited construction of the words "are not properly managed or cannot for failure of a general Election or for any other reason whatsoever, be managed in accordance with law," limited to acts of mismanagement of others than the Chairman and the Commissioner no such limited construction should be placed unless such constructions becomes inoperative for other compelling reasons. It has been contended that this limited construction placed by other learned Trial Judge becomes imperative, as otherwise section 57A becomes ultra vires. In my opinion, this contention is not sound. Undoubtedly section.67A and section 553 may to some extent overlap but the said two sections deal with the two different situations and the consequences of the exercise of the power by the State Government under the said two sections are entirely different. The effect of exercise of the powers u/s 553 is to supersede the Commissioners, whereas the appointment of an Executive Officer u/s 67A does not have any such effect of superseding the Commissioners.

28. In the case of Ram Dial and Others Vs. The State of Punjab, the Supreme Court observed at page 1921. "In this connection our attention is drawn to Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others, on which reliance is placed on behalf of the State. In that case this Court was concerned with Ss. 53A and 57 of the C.P. and Berar Municipalities Act which to a certain extent were held to overlap. The argument under Art. 14 did not really arise in that case because the two provisions dealt with two different situations. u/s 57 the State Government the power dissolve a Committee after giving it a reasonable opportunity to furnish its explanation. u/s 53A the Committee was not dissolved, but the State Government had the power to appoint an Executive Officer and confer upon him such powers of the Committee, its President, Vice-President or Secretary as it thought fit, though the reason for taking action u/s 53A(1) apparent overlapped the reasons for dissolving a committee u/s 57(1). Because of this difference in the scope of the two provisions contained in section 5A and 57 there could no question of application of Art. 14 to that case".

29. The very basis of the decision of the learned Judge in the instant case is that sections 67A and 553 are mutually exclusive and section 67A cannot be applied to acts of defaults on the part of the Commissioners. It is on this basis that the learned Judge has held in this case that as acts complained of were acts of defaults on the part of the Commissioners. Section 67A would not apply. With very great respect to the learned Judge, I cannot persuade myself to accept his view. It is undoubtedly true that the validity of the appointment of Executive Officer is not the subject matter of challenge in this Writ petition under Article 226. The learned Trial Judge has held the notification conferring the further powers on the Executive Officer already appointed to be illegal and that has quashed the same on the basis of his opinion that section 67A could not have been applied in the instant case, as the materials on record indicated that the acts complained of were acts of defaults of the Commissioners. On the basis of the view of the learned Trial Judge that section 67A and section 553 are mutually exclusive and in the facts of the instant case recourse should have taken to section 553 and Sec.67A had no application, the learned Judge has held that the said notifications conferring the further powers under s. 67A (3) on the Executive Officer already appointed was illegal as the said Section 67A could not be invoked. I have already held for reasons stated that this view of the learned Trial Judge is in my opinion, not sound and Section 67A and section 553 should not be considered to be mutually exclusive. I may further indicate that the provision in section 67A(1) (b) to the effect that the affairs of a Municipality cannot, failure of a general election or for any other reason whatsoever (underlining is mine) be managed in accordance with law goes to show that the Legislature did not intend any such limited construction as put by the learned Trial Judge, to be placed on the said section. This contention of Mr. Banerjee, therefore, fails and I accept the contention of the learned Advocate General that section 67A and section 553 are not mutually exclusive.

30. The next contention of Mr. Banerjee has been that it is not open to the State Government to confer power on the Executive Officer u/s 67A(3) piecemeal from time to time and power must be conferred on the Executive Officer by one Notification either at the time of the appointment of the Executive Officer or immediately thereafter and the main argument of Mr. Banerjee has been, as I have earlier noticed, that there is no provision in the said section for conferring such power from time to time although provision has been made in such section (1) for extending the term of the Executive Officer from time to time. I have earlier analysed the relevant provisions of section 67A and I have indicated that sub-section (1) dealt with and provided for the appointment of the Executive Officer and as the said sub-section provided for the appointment of the Executive Officer for a term necessary provision has been made in the said sub-section for extension of the term of the Executive Officer. The Scheme of Section 67A clearly shows that sub-section (1) deals with and provides for appointment of an executive Officer by the State Government, sub-section (2) makes provisions as to the remuneration of the Executive Officer so appointed, sub-section (3) deals

