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December. 22.

STATE OF ORISSA

v.

BHUPENDRA KUMAR BOSE

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA andN. RAJAGOPALA AYYANGAR, JJ.)

Municipal Elections—Electoral rolls improperly prepared —High Court declaring elections invalid—Validating Ordinance —Constitutionality of—Expiry of Ordinance—Whether invalidity revives—Orissa Municipal Act, 1950 (Orissa 33 of 1950)— Orissa Ordinance I of 1959, ss. 3, 4 and 5—Constitution of India, Arts. 14, 226 and 254.

Elections were held for the Cuttack Municipality and 27 persons were declared elected as Councillors. One B, who was defeated at the elections, filed a writ petition before the High Court challenging the elections. The High Court held that the electoral rolls had not been prepared in accordance with the provisions of the Orissa Municipalities Act, 1950, as the age qualification had been published too late thereby curtailing the period of claims and objections to the preliminary roll to 2 days from 21 days as prescribed; Consequently the High Court set aside the elections. The State took the view that the judgment affected not merely the Cuttack Municipality but other municipalities also. Accordingly, the Governor promulgated an Ordinance validating the elections to the Cuttack Municipality and validating the electoral rolls prepared in respect of other municipalities. Thereupon, B filed a writ petition before the High Court contending that the Ordinance was unconstitutional. The High Court found that the Ordinance contravened Art. 14 of the Constitution, that it did not successfully cure the invalidity and that it offended Art. 254(1) of the Constitution as it was inconsistent with many Central Acts falling in the concurrent list and was unconstitutional. The State and the Councillors appealed and challenged the findings of the High Court. B raised two further contentions that the appeal had become infructuous as the Ordinance had expired and that the Ordinance was invalid as it purported to invalidate the judgment of the High Court.

Held, that the Ordinance was valid and that it successfully cured the invalidity of the electoral roll and of the elections to the Cuttack Municipality.

The Ordinance did not offend Art. 14 of the Constitution. Its object was not only to save the elections to the

Cuttack Municipality but also to other municipalities whose validity might be challenged on similar grounds. It did not single out B for any discriminatory treatment.

Shri Ram Krishna Dalmia v. *Shri Justice S.R. Tendolkar*, [1959] S. C. R. 279, referred to.

State of Vermont v. *Albert Shedroi*,(1904)68 L. Ed. 179, distinguished.

The Ordinance effectively removal the defects in the electoral rolls found by the High Court by its first judgment. It was not necessary for it to further state that the result of elections was not materially affected.

Section 5(1) of the Ordinance which saved the actions taken and powers exercised by the Councillors, the Chairman and the Vice-Chairman was not repugnant to any existing law and did not contravene Art. 254(2) of the Constitution. Section 5(1) was confined to action taken under the Orissa Municipalities Act and did not extend to violations of other laws made by the Central Legislature under the concurrent list.

The first judgment of the High Court under Art. 226 of the Constitution could not be equated with Art. 226 itself. As such the Governor did not transgress any constitutional limitation in nullifying its effect by the validating Ordinance.

The invalidity of the electoral rolls and the elections to the Cuttack Municipality did not revive on the expiry of the Ordinance. The general rule with regard to temporary statutes is that, in the absence of a special provision to the contrary, proceedings being taken under it against a person will *ipso facto* terminate as soon as the statute expires. But, if the right created by the Statute is of an enduring character and has vested in the person, that right cannot be taken away simply because the statute has expired. The rights created by the Ordinance lasted even after the Ordinance lapsed as its object was to remove the invalidity permanently.

Krishnan v. *State of Madras* [1951] S.C.R. 621, *Wicks* v. Director of Public Prosecutions, [1947] A.C. 362, *Steavenson* v. *Oliver* (1841) 151 E. R. 1024 and *Warren* v. *Windle*, (1803) 3 East 205, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 525 and 526 of 1960.

Appeals from the judgment and order dated March 20, 1959, of the Orissa High Court in O.J.C. No. 12 of 1959.

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A. Viswanatha Sastri, B.R.L. Iyengar and *T. M. Sen*, for the appellant (In C.A. No. 525/60) and respondent No. 1 (in C.A. No. 526 of 1960.)

B. P. Maheshwari, for the appellants (in C.A. No. 526/60) and Respondents Nos. 2 to 8, 10, 13 to 16, 19—21, 23, 25, 27, and 28 (in C.A. No. 525/60).

