Sikkim High Court Nima Ongdi Lepcha vs State Of Sikkim And Ors. on 12 May, 2006 Equivalent citations: AIR 2007 Sik 7 Author: A Subba Bench: N Singh, A Subba JUDGMENT A.P. Subba, J. 1. By filing this Writ Petition, the Petitioner Shri Nima Ongdi Lepcha, a loanee of the State Bank of Sikkim (Respondent No. 2), has prayed for quashing the impugned Certificate of Public Demand dated 13-9-2004 issued by the Certificate Officer, East District for recovery of O.D. loan of Rs. 5,62,365.17 from him. 2. Before proceeding with the narration of the respective cases of the parties, it is convenient to bear in mind, that the law relating to recovery of public demands in erstwhile Sikkim was not comprehensive. The relevant law as contained in Notification No. 405 of 1950 was sketchy and inadequate. It mainly lacked provision for giving due opportunity to the debtor for making representations against the realisations of public demands. Hence, with a view to make a comprehensive law with detailed provisions on the subject, the State Legislature enacted a law called the Sikkim Public Demands Recovery Act, 1988 (hereinafter referred to as Act 1 of 1988). This Act received the assent of the Governor on 27-2-1988 and came into force in the State. In the meantime, a Central Act called the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Recovery Act 1998), also came into force in the State in the year 1993. After this Act came into force, the State Government obtained the assent of the President to the above Act No. 1 of 1988 in the year 2003 and published it in the extraordinary Sikkim Government Gazette dated 22-4-2003, as Act No. 4 of 2003. This Act is hereinafter referred to as Act No. 4 of 2003. The Petitioner, who is a registered Class III contractor, had availed of over-draft loan facilities from the State Bank of Sikkim. In the year 2004, a Certificate of Public Demand, which is impugned herein, was issued under the provisions of the above Act No. 4 of 2003 by the Ld. Certificate Officer, East District against the Petitioner, for recovery of the O.D. Loan. It is this Certificate of Public Demand that has been impugned by the Petitioner in the present proceedings. 3. It is the case of the Petitioner, that the Act No. 1 of 1988 stood impliedly repealed by the application of the decision of this Court reported in AIR 1999 Sikkim Page 16 relied on and reiterated by a later decision dated 8th July 2002 rendered in Writ Petition No. 10 of 2002. Over and above, this Act also stood impliedly repealed by the application of Article 254 of the Constitution of India, as it has suffered for want of Presidential assent. The subsequent assent obtained in the year 2003, after a lapse of 14 years, without the above two decisions of this Court being taken into consideration, cannot be sustained on the touchstone of Article 255 of the Constitution of India, and as such, the subsequent assent cannot revive and revalidate the Act in question, which stood impliedly repealed as aforesaid. As regards Act No. 4 of 2003, the case of the Petitioner, is that, even though the said 'Act' was published in the Government Gazette alter obtaining the Presidential assent, subsequently on the 5th day of March, 2003 as Act No. 4 of 2003, no Notification in terms of Section 1(3) thereof had been issued to bring the said Act into force. Therefore, this Act not yet come into force in the State. Consequently, the 'Act No. 1 of 1988' having been impliedly repealed, and the Act No. 4 of 2003 having not been enforced In the State of Sikkim, the issuance

of the impugned certificate of public demand dated 13-9-2004, in application case No. 209 of 2004, was completely illegal, wholly without jurisdiction and was thus liable to be quashed. 4. The State Bank of Sikkim, (respondent No. 2) alone filed the counter affidavit. In the said counter affidavit, it has been denied that the Act No. 1 of 1988 stood impliedly repealed by the two decisions of this Court referred to by the Petitioner. It has also been denied that the said Act No. 1 of 1988 failed for want of Presidential Assent. As regards Act No. 4 of 2003, it was conceded that no Notification in terms of Section 1(3) of the Act has been issued and published bringing the said Act into operation in the State, but it was contended that non-issuance of the required Notification after the Act received the assent of President on 5-3-2003, has no relevance, in so far as Act No. 1 of 1988 would continue to remain in force till such time the 'Act No. 4 of 2003' is not brought into force, by issuing the required notification. By way of an alternative plea, it was contended that even assuming that the corresponding law as mentioned in P.K. Saraswat's case AIR 1999 Sik 16 is Act No. 1 of 1988, the Central Act and the State Act occupy and operate in different fields, and as such, question of any conflict or repugnancy between the two Acts would not arise. Accordingly, it was contended that the impugned certificate of public demand issued by the Certificate Officer under the provisions of the Act No. 4 of 2003 would not be invalid and unenforceable. 