
(2006) 09 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No's. 4872 and 4883 of 2006

Chandrashekhar Dusane and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Bombay General Clauses Act, 1904 — Section 21
Bombay Provincial Corporations (Election to the Office of Mayor and Deputy Mayor)
Rules, 2005 — Rule 3(1), 3(2), 3(3), 32, 5(3)
Bombay Provincial Municipal Corporations Act, 1949 — Section 19, 454, 456, 456A
Representation of the People Act, 1951 — Section 30

Citation : (2007) 1 ALLMR 856 : (2007) 1 BomCR 164 : (2006) 6 MhLj 820

Hon'ble Judges : P.V. Hardas, J; D.G. Karnik, J

Bench : Division Bench

Advocate : R.N. Dhorde and V.D. Salunke, for the Appellant; S.K. Kadam, A.G.P., S.T. Shelke, P.R. Katneshwarkar, V.D. Hon, V.P. Latange, A.D. Pawar, P.M. Shah, A.S. Sawant, Shekhar Naphade and R.S. Deshmukh, for the Respondent

Judgement

P.V. Hardas, J.—Since the facts in both the petitions are identical, both these petitions are decided by this common judgment. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, these petitions are, therefore, heard finally at the stage of admission.

2. Writ Petition No. 4872 of 2006 has been filed by the petitioners praying for issuance of a writ of mandamus or an appropriate writ directing respondents No. 1 and 3 to 6 to convene an adjourned meeting held on 29-6-2006 to any other appropriate date for transacting the business of adjourned meeting and for completing further stages of election to the office of Mayor. Alternatively it is prayed that the State Election Commission be directed to make appropriate arrangements to convene the adjourned meeting dated 29-6-2006 for the purpose of holding the elections to the office of Mayor of respondent No. 5 Corporation. It is also prayed that by a writ of prohibition or by an appropriate writ, respondents No. 7 and 8 be restrained from acting as Mayor and Deputy

Mayor. After amendment the petitioners have prayed for quashing the notice dated 14-7-2006 issued by respondents No. 5 and 9 for convening the meeting on 28-7-2006 for transacting the business as per the directions of respondent No. 7.

3. In Writ Petition No. 4883 of 2006 the petitioners have prayed for similar reliefs and have additionally prayed for holding of the election to the post of Deputy Mayor. This Court by an ad interim order dated 18th July, 2006 granted stay to the meeting of Dhule Municipal Corporation which was scheduled to be held on 20th July, 2006 at 11 A.M. This ad interim order was to operate till 2nd August, 2006. Thereafter the petition was heard for final disposal with the consent of Counsel and, therefore, the interim order came to be continued.

4. Writ Petition No. 4872 of 2006, therefore, questions the election to the post of Mayor of Dhule Municipal Corporation and Writ Petition No. 4883 of 2006 questions the election to the post of Deputy Mayor of Dhule Municipal Corporation.

5. The brief facts as are necessary for the decision of these petitions can be stated thus:

The petitioners in both the petitions are elected Councillors of respondent No. 5 Corporation. The post of Mayor in the respondent No. 5 Corporation was reserved for O.B.C. category. Respondent No. 3 was the Mayor of respondent No. 5 Corporation while respondent No. 4 is the Deputy Mayor of respondent No. 5 Corporation whose term of office came to an end on 30-6-2006. Respondents No. 7 and 8 claim to have been elected to the post of Mayor and Deputy Mayor respectively of the respondent No. 5 Corporation.