A. Ranganadham Chetty, A. V. Rangam, S. Mishra, A. Vedavalli and *R. Patnaik*, for respondent No. 1 (in C A. No. 525/60) and 2 (in C.A. No. 526 of 60).

1961. December 22. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.— These two appeals are directed against the order passed by the High Court of Orissa under Art. 226 of the Constitution striking down as unconstitutional sections 4 and 5 (1) of Orissa Ordinance I of 1959 promulgated by the Governor of Orissa on January 15, 1959. This Order was passed on the Writ Petition filed by Mr. B. K. Bose against the State of Orissa and 27 persons who were elected Councillors of the Cuttack Municipality, including the Chairman and the Vice-Chairman respectively. Appeal No. 525 has been filed by the State of Orissa whereas Appeal No. 526 is filed by the said Municipal Councillors. The appellants in both the appeals obtained leave from the Orissa High Court to appeal to this Court.

It appears that during December, 1957 to March, 1958, elections were held for the Cuttack Municipality under the provisions of the Orissa Municipal Act, 1950 Orissa (XXXIII of 1950) (hereinafter called the Act) and the 27 appellants in Appeal No. 526 of 1960 were declared elected as Councillors. From amongst them, Manmohan Mishra was elected the Chairman and Mahendra Kumar Sahu the Vice-Chairman. Mr. B. K. Bose, who is an Advocate practising in Cuttack and a resident within the municipal limits of Cuttack

had contested the said elections as a candidate from Ward No.13. He was, however, defeated. Thereupon, he presented an application to the High Court (O.J.C. No. 72 of 1958) to set aside the said elections. To this application he impleaded the State of Orissa and the 27 elected Councillors. In his petition Mr. Bose alleged that the elections held for the Cuttack Municipality were invalid and he claimed an injunction restraining the 27 respondents from functioning as elected Councillors and the Chairman and the Vice-Chairman amongst them from discharging their duties as such. The respondents to the petition traversed the allegations made by Mr. Bose and urged that the elections were valid and that the petitioner was not entitled to any relief under. Art. 226.

The High Court upheld the contentions raised by the petitioner. It came to the conclusion that the qualifying date for determining the age qualification of voters under s.13 of the Orissa Municipal Act had been published by the State Government only on January 10, 1958, though the preliminary electoral rolls had already been published on December 23, 1957. In consequence, the claims and objections had been invited for a period of 21 days from the said date to January 12, 1958. As a result of the delay made in publishing the qualifying date for the determination of age qualification of voters, the citizens of Cuttack were, in fact, given only two days' time to file their claims and objections, whereas under the relevant Election Rules they were entitled to 21 days. The High Court also came to the conclusion that this drastic abridgment of the period for filing claims and objections had materially affected the results of the elections, by depriving several voters of their right to be enrolled as such. The High Court also found that whereas a candidate was entitled to 15 clear days for the purpose of canvassing, the notification issued under the Orissa Municipal Election Rules curtailed this period to

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14 days. According to the High Court, the respondents to the petition had failed to show that the results of the elections had not and could not have been affected by the contravention of the said Rules. On these findings, the elections in question were set aside and appropriate orders of injunction issued as claimed by the petitioner. This judgment was pronounced on December 11, 1958.

It appears that the State of Orissa took the view that the effect of the said judgment could not be confined only to Cuttack Municipality. As a result of the findings made by the High Court during the course of the said judgment the validity of elections to other Municipalities' might also be exposed to the risk of challenge and that would have necessitated the preparation of fresh electoral rolls after following the procedure prescribed in that behalf by the Act. That is why the Governor of Orissa promulgated the impugned Ordinance on January 15, 1959. Broadly stated, the effect of the Ordinance was that the elections to the Cuttack Municipality stood validated and the said Municipality began to function once again. It also validated the electoral rolls prepared in respect of the other Municipalities in the State of Orissa and thus sought to save elections held or to be held in respect of the said Municipalities from any possible challenge.