5. Mr. M.Z. Ahmed, Ld. Senior counsel assisted by Miss B. Dutta, Ld. counsel for the petitioner and Mr. S.P. Wangdi, Ld. Advocate General assisted by Mr. Karma Thinley, Government Advocate and Mr. A.J. Sharma, Ld. counsel for the respondents were heard. 6. The three main points urged by Shri M.Z. Ahmed in his submissions are that; (1) the Act No. 1 of 1988 stood impliedly repealed by the application of the two Single Bench decisions of this Court, (2) the Act No. 1 of 1988 also failed for want of Presidential assent as the subsequent assent does not revive and revalidate the same, and (3) the Act No. 4 of 2003 has not been brought in force in absence of the required Notification under Section 1(3) of the Act, and as such, the impugned Certificate of demand dated 13-9-2004, issued under the provisions of this Act, is void ab initio, and is liable to be struck down and quashed. 7. In support of the first point that the Act No. 1 of 1988 stood impliedly repealed by the application of the two Single Bench decisions of this Court, Mr. Ahmed cited the following Single Bench decisions: (1) P.K. Saraswat and etc. v. Union of India and Ors., (Writ Petition No. 142 with 208, 424 and 452 of 1998) reported in AIR 1999 Sikkim 16. (2) Anil Lachungpa v. State of Sikkim and Ors., (Writ Petition No. 10 of 2002). In order to ascertain whether the Act No. 1 of 1988 stands repealed by the application of the above decisions, as contended by the Ld. Counsel, it would be necessary to glance through the facts of the case, the issues involved, the points raised in the two cases' and the decisions of the Court thereon. 8. We may, therefore, take up P.K. Saraswat's case AIR 1999 Sik 16 first. A perusal of the relevant facts of the case shows that the case of the petitioner therein, was that, the Recovery Act 1993, a Central Act, was inconsistent with the provisions of Sikkim Debts Law 1910 and other laws relating to recovery of money which are protected under Article 371F(k) of the Constitution, and thus encroaches upon the field

covered by the duly protected pre merger laws of the State. In the premises, it was contended that the Recovery Act 1993 could not have been enforced in the State of Sikkim. Repelling this submission, the Ld. Single Judge held that the Recovery Act, 1993 stands enforced in the State, and on such enforcement of the Act, the Sikkim Debts Law 1910 and any other law on Recovery of Debts stand automatically repealed 'if such laws are corresponding to the Recovery Act'. The above observation of the Court, which has been strongly relied on by Ld. Counsel for the Petitioner, speaks of the repeal of the 'Sikkim Debts Law' and 'any other law on Recovery of Debts' without making any specific reference to the Act No. 1 of 1988. The observation undoubtedly makes it clear that, even in the case of the Sikkim Debt Laws, 1910 and other similar laws, they would stand repealed only if they correspond to the Recovery Act, 1993. The implication is obvious that such Acts would be void only to. the extent of repugnancy within the meaning of Article 254 of the Constitution of India. The provisions contained in Article 254 make it clear that, repugnancy occurs only when there is direct conflict between two provisions. However, the judgment in question does not spell out the area of the Acts which come in conflict with each other, with the result that, the provisions of the Acts which stand repealed and which survive are not clearly discernible. 9. The provisions contained in Article 254 of the Constitution of India, as already stated above, make it amply clear that, if any provisions of law made by legislature of State, is repugnant to any provisions of the law made by the parliament or to any provisions of any existing law with respect to one of the matters enumerated in the Concurrent List, the law made by parliament will prevail and the law made by the legislature of the State shall to the extent be void. In Prem Nath v. State of J & K cited by the Ld. Advocate General the Apex Court has held that, The essential condition for the application of Article 254(1) is that the existing law must be with respect to one of the matters enumerated in the Concurrent List; in other words, unless it is shown that the repugnancy is between the provisions of a, subsequent law and those of an existing law in respect of the specified matters, the article would be inapplicable. In M. Karunanidhi v. Union of India and Anr. . also a decision relied on by the Ld. Advocate General, the Apex Court in; Paragraph 24 of the judgment observed as follows: Before any repugnancy can arise, the following conditions must be satisfied: (1) That there is a clear and direct inconsistency between the Central Act arid the State Act. (2) That such an inconsistency is absolutely irreconciliable. (3) That inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. 