with the question of power of the Executive Officer and makes provisions with regard to the same, and sub-section (4) deals with the punishment of the Executive Officer. As sub-section (1) provided for the appointment of the Executive Officer for a term, provision has been made for the extension of the term in the said sub-section. So far as conferring power on the Executive Officer is concerned, sub-section (3) clearly lays down that power can be conferred on the Executive Officer by notification by the State Government. Notification obviously will include notifications and there is nothing in the said sub-section (3) or in the scheme of section 67A that notifications conferring powers on the Executive Officer cannot be issued from time to time. The contention put forward by Mr. Banerjee, if accepted, is likely not only to create unnecessary difficulties in the smooth and effective operation of the section but will lead to absurd result. Suppose, an Executive Officer has been appointed of a Municipality for the purpose of redressing or setting right a particular act of Mismanagement and necessary power has been conferred on the Executive Officer accordingly. While exercising the said power for redressing or remedying the mischief for the purpose which he was appointed, it transpires that the power conferred on the Executive Officer originally was not sufficient and some more or other powers are necessary to be conferred on him. It will indeed be unreasonable and absurd to hold that the State Government cannot confer necessary further powers on the Executive Officer by any further notification. Again, while the Executive Officer in charge is vested with some powers for redressing or setting right any particular acts of mis-management, other acts which would justify the appointment of an Executive Officer are brought to the notice of the State Government. It will indeed be absurd to hold that the State Government would not be competent to cloth the Executive Officer already appointed with the necessary powers for removing the other tills and it will be incumbent upon the State Government to recall or remove the Executive Officer already appointed and who has already taken charge and is in the midst of the work for which he was originally appointed and to make fresh appointment of an Executive Officer and confer on him the necessary powers including further powers required to be conferred on him and also the originally powers which were conferred on him at the time of his first appointment. In my opinion, such construction is not permissible and on a true constructions of section 67A, and particularly the provisions contained in sub-section (3) thereof, I am of the opinion that the State Government can confer powers on the Executive Officer from time to time by notification. This contention of Mr. Banerjee must fail.

31. The next contention of Mr. Banerjee that the impugned orders of the State Government conferring all the powers of the Chairman and the Commissioners is violative of the principles of natural justice, cannot, in the facts of the instant case, be entertained. Whether there has been any violation of the principles of natural justice, even assuming the said principles have any application to a particular case, must necessarily depend on the facts and circumstances of the case and a proper case of violation of principles of natural justice has to be made

out. There must be necessary averments on the basis of which the question whether there has been any violation of the principles of natural justice can be decided. Proper facts must be pleaded and established for making out a case of violation of the principles of natural Justice. In the instant case no such case has been made out in the petition. There are no averments in the petition on the basis of which the court can come to any conclusion, even if the said principles could be held to be applicable in the instant case. In the absence of any case being made in the petition as to the violation of the principles of natural justice, the court cannot speculate and cannot entertain the plea. As in the instant case, no case has been made out in the petition on this aspect, namely, the violation of the principles of natural justice, and the necessary averments are not there, I cannot entertain this plea and I do not consider it necessary to pronounce any opinion as to whether in the instant case the said principles would have any application or not.

32. The last contention of Mr. Banerjee is that the expression "such powers" in section 67A(3) cannot include all powers of the Chairman and the Commissioners, Sabyasachi Mukharji, J. in the case of Ranigunge Municipality on a careful consideration of this contention negated the same, I have earlier referred to the view expressed by him on this aspect. I am in entire agreement with the view expressed by Sabyasachi Mukharji, J. and I am of the opinion that the expression "such powers" means such powers of the Chairman or of the Commissioner whether at a meeting or otherwise, mentioned in the notification and may include all powers of the Chairman and the Commissioner if all the powers are mentioned in the notification. Sub-section (3) of section 67A unequivocally and clearly provides that the Executive Officer shall exercise such powers of the Chairman or of the Commissioner whether at a meeting or otherwise as may be conferred on him by the State Government. The said sub-section, therefore, clearly contemplates that all powers of the Chairman or the Commissioner may be conferred on the Executive Officer by the State Government and if so conferred on the Executive Officer shall be exercised by him. There is nothing in the said sub-section (3) or in the scheme of section 67A to suggest that all the powers of the Chairman and the Commissioner cannot be conferred on the Executive Officer.

The further contention of Mr. Banerjee that under the provisions of the Bengal Municipal Act various duties and obligations have been cast on the Chairman and the Commissioners without any corresponding power on them and such duties and obligations cannot be conferred on the Executive Officer, is, in my opinion, not sound. Every duty or obligation cast upon the Chairman or the Commissioner implies, as it must, that the Chairman or the Commissioners have the power to discharge the same. The Chairman and the Commissioners must necessarily therefore, be possessed of such powers. The sections to which Mr. Banerjee referred also indicate the same position. Even if the Executive Officer may not be in a position to exercise for some reason or other some of the powers conferred on him by the notification, the notification does not become bad. All that will

happen in such a case is that the Executive Officer will not exercise those powers which cannot for some reason or other be exercised and will exercise the other powers which can be properly exercised by him.