6. Respondent No. 5 Dhule Municipal Corporation has been established on 30-6-2003 and thereafter the general elections to the respondent No. 5 Corporation were held on 13-12-2003 in which the present petitioners and respondents No. 7 and 8 along with others came to be elected as Councillors from different wards. The total strength of the Corporation consists of 67 elected members while 5 members are co-opted members and thus the total strength of the Corporation is 72 members. According to the petitioners, 25 members belong to Shiv-Sena, 6 members belong to B.J.P., 3 belong to Vikas Manch, 21 belong to N.C.P., 8 belong to Congress (I) and 4 are independent. The 5 Councillors who have been co-opted have no right to vote in the election to the post of Mayor and Deputy Mayor. In the previous elections which were held in the year 2003, the post of Mayor was reserved for general category and the election were held on 30-12-2003. In that election respondent No. 3 came to be elected as a Mayor and it is alleged that he belonged to the Shiv Sena party. In the same election respondent No. 4 came to be elected as Deputy Mayor, who it is alleged belonged to the Vikas Manch which is alleged to be an ally of the Shiv Sena and B.J.P. parties. The term of Mayor and Deputy Mayor was of 2-1/2 years and, therefore, the term of office of Mayor and Deputy Mayor came to an end on 30-6-2006.

7. The petitioners have alleged that in the meantime respondent No. 2 State Election Commission had issued directions which were published in the Government Gazette dated 7-3-2006 declaring that the respondent No. 2 State Election Commission had the power and jurisdiction to hold the elections to the office of Mayor and the Deputy Mayor. The respondent No. 2 State Election Commission by communication dated 9-3-2006 also directed the Secretaries of all the Corporations that the elections would be conducted and held by respondent No. 2 State Election Commission. Meanwhile the State of Maharashtra by draw of lots declared that the office of Mayor of respondent No. 5 was reserved for O.B.C. category. The petitioners have very candidly stated that the question whether the State Election Commission had the jurisdiction and bound to hold elections in respect of the office of Mayor and Deputy Mayor is subjudice before the Bombay High Court in Writ Petition No. 4664 of 2006 filed by some of the Councillors. Be that as it may, the respondent No. 6 issued a letter dated 20-6-2006 in respect of a meeting scheduled to be held on 29-6-2006 at 11 A.M. for the purpose of election to the office of Mayor and Deputy Mayor. The said notice also declared that the meeting would be presided over by respondent No. 3 who would be relinquishing the office of Mayor on 30-6-2006. Along with the copy of the notice convening the special meeting on 29-6-2006, respondent No. 6 Secretary of respondent No. 5 had also sent the election programme. The election programme which was declared is as follows:

1. Date, time and place for obtaining From 21-6-2006 till 26-6-2006 the blank nomination forms (excluding holidays), from 11.00 A.M. till 2.00 P.M. in office of Urban Secretary, Dhule Corporation 2. Date and time for submitting From 21-6-2006 till 26-6-2006 nomination papers (excluding holidays), from 11.00 A.M. to 2.00 P.M., in office of Urban Secretary, Dhule Corporation. 3. Scrutiny of nomination papers. On the day of meeting. Immediately after starting the meeting. 4. Taking back nomination papers. After scrutiny is over, 15 minutes time will be given. 5. Time of voting. After expiry of period of taking back nomination if there are more than one person are contesting Presiding Officer will declare the same.

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Thus, as per the election programme the candidates desirous of contesting the election to the office of Mayor and Deputy Mayor could obtain the nomination forms from 21-6-2006 till 26-6-2006. The nominations could be submitted by the candidates from 21-6-2006 till 26-6-2006. On the same day the nomination papers could be scrutinized and after giving an opportunity to the candidates for withdrawal of their nomination, elections would be held if there were more than one nomination in respect of the office of Mayor and Deputy Mayor. According to the petitioners since both belonged to O.B.C. category they were entitled and eligible to contest the election to the office of Mayor and, therefore, the petitioners had submitted their nominations on 26-6-2006. According to the