10. It is thus settled position of law that, there can be no repeal by implication unless the repugnancy between the Acts appears on the face of the two statutes and where there is room or possibility of both the statutes operating in the same field, no repugnancy results. Therefore, when the provisions of an Act are held to be repugnant, certain conditions as highlighted in above Karunanidhi's case AIR 1979 SC 898 have to be fulfilled. Thus, the question is, whether the required conditions are satisfied in the case at hand. As already noted above, the judgment in question hardly highlights

and spells out the area, if any, where the provisions of the two Acts come in conflict. No doubt, the phrase "any other law on Recovery of Debts" employed by the Ld. Single Bench is broad enough to include the Act No. 1 of 1988 since it is a law on Recovery of Debt, and it may be taken as repealed if it corresponds to the Recovery Act 1993. However, as already noted above, a State Law does not become void in toto, as soon as the Union Parliament legislates with respect to the same subject, and only such provisions of the State Act as are in direct conflict with the Central Act would cease to be in force by giving way to the provisions of the Central Legislation. In view of the above, the only legitimate conclusion would be, that the Act No. 1 of 1988 cannot be taken to have been repealed in toto on the basis of the observation made in P.K. Saraswat's case AIR 1999 Sik 16. 11. Having thus considered the implications of P.K. Saraswat's case, we may similarly proceed to consider the implication of Anil Lachungpa's case. Question is, whether the judgment rendered in Anil Lachungpa's case relied on by the Ld. Counsel for the Petitioner, in support of his case, can be taken as an authority, for the proposition, that the Act No. 1 of 1988 also stands repealed in the same way as the Debt Law of 1910, by virtue of the decision in P.K. Saraswat's case AIR 1999 Sik 16 which was followed. For the sake of convenience of reference, we extract below the relevant portion of the judgment in Anil Lachungpa's case. Vide Judgment dated 30th March, 2001, the Certificate Officer issued the impugned Certificate dated 30th March, 2001 in Sikkim Public Demand Recovery Case No. 180 of 2000. The petitioner has challenged the judgment and the certificate issued by the Certificate Officer on the ground that on the enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is a Central Act, the Sikkim Public Demands Recovery Act, 1988 has stood repealed. The submission finds support from the judgment of this Court in P.K. Saraswat v. Union of India AIR 1999 Sikkim 16. Relying upon the decision, I allow the Writ Petition and quash the judgment and certificate dated 30th March, 2001 issued by the Certificate Officer, East District in Sikkim Public Demand Recovery Case No. 180 or 2000. It is evident from the above, that the Ld. Single Bench placed reliance on P.K. Saraswat's case without any discussion as to whether the factual situation of the case fits in with the fact situation of the decision on which reliance was being placed. As can be gathered from the judgment, the Ld. Single Bench proceeded on the assumption that Act No. 1 of 1988 stood repealed by virtue of the decision rendered in P.K. Saraswat's case (supra). This approach, if we may say so with respect, is not in line with our foregoing conclusion that Act No. 1 of 1988 cannot be taken to have been repealed in toto by virtue of the judgment passed in P.K. Saraswat's case. 12. We have already held above, that the Act No. 1 of 1988 is not the Act which can be taken to have been repealed by the application of the decision rendered in P.K. Saraswat's case AIR 1999 Sik 16 and even if the Act No. 1 of 1988 was taken as an Act covered by the expression "any other law of Recovery Act" the two Acts would operate in different areas, even though they cover the same field and as such, it would be incongruous to hold that the Act No. 1 of 1983 stands repealed on and after the enactment of Recovery Act, 1993 on the basis of what has been held in P.K. Saraswat's case