When Mr. Bose found that his success in the Writ Petition (O.J.C. No. 72 of 1958) had thus been rendered illusory by the Ordinance, he moved the High Court again by the present Writ Petition. He contended that the material provisions of the Ordinance, viz., ss. 4 and 5(1) were unconstitutional and he asked for an appropriate relief on that basis. The High Court has again upheld the contentions raised by Mr. Bose and has struck down ss.4 and 5(1) of the Ordinance and issued appropriate orders of injunction restraining the elected Councillors and

the Chairman and Vice-Chairman from functioning as such. The State of Orissa and the 27 Councillors by separate applications obtained a certificate from the High Court and have come to this Court by their two separate appeals Nos. 525 and 526 of 1960.

Before dealing with the validity of the impugned provisions of the Ordinance, it is necessary to consider the broad features of the Ordinance itself. As the preamble to the Ordinance shows, the Governor of Orissa promulgated it beacuse he thought it necessary to provide for the validation of electoral rolls and elections to Municipalities. In his opinion, the preparation of fresh electoral rolls and the holding of fresh elections which would have become necessary unless a validating Ordinance had been passed, would have entailed huge expenditure and would have given rise to problems regarding the administration of such Municipalities during the intervening period. He also thought that it was necessary to take immediate steps to provide for the validation of the electoral rolls and the elections since the Legislature of the State of Orissa was not then in session and the Governor thought circumstances existed which rendered it necessary to take immediate action. In exercise of the powers conferred on him by Art. 213(1) of the Constitution, he was, therefore, pleased to promulgate the Ordinance. That, according to the statement made in the preamble to the Ordinance explains the genesis of its promulgation.

The Ordinance consists of five sections. Section 1 gives its short title and extent, while s.2 is the defining section. Sections, 3, 4 and 5 read thus : –

> "3. (1) Notwithstanding the Order of any Court to the contrary or any provision in the Act or the rules thereunder :
>
> (a) the electoral rolls of the Cuttack Municipality shall be, and shall always

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be deemed to have been validly prepared and published; and

(b) the said electoral rolls shall be deemed to have come in force on the date of publication and shall continue to be in force until they are revised in accordance with the rules made in this behalf under the Act.

(2) The validity of the electoral rolls shall not be called in question in any court on the ground that the date on which a person has to be not less than 21 years of age was fixed under Section 13 of the act after the publication of the preliminary electoral rolls.

4. Any order of a court declaring the election to the Cuttack Municipality invalid on account of the fact that the electoral rolls were invalid on the ground specified in Sub-section (2) of section 3 or on the ground that the date of polling of the election was not fixed in accordance with the Act or the rules made thereunder, shall be deemed to be and always to have been of, no legal effect, whatsoever, and the elections to the said Municipality are hereby validated.

5. (1) All actions taken, and powers exercised by the Councillors, Chairman or Vice-Chairman of the Cuttack Municipality prior to the coming into force of this Ordinance shall be deemed to have been validly taken, and exercised.

(2) All actions taken and powers exercised by the District Magistrate of Cuttack in respect of the Cuttack Municipality in pursuance of the Order of the Government of Orissa in the Health (L. S. G.) Department No. 8263 L.S.G. dated the 13th December, 1958, shall be deemed to have been taken

and exercised by the Council of the said Municipality or its Chairman or Vice-Chairman, as the case may be."

It will thus be seen that s. 3 purports to validate the electoral rolls which had been held to be invalid by the High Court in Writ Petition No. 72 of 1958. Sub-section (1) of s. 3 deals specifically with the infirmities found in the elections held for the Cuttack Municipality whereas sub-s. (2) deals with the defects in the electoral rolls in respect of all the Municipalities. Section 4 validates, in particular, the elections to the Cuttack Municipality which had been held to be invalid by the High Court. Section 5(1) purports to protect all actions taken and powers exercised by the Councillors, the Chairman and the Vice-Chairman prior to the coming into force of the Ordinance, while s. 5(2) validates all actions taken and powers exercised by the District Magistrate of Cuttack in respect of the Cuttack Municipality in pursuance of the Order there specified. In other words, the Ordinance is a validating Ordinance. It purports to validate the elections of the Cuttack Municipality in particular and to make valid and regular the electoral rolls which would otherwise have been held to be irregular and invalid in accordance with the judgment of the High Court.

Before the High Court, on behalf of Mr. Bose five points were raised. It was argued that the provisions of the Ordinance were a mere colourable device to set aside the judgment of the High Court in O.J.C. No. 72 of 1958. It was, in fact, and in substance, not any exercise of legislative power by the Governor but assumption by him of judicial power which is not warranted by the Constitution. The High Court has rejected this contention and the finding of the High Court on this point has not been challenged before us. So we are relieved of the task of considering the merits of this finding.