33. The appeal must, therefore, be allowed. The Judgment and order passed by the learned Trial Judge are set aside. The petition under Art. 226 is dismissed and the Rule is discharged.

There will be no order as to costs.

Hazra, J.

34. I also agree with my Lord A.N. Sen, J. that the appeal should be allowed, but I wish to deliver a separate judgment stating my reasons.

35. The petitioners applied for issue of writs in the nature of mandamus and certiorari directing the Deputy Secretary to the Government of West Bengal, Secretary Local Self Government, State of West Bengal, Executive Officer, Budge Budge Municipality and the Additional District Magistrate, 24 Parganas to forbear from giving effect to the order dated June 17, 1971 by the Government of West Bengal and also to revoke or cancel or rescind the impugned order. By his order dated September 26, 1972, the learned Judge taking application under Article 226 of the Constitution of India, quashed the said notification dated June 17, 1972 and issued writs in the nature of mandamus and certiorari.

36. In the original petition, the State of West Bengal was not made a party. The State of West Bengal is very much affected by the order of the learned Judge and as such filed this appeal. Before us by consent of the parties, the State of West Bengal was added as a party in the Original Petition and also consequential amendment was made in the Memorandum of appeal. By such amendment the appeal has been duly filed by the State of West Bengal

37. The State of West Bengal is challenging the order dated September 26, 1972 passed by the learned Judge in this appeal.

38. The facts giving rise to this appeal are as follows:

The petitioners formed the Board of Budge Budge Municipality the normal period of the term of the Board was upto May 3, 1969 as provided u/s 56(1) of the Bengal Municipal Act 1932 (hereinafter referred to as the said Act) but as no election was held the State of West Bengal extended the term of office of the members of the Board from time to time. There was an application before this Court under Article 226(1) of the Constitution by some rate payers Govinda Bakshi and others for writ in the nature of Mandamus directing the State of West Bengal to cancel, rescind or withdraw from giving effect to the resolution passed by the Commissioners of the Municipality during the period of May 5, 1971 to May 11, 1971 and also a Writ in the nature of quo warranto stating that the terms of the office of the Commissioners expired and they were holding the office without authority. This application was ultimately dismissed by S.K. Dutta, J. on

March 3, 1972. The Judgment reported in the Calcutta Weekly Notes (76 C.W.N. page 508). On October 22, 1970, there was a report of one Shri S.K. Chanda, Inspector of Local Bodies mentioning certain irregularities. On November 28, 1970 the order of the State Government was issued removing the former Chairman Sri Hrishikesh Panda. On December 29, 1970 Dr. Surendra Nath Mondal, the petitioner No. 1 was elected as Chairman.

39. Thereafter, on January 11, 1971 the Government of West Bengal, Local Self Government, Department issued a notification u/s 67A of the Bengal Municipal Act, 1932 appointing an Executive Officer as provided under sub-section (1) of section 67A and also conferred certain powers to the Executive Officer as provided under Sub-section (2) and (3) of the said Section. I shall call this notification as the first notification.

40. On January 27, 1971 another notification was issued by which another Executive Officer was appointed. I shall call this notification as the "second notification". The Executive Officer initially appointed was Shri S.C. Roy Chowdhury, Magistrate First Class, Alipore. But by the second notification dated January 27, 1971 Shri B.J. Majumdar Magistrate, First Class Alipore was appointed in his place as the Executive Officer.

41. Thereafter, in June 17, 1971 another notification was issued by the State Government I shall call this the "third notification". By this notification, the Executive Officer is directed to exercise all the powers and duties of the Chairman and of the Commissioners. In this application under Article 226 of the Constitution of India, taken out in June 1971 the petitioners are challenging this third notification dated June 17, 1971 on the grounds mentioned in paragraph 12 of the petition.