(supra). 13. It thus becomes clear from the foregoing discussion, that it cannot be assumed that, by virtue of the Single Bench decisions in P.K. Saraswat's case AIR 1999 Sik 16 and Anil Lachungpa's case, the Act No. 1 of 1988 stands repealed in toto and no part of it survives. 14. In addition to the above, the Ld. Advocate General had also submitted that the provision relating to lower limit of the amount of loan that can be recovered under the Recovery Act 1993, the meaning assigned to the words 'Bank' and "Debt' in the said Act and the meaning assigned to the words"Public Demand' under the Act No. 1 of 1988 also go to show that, the ambit and scope of the two Acts are distinct and do not come in conflict with each other in regard to recovery of loan below ten lakhs. However, we do not consider it necessary to go into this aspect, in view of our above conclusion that, merely on the basis of the two Single Bench decisions of this Court, it cannot be said that the Act No. 1 of 1988 stands repealed in toto. Accordingly, we propose to proceed further and take up the next point. 15. Coming to the second point, it may be seen that the point raised by Mr. Ahmed, is that, the Act No. 1 of 1988 has failed for want of Presidential assent and does not stand revived by the subsequent assent of the President. The contention of the Ld. Advocate General in this regard, is that, the Act being a State Act, no Presidential Assent would be required for validity of the Act. It was, according to him. only by way of abundant caution, that the Presidential Assent to the Act was obtained in 2003, and the fact of obtaining the assent has nothing to do with the validity of the Act, as it was already in force. 16. It is stated that the Act No. 1 of 1988 falls within the State list i.e. List II of the 7th Schedule, and, as such, the State Legislature has the competence to pass such law. Article 246 of the Constitution which deals with distribution of legislative powers between the Union and the State Legislatures, clearly provides that the Legislature of a State shall have exclusive powers to make laws for such State or any part thereof, with respect to any of the matters enumerated in the List II in the Seventh Schedule to the Constitution. Thus, if the subject matter falls in the State List, the question of obtaining Presidential Assent would not arise, for making the Act a valid piece of legislation, unless it is intended to prevail over an earlier law of the Union in the State, within the exception engrafted under Clause 2 of Article 254. It is obvious that no such purpose was sought to be achieved by obtaining the Presidential assent. The only purpose as the Ld. Advocate General highlighted was, by way of 'abundant caution' to avoid controversies that the Presidential assent was obtained. Whether the said object was achieved by obtaining the Presidential Assent is beside the point. On the issue at hand, we find it pertinent to note that, what is contended, is that, Act No. 1 of 1988 had failed for want of presidential assent, and such Act cannot be revived by obtaining Presidential assent at a later date. We however find it difficult to see how the Act No. 1 of 1988 enacted by the State Legislature, in exercise of the legislative power vested in it under Article 246, is hit by Article 255 and how the question of Presidential assent to validate the Act arises. 17. Article 246 as already noted above, clearly defines the respective jurisdictions of the Union Parliament and the State Legislatures as regards subject of legislation. It is not disputed that the subject matter of the Act No. 1 of 1988 falls within the State

List. Article 255; to our mind, only enacts that in cases where the Constitution requires that a Bill relating to certain matters shall not be introduced without the recommendation, or prior sanction of the Governor, or the President, and if such recommendations or sanction has not been given, the irregularity shall be cured by subsequent assent of the concerned authority. It is only in a situation where the legislature, in order to cure the invalidity reenacts the provisions of the invalid statute that the President cannot, by giving his assent to the subsequent bill, validate the earlier Act with retrospective effect. No such issue seems to have been involved in the present case. All that has been done by the State is to obtain assent of the President to the State Act, for which Governor's assent was already obtained, and as noted above, it has been done only by way of abundant caution. 18. Therefore, in our considered view, the Act No. 1 of 1988 does not fall within the ambit and purview of Article 255. As the Act No. 1 of 1988 is a State Legislation, on a subject falling within the State List, the question of obtaining Presidential assent to1 the Act would not arise. Therefore, in our considered view, the Act No. 1 of 1988 neither failed for want of Presidential assent nor does it need to be revalidated by a presidential assent to be obtained subsequently. The Act No. 1 of 1988 being a State legislation, the required assent of the Governor has been duly taken. Such assent of the Governor already obtained, in our view, caurot be nullified by the Presidential assent subsequently obtained, and so long as the Act is not brought into force by issue of required Notification. 