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It was then contended that s. 4 of the Ordinance contravenes the equality before law guaranteed by Art. 14 of the Constitution. It was also urged alternatively that even if s. 4 did not contravene Art. 14, it did not successfully cure the invalidity of the elections to the Cuttack Municipality arising out of the fact that material prejudice had been caused to the citizens by the abridgement of the period for filing claims and objections and of the period for canvassing. In regard to s. 5(1) the argument was that it was invalid under Art. 254(1). All these three contentions have been accepted by the High Court and the correctness of the findings recorded by the High Court in that behalf fall to be considered in the present Appeals. The last contention raised in support of the petition was that on February 23, 1959, a Bill entitled "Orissa Municipal Election Validating Bill 1959" which contained substantially similar provisions as those of the Ordinance, was sought to be introduced in the Orissa Legislative Assembly but was defeated by a majority of votes and that made the Ordinance invalid. This contention has been rejected by the High Court and the finding of the High Court on this point has not been challenged before us. Thus, out of the 5 points raised before the High Court, 3 have been argued before us. For Mr. Bose, Mr. Ranganathan Chetty has also urged two additional points. He has contended that the present appeals have really become infructuous in view of the fact that the impugned Ordinance lapsed on April 1, 1959. This argument has been strenuously pressed before us in the form of a preliminary objection against the competence of the appeals themselves. On the merits, Mr. Chetty has urged an additional ground that the Ordinance was invalid inasmuch as it purported to invalidate the judgment of the High Court in O.J.C. No. 72 of 1958 delivered under Art. 226 of the Constitution.

Let us first consider whether s. 4 offends the equality before law guaranteed by Art. 14. In coming to the conclusion that the said section is unconstitutional on the ground that it contravenes Art. 14. the High Court was very much impressed by the fact that as a result of its earlier judgment, Mr. Bose had obtained a very valuable right of preventing the existing Councillors from functioning as such and of having fresh elections conducted according to law in which he would have the right to stand as a candidate once again. The petitioner, Mr. Bose, may legitimately ask, observed the High Court, why, when hundreds of successful suitors who have sought the help of that Court for relief under Art. 226 were allowed to enjoy the fruits of their success, he alone should have been discriminated against by hostile legislation. With respect, this rhetorical approach adopted by the High Court, in dealing with the question about the validity of s. 4 is open to the obvious criticism that it is inconsistent with the view taken by the High Court itself in this very judgment that the Governor was competent to issue an Ordinance to invalidate the judgment of the High Court pronounced in O.J.C. No. 72 of 1958; as we have already pointed out one of the contentions raised by Mr. Bose against the validity of the Ordinance was that in the guise of the exercise of the legislative powers, the Governor had purported to exercise judicial powers and that was beyond his competence. Since the finding of the High Court on this question has not been challenged before us by Mr. Chetty, we propose to express no opinion on its merits. But if it is held that in promulgating the validating Ordinance the Governor was exercising his powers under Art. 213(1) and his legislative competence in that behalf is not in doubt, then it is difficult to appreciate how the High Court should have allowed itself to be influenced by the grievance made by Mr. Bose that he had been deprived of the fruits of his success in the earlier Writ Petition.

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The High Court was, no doubt, influenced by its conclusion that Mr. Bose alone had been singled out for discriminatory treatment of the impugned Ordinance and that, according to the High Court, constituted violation of the provisions of Art. 14. There are, however, two obvious infirmities in this conclusion. Looking at the scheme of the Ordinance, it is clear that ss. 3 and 4 must be read together. The object of the Ordinance was two-fold. Its first object was to validate the elections to the Cuttack Municipality which had been declared to be invalid by the High Court and its other object was to save elections to other Municipalities in the State of Orissa whose validity might have been challenged on grounds similar to those on which the elections to the Cuttack Municipality had been successfully impeached. It is with this two-fold object that s. 3 makes provisions under its two sub-ss. (1) and (2). Having made the said two provisions by s. 3, s. 4 proceeded to validate the elections to the Cuttack Municipality. If we bear in mind this obvious scheme of the Ordinance, it would be unreasonable to read s. 4 in isolation and a part from s. 3. The High Court was in error in dealing with s. 4 by itself unconnected with s. 3 when it came to the conclusion that the only subject of s. 4 was to single out Mr. Bose and deprive him of the fruits of his success in the earlier Writ Petition. If ss. 3 and 4 are read together, it would be clear that Mr. Bose alone had not been singled out or discriminatory treatment; the validating provisions applied, no doubt, to the Cuttack Municipal elections but they are also intended to govern any future and even pending dispute in regard to the elections to other Municipalities. Therefore in our opinion, the High Court was not right in coming to the conclusion that the object of the Ordinance was only to validate the Cuttack Municipal elections and nothing more.