petitioners, in all 9 nominations had been submitted by 5 candidates for the office of the Mayor while 11 nominations had been filed in respect of the election to the office of the Deputy Mayor. The meeting which was scheduled to be held on 29-6-2006 at 11 a.m. commenced as per the schedule. According to the petitioners, in all 67 Councillors were present including the 5 co-opted Councillors. However, since the co-opted Councillors did not have a right of vote, only 62 elected Councillors had a right of vote and were present at 11.00 a.m. The petitioners claim that they too were present in the said meeting which commenced at around 11.00 a.m. Before the meeting could address itself to the question of election of the Mayor and Deputy Mayor certain objections, clarifications and point of order were raised by some of the members. In the entire process, according to the petitioners, chaos and pandemonium prevailed and, therefore, the Presiding Officer i.e. respondent No. 3 Mayor had no other alternative but to adjourn the meeting. The petitioners have annexed to the petition a copy of the minutes of the meeting which bear the signature of respondent No. 3 who then was presiding over the meeting. It is the categorical submission of the petitioners that till the meeting was adjourned the elections to the office of the Mayor and Deputy Mayor were not held as there was "lot of chaos and confusion." The petitioners ascribe the chaos, confusion and pandemonium to respondents No. 7 and 8 who according to the petitioners had no hope of being successfully elected in the meeting because the petitioners had majority in their favour. The petitioners further allege that the situation which led to the adjournment of the meeting was created deliberately by the political parties to which respondent Nos. 7 and 8 belonged. It is categorically stated by the petitioners that there was no scrutiny of nomination nor was an opportunity afforded to the contesting candidates of withdrawal of their nominations and consequently no elections had been held. The petitioners, therefore, state that the meeting was adjourned without transacting the business for which the meeting had been convened. The petitioners further state that due to adjournment of the meeting it was informed that the agenda of the adjourned meeting would be issued later and the Councillors would be accordingly informed. The petitioners categorically state that "therefore, the petitioners and all other Councillors have left the said premises, even the Mayor and the Deputy Mayor have also left the said premises, (emphasis supplied). The petitioners contend that on the next day i.e. on 30-6-2006 the petitioners read in the newspaper that respondents No. 7 and 8 have been declared as elected to the office of Mayor and Deputy Mayor. The petitioners further state that they had subsequently learnt that some Councillors belonging to rival political parties have prepared the documents showing the election to the office of Mayor and Deputy Mayor. The contention of the petitioners, therefore, is that since the meeting was adjourned without transacting any business, respondents No. 7 and 8 could not have been elected to the office of Mayor and Deputy Mayor respectively. There are averments in the petition in respect of the meeting which had been convened subsequent to the election of respondents No. 7 and 8, which meeting came to be stayed by an ad interim order of this Court. The pleadings in respect of that

are not germane for the decision of the controversy which is raised in these two petitions and which we are called upon to decide.

8. The petitioners along with the petition have annexed the minutes of the meeting which was held on 29-6-2006. The minutes of the meeting are annexed to the petition as Exh.H. The minutes disclose the various objections, point of order, contentions which were raised by the members and the ultimate decision which was taken by the Presiding Officer. The decision of the Presiding Officer is that because of chaos in the meeting it was not possible to conduct the meeting for the election and, therefore, the meeting is adjourned.

9. On notice being issued to the respondents, respondents have filed their affidavit in reply and we shall briefly advert to the contentions which have been raised by the respondents in their replies. Respondent No. 1 State of Maharashtra in its reply has stated that the Government has the power to conduct the election to the office of Mayor in view of Section 19 of the Bombay Provincial Municipal Corporations Act, 1949 and accordingly the Government had notified the Rules for the election of Mayor and Deputy Mayor as "Bombay Provincial Corporations (Election to the office of Mayor and Deputy Mayor) Rules, 2005 vide Government Notification dated 5-2-2005. It is further stated in the affidavit that relying upon the opinion expressed by the Advocate General, the Government had directed all Municipal Commissioners, Collectors, Chief Officers of Municipal Councils that the directions issued by the State Election Commission were contrary to the provisions of Municipal Corporation Act and the Municipal Commissioners were legally bound to conduct the elections. It is further stated that as per the provisions of Sub-rule (3) of Rule 3 of the Election Rules, 2005, a special meeting called for election of Mayor shall not be cancelled or adjourned. It was, therefore, submitted that the petition be dismissed.