19. Therefore it follows that the Act No. 1 of 1988 being a State Legislation on a subject falling within the State List, Presidential Assent would be unnecessary for validity of the Act. As such, the question of the said Act failing for want of Presidential Assent, in our opinion, does not and should not arise at this stage. The issue stands accordingly answered. 20. Now, passing on to the third and last point, it may be noted that, it is the admitted position that no Notification in terms of Section 1(3) of the Act No. 4 of 2003 has been issued. But it is the contention of Ld. Advocate General that non issuance of the Notification required under the Act No. 4 of 2003 has no relevance, as the Act No. 1 of 1988 is a valid piece of legislation and it continues to be in force, even when the Act No. 4 of 2003 fails for any reason whatsoever. In order to appreciate the above contention, a reference to the relevant provision of the related Act would be called for. Section 1(3) of the Act No. 4 of 2003 provides as follows: 1. (3) It shall come into force on such date as the State Government may, by notification, appoint. The above provision is too clear to admit of any doubt that issuance of a Notification is a condition precedent for the Act to come into force. Admittedly no Notification as required under the above provision has been issued and as already noted above, the Ld. Advocate General fairly concedes that the Act No. 4 of 2003 has not come into force. Therefore, the crucial question is, whether the impugned Certificate of Public Demand dated 30-9-2004, issued under the provisions of an Act, which has not come into force, is valid and can be acted upon. 21. It is the submission of Mr. Ahmed that, the impugned Certificate of Public Demand, which was issued in application No. 209 of 2004, was under the provisions of Act No. 4 of 2003. It is his further submission that there being no such Act in force in the State at the time of

the issue of the impugned Certificate of Public Demand, the very institution of a recovery case against the petitioner under the Act, and the issuance of the Certificate in question under its provision, was void ab initio and without jurisdiction. It is not disputed that the impugned Certificate of Public Demand was issued under the provisions of Act No. 4 of 2003. The only submission made by Ld. Advocate General is to the effect that, even if the Act No. 4 of 2003 fails for any reasons, the Act No. 1 of 1988 is a valid piece of legislation and would be in force. No doubt, we have held above that, Act No. 1 of 1988 cannot be taken to have been repealed in toto on and after enforcement of Recovery Act 1993. However, the question as already noted above, is how far can this position save the impugned Certificate of Public Demand issued under the provisions of Act No. 4 of 2003. It is the admitted position that the impugned Certificate of Public Demand has been issued under the provisions of Act No. 4 of 2003, and not under Act No. 1 of 1988. In view of this position, we do not find ourselves in agreement with the submission of the Ld. Advocate General that non-issuance of Notification under Section 1(3) of Act No. 4 of 2003 has no bearing on the validity of the impugned Certificate of Public Demand. The admitted position as highlighted above, is that, the issuance of a Notification in terms of Section 1(3) is a condition precedent for Act No. 4 of 2003 to come into force and since no Notification has been issued, the only legitimate conclusion that can be drawn is that, the Act has not come into force in the State till date and consequently it follows that no action taken. under its provision can be sustained. In view of the above position, we find no valid ground to reject the submission that the Ld. Certificate Officer had no jurisdiction to issue the impugned Certificate of Public Demand under the provisions of an Act which had not come into force and as such the same was without Jurisdiction and void. 22. Even if we were to hold that the Act No. 4 of 2003 was in force, for any reasons whatsoever, it is the next contention of Mr. Ahmed that the over draft loan in question would not fall within the meaning of "Public Demand" as defined under Section 2(f) of the Act No. 4 of 2003. It is his contention that every loan taken from a bank does not fall within the definition of Public Demand and does not become recoverable by recourse to the machinery provided under the Act. In support of his contention, the Ld. Counsel relied on the recent decision of the apex Court in Iqbal Nasir v. Central Bank of India and Ors. . A perusal of the judgment shows that, the appellant in the case had taken a loan from the Central Bank of India and in consequence of his failure to repay the loan amount, a Certificate of Recovery was ultimately issued under the