Besides, if the power to validate by promulgating an Ordinance is conceded to the Governor under Art. 213(1), it would not be easy to appreciate why it was not open to the Governor to issue an Ordinance dealing with the Cuttack Municipal Elections themselves. The Cuttack Municipal Elections had been set aside by the High Court and if the Governor thought that in the public interest, having regard to the factors enumerated in the preamble to the Ordinance, it was necessary to validate the said elections, it would not necessarily follow that the Ordinance suffers from the vice of contravening Art. 14. Article 14 has been the subject matter of decisions in this Court on numerous occasions. It is now well-established that what the said Article forbids is class legislation no doubt, but it does not forbid reasonable classification for the purposes of legislation. In order that the test of permissible classification should be satisfied, two conditions have to be fulfilled, viz., (1) the classification must be founded on an intelligible differentia which would distinguish persons or things grouped together from others left out of the group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. As this Court has held in the case of *SHRI RAM KRISHNA DALMIA* V. *SHRI JUSTICE S. R. TENDOLKAR*(1), a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Therefore, if the infirmity in the electoral rolls on which the decision of the High Court in the earlier writ petition was based, had not been applicable to the electoral rolls in regard to other Municipalities in the State of Orissa, then it may have been open to the Governor to issue an Ordinance only in

(1) [1959] S. C .R. 279, 297.

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respect of the Cuttack Municipal Elections, and if, on account of special circumstances or reasons applicable to the Cuttack Municipal Elections, a law was passed in respect of the said elections alone, it could not have been challenged as unconstitutional under Art. 14. Similarly, if Mr. Bose was the only litigant affected by the decision and as such formed a class by himself, it would have been open to the Legislature to make a law only in respect of his case. But as we have already pointed out, the Ordinance does not purport to limit its operation only to the Cuttack Municipality; it purports to validate the Cuttack Municipal Elections and the electoral rolls in respect of other Municipalities as well. Therefore, we are satisfied that the High Court was in error in coming to the conclusion that section 4 contravenes Art. 14 of the Constitution. Having regard to the fact that certain infirmities, in the electoral rolls were presumably found to be common to electoral rolls in several Municipalities the Governor thought that the decision of the High Court raised a problem of public importance affecting all Municipal elections in the State and so, acting on the considerations set out in the preamble to the Ordinance, he proceeded to promulgate it. In dealing with the challenge against s. 4 of the said Ordinance, the High Court should have considered all the provisions of the Ordinance together before coming to the conclusion that section 4 was discriminatory and contravened Art. 14.

In support of the finding of the High Court, Mr. Chetty referred us to the decision in the *State of Vermont* v. *Albert Shedroi*. (1) In that case the Court was dealing with a statute which exempted certain persons from the obligation to obtain a licence for the privilege of selling goods as peddlers. The impugned statute conferred exemption on persons resident in the State, who had served as soldiers in

(1) (1904) 68 L. Ed. 179.

the war for the suppression of the Rebellion in the Southern States, and were honourably discharged. This statute was held to contravene the provisions of the 14th Amendment whereby no state can deny to any person within its jurisdiction the equal protection of the laws. In our opinion, this decision can afford no assistance to Mr. Chetty in supporting the finding of the High Court that s. 4 contravenes Art. 14. The services rendered by the soldiers in the war for the suppression of the Rebellion in the Southern States had hardly any rational connection with the exemption granted to them from obtaining licence for selling goods as peddlers and so, the classification purported to be made by the impugned statute was obviously unreasonable and irrational. That is not so in the present case. Certain irregularities in the electoral rolls were discovered and it was thought that unless the said irregularities were validated, public exchequer would be involved in huge expenditure and problems regarding the administration of Municipalities during the intervening period would arise. That is why the Ordinance was promulgated. The impugned provisions of the Ordinance cannot be said to be based on a classification which is not rational and which has no reasonable connection with the object intended to be achieved by the Ordinance. Therefore, in our opinion the conclusion of the High Court that s. 4 contravened Art. 14 cannot be sustained.