42. Kalyan Prosad Gorai, Deputy Secretary to the Government of West Bengal, Local Self Government Department filed an affidavit on March 1, 1972 in opposition to this application. In paragraph 6 of the said affidavit, the Deputy Secretary to the Government of West Bengal referred to his previous affidavit affirmed on February 26, 1971 (in the application which resulted in the Judgment and order of S.K. Datta J.) and said that on receipt of the representations containing allegations against the Commissioners of Budge Budge Municipality the deponent started enquiry and the report by the local Officer is being awaited. It is further stated by the deponent as follows : "I say that at the time of affirming the affidavit the allegations of malpractices, maladministration and misuses of powers by the Commissioners of the Budge Budge Municipality were not completely confirmed and as a result the Board of Commissioners was not superseded. But thereafter the State Government got sufficient materials before it to believe and irresistibly conclude that the Board of Commissioners indulged in malpractices and misuses of powers and Government was satisfied that the affairs of the said Municipality could not be properly managed in accordance with law and also in view of the fact that the next General Election of the Commissioners of Budge Budge Municipality which had been overdue could not

be held earlier, the State Government decided to vest the Executive Officer with the remaining powers of the Commissioners and of the Chairman as it was considered a desirable and proper course to adopt and accordingly issued an order vesting the executive Officer with the remaining" powers of the Chairman and Commissioners at a meeting or otherwise by notification dated June 17, 1971.

43. The learned Judge relied on his own Judgment in C.R. No. 2855(W) of 1971 delivered on June 5, 1972. The learned Judge referred to the said affidavit of Kalyan Prosad Gorai, Deputy Secretary to the Government of West Bengal, Local Self Government, Department and observed as follows:

Such an opinion cannot be the basis for action u/s 67A of the Bengal Municipal Act 1932. If the Government desires to act on such an opinion report had to be made to the provisions of section 553 of the said Act. Therefore, the impugned notification is illegal and contrary to the provisions of Section 67A of the Bengal Municipal Act 1932.

44. Mr. Gouri Mitter, the learned Advocate General appearing for the appellant, State of West Bengal, submitted that this appeal should be allowed on the short point which is as follows:

In the instant case the first notification dated January 11, 1971 by which the Executive Officer was appointed is not challenged. The petitioners are only challenging the third notification dated June 17, 1971 by which the Executive Officer was given certain additional powers. Mr. Advocate General argued that while giving additional powers it is not necessary at all for the Government to ascribe the reasons why some more powers are necessary. He said that although in the notifications dated June 17, 1971, the Government of West Bengal gave several reasons why additional powers were given and these reasons are challenged although the appointment of the Executive Officer is not challenged at all. The learned Advocate General then stated that the learned Judge held that if there is misuse or maladministration by the Chairman and the Commissioners of the Municipality then only section 553 of the said Act could be invoked and on this ground the learned Judge issued a Writ in the nature of certiorari and mandamus. According to learned Advocate General, by section 67A of the said Act, legislature has expressly given certain powers to the State Government for appointment of the Executive Officer. This is a temporary measure for a limited period and can be invoked under certain circumstances stated in the section. Section 67A of the Act also provides that the Executive Officer shall exercise such powers of the Chairman and of the Commissioners as may be conferred on him by notification of the State Government and to the extent the powers are given to the Executive Officer, the Chairman or the Commissioners shall cease to have such powers. Mr. Advocate General then said that section 553 of the Act relates to power to supersede the Commissioners under certain circumstances. This an entirely different power given by the legislature. Ordinarily section 553 of the Act will not be invoked until the powers in section 552 are invoked. This is also a

different measure.

45. The Advocate General in course of his argument stated that the attention of the learned Judge was not drawn to this aspect of the case, namely that the appointment of the Executive Officer by the first notification is not challenged at all. But only the third notification by which the Executive Officer has been given all powers of the Chairman and of the Commissioners is challenged.

46. Appearing for the respondents Nos. 1 to 8 Mr. Banerjee contended before us that the State Government cannot confer on the Executive Officer all, powers of the Chairman and of the Commissioners. He invited our attention to section 68, sub-section (2) of the Act and submitted that the Executive Officer shall act in respect of all other matters under the direction of the Chairman through whom he shall be responsible to the Commissioners. He said that the Executive Officer is a Subordinate Officer and all powers of the Commissioners of the Chairman could not be given to The Executive Officer. He also argued that further powers could not be given to the Executive Officer, because, the Executive Officer has already been vested with the powers by the first notification.

47. The question is, whether the learned Judge was right in the view taken by him, that, the cause for the action was the opinion of the State Government that the Commissioners had been responsible for various irregularities in connection with the administration of the Municipal affairs, and therefore, such an opinion cannot be the basis for an action u/s 67A of the Act, but resort had to be made to the provisions of Section 553 of the Act.

48. The impugned notification which is quashed by the learned Judge so far as it enumerates the first notification dated January 11, 1971 and the second notification dated January 27, 1971 namely, that the Executive Officer was appointed by the notification dated January 11, 1971 u/s 67A of the Bengal Municipal Act 1932 (Bengal Act XV of 1932) and that Shri B.J. Majumdar was appointed under the second notifications dated January 27, 1971 are statement of facts. But so far as the impugned notification states :

And whereas in the opinion of the Government the Commissioners have been responsible for various irregularities in connection with the administration of Municipal Affairs.