provision of Section 3 of the Uttar Pradesh Public Monies (Recovery of Dues) Act 1972. The Writ Petition filed by him in the High Court challenging the Certificate of Recovery was dismissed by the High Court. In the appeal against the judgment of the High Court, the Apex Court set aside the judgment of the High Court, holding that Section 3 of Uttar Pradesh Public Monies (Recovery of Dues) Act, 1972 does not envisage the provision of the Act being utilized for recovery of every loan taken from the bank, and further holding that recourse to such action was permissible under Section 3(1)(b) only, in respect of loans taken from the Bank under a "State Sponsored Scheme". Drawing an analogy between the above referred case and

the case at hand, Mr. Ahmed submitted that the O.D. loan availed of by the petitioner was not such a loan as may be covered by the definition of 'public demand' so as to justify the impugned action taken for recovery of loan. To appreciate the above point raised by Mr. Ahmed, it is necessary to refer to the definition of the words 'Public Demand' as given in Act No. 4 of 2003. The words "Public Demand" as defined in Section 2(f) of Act No. 4 of 2003 are as follows: (f) "Public Demand" means any money payable to the State Government or to a department or to any corporation or Company owned or controlled by the State government or to any local authority, under any law for the time being in force or under a written agreement with the above authority or institution or instrument or any decree or a award of any Court or Authority competent to adjudicate the claims. It is manifest from the above definition that the dues falling within the ambit of Public demand should be such as may be payable to the State Government or to a department or to any corporation or company owned or controlled by the State Government or to any local authority under any law for the time being in force or under a written agreement with any of the authorities mentioned above. It also includes dues payable under any decree or award of any Court or Authority competent to adjudicate the claims. Looked at from this angle, the above definition of the word 'Public Demand' does not seem to cover each and every kind of loans payable to a bank. Admittedly, the loan owed by the petitioner to the State Bank of Sikkim is a loan under an over draft facility, and as such, it does not seem to fit in the definition of 'Public Demand' as noted above. Therefore, the impugned Certificate of Public Demand seems to suffer from a serious infirmity on this account also. It is thus clear from the above, that the case of the respondent Bank is not free from hurdles even when the Act No. 4 of 2003 is taken to be in force. It thus follows, that the impugned Certificate of Public Demand having, been issued by the. Ld. Certificate Officer without jurisdiction is void ab initio and is thus liable to be quashed. We have, therefore no hesitation in holding that the Writ Petition should succeed on this sole ground even though the two previous grounds fail to support the petitioner's case. 23. Even though the above is sufficient to dispose of the whole matter, we feel called upon to consider one more aspect of the decision in Anil Lachungpa's case (supra), before parting with the present case. It was the further submission of the Ld. Advocate General that the judgment in Writ Petition No. 10 of 2002. Anil Lachungpa v. State of Sikkim needs reconsideration and review so as to explain it and clarify the correct position of law in public interest and accordingly, referring to the decision of the Apex Court in Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr. the Ld. Advocate General further submitted that such a course was permissible in law. The observation of the Apex Court specifically relied on by the Ld. Advocate General for his submission is as follows: (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the

correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. While we entertain no doubt as to the permissibility of the course of action, as suggested by the Ld. Advocate General, by this Bench, which consists of higher quorum, we feel constrained to observe that the present petition that we are hearing is not a petition seeking reconsideration or review of the judgment in Anil Lachungpa's case nor are the necessary parties present before us in these proceedings. In view of this, we refrain from entering into any such exercise. However, considering the relevance of the issue and the public interest involved, we place on record the points raised by Ld. Advocate General and our tentative view on it as follows. 