As we have already pointed out, the High Court has taken the view that even if s. 4 did not offend against Art 14, it nevertheless could not cure the invalidity of the elections to the Cuttack Municipality inasmuch as it had not said anything about the finding of the High Court that the irregularities complained against had caused material prejudice to the citizens of Cuttack by the abridgement of the period for filing claims and objections

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and of the period for canvassing. When the validating provision, observes the High Court, merely cures the invalidity arising out of the fixation of the qualifying date after the publication of the preliminary electoral rolls and is completely silent about the results of the elections being materially affected thereby, it cannot be said to have annulled the judgment of this Court in O. J. C. No. 72 of 1958. The same reasoning would also apply to the abridgement of the period of canvassing from 15 days to 14 days which also materially affected the results of the elections. The High Court thought that if the Governor wanted to annul the effect of its ealier decision, he should have made express provision to that effect or at least should have referred to that fact in Section 4. It is not easy to appeciate this view. What the Ordinance has purported to do is to validate the electoral rolls and thereby cure the infirmities detected in them. Once that is done, there is hardly any occasion to say further that no prejudice shall be deemed to have been caused by the said infirmities of the electoral rolls. In validating the elections to the Cuttack Municipality, the Ordinance was not expected or required to cover the reasons given by the judgment or the finding recorded in it. The basis of the judgment was the irregularities in the Electoral rolls and the procedure followed in holding the elections. Those irregularities have been validated and that inevitably must mean that the elections which were held to be invalid would have to be deemed to be valid as a result of the Ordinance and so no question of material prejudice can arise. That being so, we do not think there is any substance in the alternative argument urged in support of the plea that s. 4 is ineffective even if it does not contravene Art. 14.

That takes us to the question as whether s. 5(1) is invalid. The High Court has taken the view that s. 5(1) purports to protect not only actions taken and powers exercised under the Municipal

Act but all actions and all powers exercised, even outside the Municipal Act in violation of other laws. Basing itself on this broad and wide construction of s. 5(1), the High Court thought that between ss.5(1) and s.477A of the Indian Penal Code there was inconsistency. That is why it struck down s. 5(1) under Arts. 254(2) and 213(1) of the Constitution. We have no hesitation in holding that the construction placed by the High Court on s. 5 (1) is obviously unreasonable. The object of s. 5 (1) is plain and unambiguous. It seeks to save actions taken and powers exercised by the Councillors, the Chairman or the Vice-Chairman in pursuance of, and in accordance with, the provisions of the Municipal Act. Having validated the elections to the Cuttack Municipality, it was obviously necessary to validate actions taken and powers exercised by the appropriate authorities and Councillors as such after the elections were held and before they were invalidated by the judgment of the High Court. Having regard to this plain object which s.5(1) is intended to serve, it is, we think, wholly unreasonable to put upon its words an unduly wide construction and then strike it down as inconsistent with Art. 254(2) of the Constitution. It is true that s. 5(1) is not in express terms confined to all actions taken and powers exercised under the Municipal Act, but, in the context, that is obviously intended. Indeed, it is doubtful whether it was really necessary to add the words under the Municipal Act having regard to the scheme of the Ordinance and the context in which s. 5(1) is enacted. Therefore, we do not think that the High Court was justified in holding that s. 5(1) was void to the extent of its repugnancy to the existing laws dealing with matters in the Concurrent List. There is no repugnancy to any existing laws and so, there is no contravention of Art. 254(2) of the Constitution at all.

We will now deal with the two additional grounds urged before us by Mr. Chetty. He contends

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that the Governor was not competent to issue an Ordinance with a view to over-ride the judgment delivered by the High Court in its jurisdiction under Art. 226 of the Constitution. This argument is obviously untenable, for it erroneously assumes that the judgment delivered by the High Court under Art. 226 has the same status as the provisions in the Constitution itself. In substance, the contention is that just as a provision in the Constitution like the one in Art. 226 cannot be amended by the Governor by issuing an Ordinance, so a judgment under Art. 226 cannot be touched by the Governor in his Ordinance making power. It is true that the judgment delivered by the High Court under Art.226 must be respected but that is not to say that the Legislature is incompetent to deal with problems raised by the said judgment if the said problems and their proposed solutions are otherwise within their legislative competence. It would, we think, be erroneous to equate the judgment of the High Court under Art. 226 with Art 226 itself and confer upon it all the attributes of the said constitutional provision.