And whereas in the opinion of the Government it is desirable in the public interest to vest the Executive Officer with the powers of the Commissioners and of the Chairman for the purpose of managing the affairs of the said Municipality in succession with law.

The view of the learned Judge is that if all powers are conferred on the basis of opinion as to various irregularities of the Commissioner, then the same cannot be made u/s 67A of the Act, but, resort should have been made to section 553 of the said Act.

49. With regard to this part of the notification, namely conferring powers to the

Executive Officer, it is clear that powers can be conferred u/s 67A Sub-section (3) of the Act, Section 67A sub-section (3) of the Act clearly states that the Executive Officer appointed under this section, that means u/s 67A sub-section (1) shall exercise such powers as may be conferred on him by notification by the State Government.

50. There is no question of forming an opinion again when the State Government confers powers on the executive Officer by notification u/s 67A sub-section (3). In the instant case the Executive Officer has been appointed u/s 67A sub-section (1) and the same is not challenged. The powers given to the Executive Officer by the first notification is also not challenged. Only granting of further powers has been challenged. But for granting of further powers to the Executive Officer appointed u/s 67A sub-section (1) it is not required u/s 67A sub-section (3) that State Government should form further opinion.

51. In view of the fact that the appointment of the Executive Officer is not challenged, the only point which remains to be considered is whether the Executive Officer could be given all powers of Chairman and of the Commissioners. In my view, section 67A, sub-section (3) of the Act clearly states that the Executive Officer appointed under this section that means, sub-section (1) shall exercise such powers as may be conferred on him by notification by the State Government. There is no limitation to the word "such powers". Such powers include these powers of the Chairman or of the Commissioner which the State Government would confer upon the Executive Officer by notification. Therefore, there is no question of limitation as to what powers would be given and what powers would not be given. The learned Judge himself has taken the same view in his own judgment dated June 5, 1972, as he said:

I am also unable to accept the contention that the expression "such powers" cannot mean all powers as has been done in this case. The expression "such powers" is a qualifying term and must be construed in the context in which it is used. The expression "such powers" in this context means those mentioned in the notification. Therefore, if all the powers of the Commissioners are mentioned in the notification, then the expression "such powers" would cover all powers.

52. I cannot accept the argument of Mr. Banerji that u/s 68 sub-section (2) of the Act the Executive Officer shall act in respect of all other matters under the direction of Chairman to whom he shall be responsible to the Commissioners. Section 68, sub-section (2) says : "Subject to the provisions of sub-section (2) of Section 51 and sub-section (3) of section 67A. Therefore the powers of the Executive Officer is subject to the powers conferred on him u/s 67A sub-section (3) and there is no limitation of the powers which can be conferred on the Executive Officer u/s 67A Sub-section (3).

53. In my view, the question whether Section 67A the Act is a separate or exclusive section or is complementary to Section 553 of the Act may not be decided in this appeal. This question is the subject matter of the appeal against

the judgment and order of the learned Judge dated June 5, 1972 and this question will be decided in that appeal.

54. With regard to the part of the notification where it is enumerated that the Government is vesting all powers of the Commissioners and of the Chairman on the basis of the irregularities in connection with the administration of the municipal affairs. Mr. Banerji argued before us that the statements have been made (a) malafide and (b) in violation of the principles of natural Justice.

55. With regard to the question of malafide, although this point has been taken in the petition, but there is no finding by the learned Judge. After all, this is a question of fact on which we do not have the benefit of the finding of the learned Judge. In any event, I do not think that there is sufficient materials on which we can hold that this part of the notification has been made malafide. There is no violation of the principles of natural justice when the State does not require any reasons to be given or any opinion to be formed. The requirement of the principles of natural justice must depend, inter alia, upon circumstances of the case, and also on the rules under which the Tribunal is acting. Here in the instant case, Section 67A sub-section (3) of the Act does not provide that notice should be given to the Chairman or the Commissioners before conferring powers to the Executive Officer under the notification.

56. The other point taken before us by Mr. Banerji, is that section 67A. is ultra vires. I do not think that I can allow this point to be raised now in appeal, because, this point was not taken before the court of first instance. In the premises, appeal should be allowed and the Judgment and order dated September 26, 1972 are set aside. Accordingly, the Rule made by the learned Judge is discharged and the application under Article 226 of the Constitution is dismissed.

Each party will pay and bear Its or his own costs.