24. It is the submission of the Ld. Advocate General that the subject matter in P.K. Saraswat's case AIR 1999 Sik 16 and Anil lachungpa's case were totally different and the Hon'ble Single Judge fell in error in not taking note of the glaring differences of the factual situations in the two cases while rendering the judgment relying on and following the decision in P.K. Saraswat's case. In elaboration of his submission, the Ld. Advocate General pointed out that in Anil Lachungpa's case it was the proceedings of the Certificate officer under the Act No. 1 of 1988 which was being assailed and in P.K. Saraswat's case it was the State Bank of India which is a bank within the meaning of Clause (d) of Section 2 of the Recovery Act 1993 which had filed the Certificate of Public Demand for Recovery of Dues. Therefore in P.K. Saraswat's case, the Court was not called upon to adjudicate the vires of the Act No. 1 of 1988 vis-a-vis the Recovery Act, but the views of Recovery Act vis-a-vis the pre merger laws relating to recovery of debts. However, Ld. Single Bench without taking notice of such glaring differences, followed the decision in P.K. Saraswat's case and quashed the Certificate of Public demand dated 30-3-2001 issued by the Certificate officer, East District in Sikkim Public Demand Recovery case No. 180 of 2000 under the provisions of the Act No. 1 or 1988. 25. The Ld. Advocate General, in support of his contention that, the Ld. Single Bench was in error in following the decision rendered in P.K. Saraswat 'scase AIR 1999 Sik 16; without the required discussion, placed reliance on the decision of the Hon'ble Supreme Court rendered in Ashwani Kr. Singh v. U. P. Public Service Commission . In the said case, the Hon'ble Supreme Court laid down the following guidelines for Courts while placing reliance on decisions: Courts should not place reliance on decisions without discussing ns to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Qbservations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in context in which they appear. Judgments of Courts are not to be construed as statuies.... Judges interpet statutes, theydo not interpret judgments. They interpret words of statutes: their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The above observation makes it crystal clear that, reliance on a decision cannot be placed without discussing whether it was rendered in the same factual situation, and the observation relied on must be read in the context in which

they appear. 26. A perusal of the judgment in Anil Lachungpa's case extracted above at Paragraph 11, does not show that the fact situation in P.K. Saraswal's case AIR 1999 Sik 16 and the legal issues involved therein, were brought to the notice of the Court in the case. Arguments addressed, if any, on the point or the issues raised in the case, find no mention in the judgment. In the situation, we have no alternative, but to assume that the issues involved in P. K. Saraswat's case was never argued by the Ld. counsel which deprived the 1x3. Single Bench of taking notice of the same. It is, therefore, clear that the question whether the Act No, 1 of 1988 stood repealed by the application of the decision of the Single Bench in P.K. Saraswat's case, and whether It applied In the fact situation of Anil Lachungpa's case, never received consideration of the Court. The total absence of argument on the relevant point thus justifies a conclusion that the decision In Anil Lachungpa's case was arrived at sub silentio. It is well recognized rule of law that a precedent sub silentio Is not authoritative. Observations and expressions often quoted from some old English cases in this regard are 'a hundred precer dent sub silentio are not material' and 'Precedents sub silentio and without, argument are of no moment'. Indeed it has long been the established rule in this country that decisions rendered without hearing arguments, without reference to the crucial words of the rule and without any citation of authority are not binding and would not be followed. Thus, it goes without saying, that the decision In Anil Lichungpa's case ought not to be regarded as possessing any authority of precedent on the point raised by the petitioner, namely, that the Act, No. 1 of 1988 stands repealed on the authority of this decission. We would, however, hasten to add that this will have no bearing so far as the merit of the present Writ Petition, on other counts is concerned. 27. Hence, for the reasons given and the observations made while dealing with point No. 3 in Paragraphs 21 and 22 above, we are of the view that the present writ petition is not devoid of merit. The same is accordingly allowed and the impugned Certificate of Public Demand is quashed. It is needless to say that, it remains open for the Respondent Bank to recover the dues from the Petitioner in any other manner, as permissible under the law. With the above observations and the findings of ours, the Writ Petition is finally disposed of. There will be no order as to costs. N.S. Singh, Acgt. C.J. 28. I agree