10. Respondent No. 3, who was then the outgoing Mayor when the meeting dated 29-6-2006 was convened, in his reply states that in the meeting which had been held on 30-12-2003 he was elected as Mayor. He further states that respondent No. 4 had been elected as the Deputy Mayor. He further states that respondent No. 6 - Secretary of respondent No. 5 Corporation had issued notice on 21-6-2006 in respect of convening a special general body meeting of respondent No. 5 Corporation on 29-6-2006 at 11.00 a.m. The receipt of the election programme along with the said notice is also admitted. It is further stated that as per the election programme in all 9 nomination forms had been received for the office of Mayor and 11 nomination forms had been received for the office of Deputy Mayor. Certain allegations are attributed to respondent No. 7 who had threatened to disrupt the meeting in the event the Mayor and the Deputy Mayor are not elected from amongst the Councillors belonging to his political party. The reply further contains an averment that certain independent Councillors had been wooed by respondent No. 3 to vote in favour of the candidate for the office of Mayor and Deputy Mayor belonging to his political party. It is further stated that apprehending some foul play in the said meeting,

one Councillor, namely Shri Mahesh Mistri had filed Writ Petition No. 4664 of 2006 on 27-6-2006 praying therein that the Election Commission should be directed to hold the election of Mayor and Deputy Mayor. In the said writ petition respondent No. 7 had intervened and the Division Bench of this Court by order dated 27-6-2006 had issued Rule making it returnable in eight weeks and making the elections subject to the decision of the petition. The Division Bench had declined to grant any interim relief. It is also alleged that respondent No. 7 had filed Regular Civil Suit No. 144 of 2006 attempting to seek an injunction restraining respondent No. 3 from presiding over the meeting. According to respondent No. 3, the respondent No. 7 had attempted to create hurdles in the smooth conduct of the meeting scheduled to be held on 29-6-2006. In respect of the meeting held on 29-6-2006, respondent No. 3 states that the meeting commenced at about 11.00 a.m. and the Corporators belonging to different parties started raising objections. It is stated that thereafter respondent No. 7 and his supporters started shouting slogans and created a chaotic situation. To counter the slogans raised by respondent No. 7, some Councillors from the political party of respondent No. 3 also raised slogans and thus there was slogan shouting from amongst the political parties. It is stated that because of this "atmosphere was vicious and it has become difficult to conduct the meeting." The atmosphere in the hall had become unruly and respondent No. 8 waited for about 15 to 25 minutes and finding that it became difficult to conduct the meeting exercised his power and adjourned the meeting to a subsequent date. It is thus stated that about around 11.00 to 11.30 a.m. he adjourned the meeting by making an announcement that the meeting could not be conducted and the House would be informed subsequently and requested the Corporators to leave the House. Respondent No. 3 states that he along with Deputy Mayor left the House. It is further stated that all the Corporators had left the hall and thereafter respondent No. 6 Secretary had scribed the proceedings of the meeting. It is reiterated that since the situation had become tense, respondent No. 3 had no other alternative but to adjourn the meeting.

11. Respondent No. 4 the then outgoing Deputy Mayor in his affidavit in reply has also stated that on the day of the meeting a chaotic situation prevailed on account of the raising of slogans by the rival political parties and, therefore, it was decided to adjourn the meeting in order to avoid further untoward incident. Respondent No. 3 accordingly declared that the meeting had been adjourned. It is also stated that after adjourning the meeting respondent No. 3 and respondent No. 4 left the premises as also the other Corporators.

12. Respondent No. 5 through the affidavit of one Bhagwan Gite, in-charge Assistant Commissioner, Dhule Municipal Corporation, Dhule, states in respect of the aforesaid meeting as follows:

The meeting commenced at 11.00 a.m. and was presided over by Mayor respondent No. 3. It is stated that the original record is not available with the respondent No. 5 Corporation and the respondent No. 5 Corporation, therefore;

does not have the original of the minutes of the meeting annexed by the petitioners at Exh.H. It is further stated that the respondent No. 3 the outgoing Mayor and respondent No. 6 the Secretary of respondent No. 5 Corporation had carried with them the relevant documents along with them by "trying to adjourn the meeting. They went away from the meeting hall without conducting the voting to the post of Mayor and Deputy Mayor (sic Mayor).