We must now turn to the main argument urged before us by Mr. Chetty that the Ordinance having lapsed on April 1st 1959, the appeals themselves have become infructuous. He contends that the Ordinance was a temporary statute which was bound to lapse after the expiration of the prescribed period and so, as soon as it lapsed, the invalidity in the Cuttack Municipal elections which had been cured by it revived and so there is no point in the appellants challenging the correctness of the High Court's decision. Indeed, it was this point which Mr. Chetty strenuously stressed before us in the present Appeals. If the true legal position be that after the expiration of the Ordinance the validation of the elections effected by it comes to an end, then Mr. Chetty would be right in contending

that the appeals are infructuous. But is it the true legal position ?—that is the question which calls for our decision.

It is true that the provisions of s. 6 of the General Clauses Act in relation to the effect of repeal do not apply to a temporary Act. As observed by Patanjali Sastri, J., as he then was, in *S. Krishnan* v. *The State of Madras*,(1) the general rule in regard to a temporary statute is that, in the absence of special provision to the contrary, proceedings which are being taken against a person under it will *ipso facto* terminate as soon as the statute expires. That is why the Legislature can and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of s. 6 of the General Clauses Act. Incidentally, we ought to add that it may not be open to the Ordinance making authority to adopt such a course because of the obvious limitation imposed on the said authority by Art. 213(2) (a).

Wicks v. *Director of Public Prosecutions* (2) is an illustration in point. The Emergency Powers (Defence) Act, 1939, s. 11, sub-s. 3, with which that case was concerned, provided that the expiry of the Act shall not affect the operation thereof as respects things previously done or omitted to be done. The appellant Wicks was convicted in May, 1946, of offences committed in 1943 and 1944, contrary to Regulation 2A of the Defence (General) Regulations 1939, made pursuant to the Act. Both the Act and the Regulation expired on February 24, 1946. It was as a result of this specific saving provision contained in s. 11 (3) of the Act that the House of Lords held that, although regulation 2A had expired before the trial of the appellant, he was properly convicted after the expiration of the Act, since s. 11 (3) did not expire with the rest of the

(1) [1951] S.C.R. 621. (2) (1947) A.C. 362.

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Act, being designed to preserve the right to prosecute after the date of expiry. Mr. Chetty contends that there is and can be, no corresponding saving provision made by the Ordinance in question and so, the invalidity of the Cuttack Municipal Elections would revive as soon as the Ordinance expired by lapse of time. This contention is based on the general rule thus stated by Craies: "that unless a temporary Act contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. That is why offences committed against temporary Acts must be prosecuted and punished before the act expires, and as soon as the Act expires any proceedings which are being taken against a person will *ipso facto* terminate." (1)

In our opinion, it would not be reasonable to hold that the general rule about the effect of the expiration of a temporary Act on which Mr. Chetty relies is inflexible and admits of no exceptions. It is true for instance that offences committed against temporary Acts must be prosecuted and punished before the act expires. If a prosecution has not ended before that day, as a result of the termination of the Act, it will *ipso facto* terminate. But is that an inflexible and universal rule? In our opinion, what the effect of the expiration of a temporary Act would be must depend upon the nature of the right or obligation resulting from the provisions of the temporary Act and upon their character whether the said right and liability are enduring or not. As observed by Parker, B. in the case of *Steavenson* v. *Oliver*, (2) "there is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the

(1) Craies on statute Law. p.377. (2) 151 E R. 1024, 1026-1027.