It is further stated that the Commissioner had contacted the State Government authorities for guidance and further suitable action and was informed by the State Government on telephone that the Commissioner should proceed in accordance with the Rules and conduct the election of the Mayor and Deputy Mayor. It is further stated that in this context the Deputy Secretary, Government of Maharashtra had also sent a fax message that the meeting for electing Mayor and Deputy Mayor cannot be cancelled or adjourned as per the provisions of the Rules and further directed the Commissioner to conduct the elections to the post of Mayor and Deputy Mayor in accordance with the said Rules. It is stated at paragraph 8 of the reply that since the Mayor and Deputy Mayor had not conducted the proceedings of the meeting to elect Mayor and Deputy Mayor and on the contrary had walked out of the meeting hall, "(he majority of the Councillors were present in the meeting hall and therefore they had requested for further proceedings with the meeting as the said meeting cannot be cancelled and/or adjourned. I say that there were 37 elected Councillors 2 nominated Councillors present in the meeting hall and in accordance with the provisions of Rule 5(3) they elected the one of the senior most Councillors, namely, Chandrakant Kashinath Kele as Presiding Officer to preside over the meeting. I say that accordingly, the meeting proceeded further and transacted the entire business of electing the Mayor and Deputy Mayor. " (emphasis supplied). It is stated that in the said meeting respondents No. 7 and 8 came to be elected as the Mayor and Deputy Mayor respectively. It is stated that after respondent No. 7 was elected as the Mayor he presided over and conducted the elections to the post of Deputy Mayor and thereafter respondent No. 8 came to be elected as the Deputy Mayor. The respondent has annexed along with his reply at Exh.R-5 copy of the minutes of the meeting held on 29-6-2006. It is also stated that since the respondent No. 6 Secretary had committed dereliction of his duty in not taking proper care of the record a criminal complaint had been filed with the Dhule City Police Station on 29-6-2006.

13. In Writ Petition No. 4883 of 2006 on behalf of respondent No. 5 the affidavit has been sworn by the Commissioner reiterating exactly what is stated on his behalf. In fact, the stand of the respondents is identically reflected in Writ Petition No. 4883 of 2006. We, therefore, do not allude to the replies and the contentions of the respondents in their replies filed in Writ Petition No. 4883 of 2006 as the averments and the statement of fact made in both the petitions being identical.

14. Respondent No. 6 Secretary has filed his affidavit in reply and in the affidavit

in reply it is stated that the meeting on 29-6-2006 commenced at around 11.00 a.m. It is stated that a chaotic situation prevailed on account of the slogans raised by rival political groups and as a result of which respondent No. 3 the outgoing Mayor adjourned the meeting. It is stated that no business had been transacted in the said meeting and almost all the Corporators left the premises so also the Mayor and the Deputy Mayor also left the premises. Respondent No. 6 states that he also went to his office.