extent of the restrictions imposed, and the duration of the provisions, are matters of construction." In this connection, it would be useful and interesting to consider the decision in the case of Steavenson itself. That case related to 6th Geo. 4, c. 133, s. 4 which provided that every person who held a commission or warrant as surgeon or assistant surgeon in His Majesty's Navy or Army, should be entitled to practise as an apothecary without having passed the usual examination. The statute itself was temporary and it expired on August 1, 1826. It was urged that a person who was entitled to practise as an apothecary under the Act would lose his right after August 1, 1826, because there was no saving provision in the statute and its expiration would bring to an end all the rights and liabilities created by it. The Court rejected this contention and held that the person who had acquired a right to practise as an apothecary, without having passed the usnal examination, by virtue of the provision of the temporary Act, would not be deprived of his right afrer its expiration. In dealing with the question about the effect of the expiration of the temporary statute, Lord Abinger, C. B. observed that "it is by no means a consequence of an act of Parliament's expiring, that rights acquired under it should likewise expire. Take the case of a penalty imposed by an act of Parliament; would not a person who had been guilty of the offence upon which the legislature had imposed the penalty while the Act was in force, be liable to pay it after its expiration ? The case of a right acquired under the Act is stronger. The 6 Geo. 4 c. 133, provides that parties who hold such warrants shall be entitled to practise as apothecaries ; and we cannot engraft on the statute a new qualification, limiting that enactment." It is in support of the same conclusion that Parker, B. made the observations which we have already cited. "We must look at this act",

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observed Parker, B., "and see whether the restriction in the 11th clause, that the provisions of the statute are only to last for a limited time, is applicable to this privilege, in question. It seems to me that the meaning of the legislature was that all assistant-surgeons, who were such before the 1st of August, 1826, should be entitled to the same privileges of practising as apothecaries, as if they had been in actual practice as such on the 1st of August, 1815, and that their privilege as such was of an executory nature, capable of being carried into effect after the 1st of August, 1826." Take the case of a penalty imposed by a temporary statute for offences created by it. If a person is tried and convicted under the relevant provisions of the temporary statute and sentenced to undergo imprisonment, could it be said that as soon as the temporary statute expires by efflux of time, the detention of the offender in jail by virtue of the order of sentence imposed upon him would cease to be valid and legal? In our opinion, the answer to this question has to be in the negative. Therefore, in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter.

This question sometimes arises in another form. As Craies has observed: "If an act which repeals an earlier Act is itself only a temporary Act, the general rule is that the earlier Act is revived after the temporary Act is spent; and inasmuch as ex-hypothesis the temporary Act expires and is not repealed, the rules of construction laid

down by ss. 11 (1) and 38 (2) of the Interpretation Act, 1889, do not apply. But there will be no revivor if it was clearly the intention of the legislature to repeal the earlier Act absolutely." Therefore, even as regards the effect of the repealing of an earlier Act made by a temporary Act, the intention of the temporary Act in repealing the earlier Act will have to be considered and no general or inflexible rule in that behalf can be laid down. This position has been tersely expressed by Lord Ellenborough, C. J., when he observed in *Warren* v. *Windle* (1) "a law though temporary in some of its provisions, may have a permanent operation in other respects. The stat. 26 Geo. 3, c. 108, professes to repeal the statute of 19 Geo. 2, c. 35, absolutely, though its own provisions, which it substituted in place of it, were to be only temporary." In other words, this decision shows that in some cases the repeal effected by a temporary Act would be permanent and would endure even after the expiration of the temporary Act. We have referred to this aspect of the matter only by way of analogy to show that no inflexible rule can be laid down about the effect of the expiration of a temporary Act.

Now, turning to the facts in the present case, the Ordinance purported to validate the elections to the Cuttack Municipality which had been declared to be invalid by the High Court by its earlier judgment so that as a result of the Ordinance, the elections to the Cuttack Municipality must be held to have been valid. Can it be said that the validation was intended to be temporary in character and was to last only during the life-time of the Ordinance ? In our opinion, having regard to the object of the Ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived. The rights created by this

(1) (1803) 3 East 205, 211-212 : 102 E. R. (K. B.) 578.

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Ordinance are, in our opinion, very similar to the rights with which the court was dealing in the case of Steavenson and they must be held to endure and last even after the expiry of the Ordinance. The Ordinance has in terms provided that the Order of Court declaring the elections to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would not come to an end as soon as the Ordinance expires. Therefore, we do not think that the preliminary objection raised by Mr. Chetty against the competence of the appeals can be upheld.

The result is that the appeals are allowed, the Order passed by the High Court is set aside, and the Writ Petition filed by Mr. Bose is dismissed with costs throughout.

Appeals allowed.