15. Respondent No. 7 in his reply while denying all adverse allegations against him, states that the petition is structured and is based on disputed questions of fact. It is also stated that the petitioners are in fact proxy petitioners and the real person behind the filing of the petition is respondent No. 3. It is stated that respondent No. 3 in order to ensure his continuance in the office had made efforts earlier but they proved futile, and therefore, has instigated the filing of the present petition, and therefore, the petitioners would not be entitled to any equitable relief. It is stated that the respondent No. 7 has been elected as the Mayor by majority of votes and has already taken charge of the post of Mayor. It is further attempted to be shown that in any event respondent No. 7 would have been elected as the Mayor of respondent No. 5 Corporation because respondent No. 7 had admittedly the majority over his rivals. In respect of the meeting which was held on 29-6-2006, it is stated that respondent No. 3 in an arbitrary, high handed and unjust act left the meeting hall and did not even inform about the further course of action to be adopted. Respondent No. 3 had also not informed whether he had cancelled or adjourned the meeting nor was the next date of the meeting informed to the members. Respondent No. 3 had simply abandoned the meeting. It is further stated that if respondent No. 3 had left the meeting hall, few Corporators from "Saffron alliance" continued to stay in the meeting hall while some of them went out of the meeting hall. It is then further stated that the Commissioner obtained the necessary instructions and one Chandrakant Kele was elected as the Presiding Officer and in the said meeting, respondent No. 7 secured 35 votes and was declared elected as the Mayor. Respondent No. 7 thereafter presided over the meeting and respondent No. 8 came to be elected as the Deputy Mayor. It is denied that there was either any chaos, confusion. It is also stated that a copy of the minutes at Exh.H annexed by the petitioner is not an authentic record available with the Corporation and is a document which is created to provide foundation for the petitioners to file the present petition. It is stated that about 37 Corporators have sworn individual affidavits about the events as they occurred in the meeting dated 29-6-2006. Respondent No. 7 therefore urged for dismissal of the petition. Respondent No. 8 the newly elected Deputy Mayor in his affidavit in reply states that a communication had been addressed dated 29-6-2006 at 10.50 a.m. in which the B.J.P. (B) group consisting of three Corporators had informed the Collector, Dhule that B.J.P. (B) had extended its support to N.C.P. and Congress (I) and its allies for the election scheduled at 11.00 a.m. on 29-6-2006. In the said communication an apprehension was expressed that respondent No. 3 would

abuse or misuse his powers as he has lost the support of the majority. It is further stated that on 29-6-2006 at about 10.45 a.m. about 33 Corporators had submitted a representation to the Collector stating therein that the 33 signatories to the representation had formed a group for the purpose of election of Deputy Mayor and they apprehended that respondent No. 3 would resort to unfair practices in the election of Deputy Mayor. In the reply it is attempted to make out that respondent No. 8 had a clearage in the majority in respect of his rivals by showing the list of his supporters. In respect of the meeting at paragraph 14 of the affidavit in reply it is stated that the Corporators belonging to the Congress group were extremely temperate in their behaviour and there was no disorder in the House. It is stated that there was neither any commotion nor disturbance in the House and as Shiv Sena and B.J.P. (A) wanted to avoid the elections, respondent No. 3 attempted to adjourn the meeting and abruptly left the meeting hall. Respondent No. 3 did not even inform the further course of action which was to be taken. Respondent No. 3 also did not inform about the next date and time about the meeting. While leaving the hall respondent No. 6 Secretary took the proceeding book, attendance register, nomination forms, etc. which had been handed over to him by the Presiding Officer. This was an attempt who according to respondent No. 8, to stall the election at all costs. It is stated "however, all the Corporators belonging to Congress group continued to stay in the meeting hall itself." It is again reiterated that there was only an attempt by the Presiding Officer to adjourn the meeting. It is also admitted that after the commencement of the meeting objections were raised by Corporators of Shiv Sena - B.J.P. about the validity of the meeting as the entire approach of the Corporators of these political parties was to adjourn the meeting. It is reiterated that there was neither any confusion or bedlam in the meeting hall and thus there was no necessity to adjourn the meeting on account of chaos. It is further stated that 37 elected Corporators and two co-opted Corporators had never left the meeting hall. The meeting was thereafter continued and concluded.

16. The petitioner has filed affidavit in rejoinder to the affidavits of the respondents and at this stage, according to us, it is not necessary to allude to the contents of the affidavit in rejoinder. In view of the rival pleadings of the parties, three questions stand posed before us:

- (i) Whether the Rules governing the election to the office of Mayor and Deputy Mayor contemplate adjournment of a meeting convened for that purpose;
- (ii) Whether the meeting had in fact been adjourned;
- (iii) If the meeting had been adjourned, whether the meeting which was held subsequently can be said to be a continuation of the first meeting.

17. We have heard Mr. R.N. Dhorde, learned Counsel appearing for petitioners in Writ Petition No. 4872 of 2006 and Mr. V.D. Salunke, learned Counsel on behalf of the petitioners in Writ Petition No. 4883 of 2006. According to Mr. Dhorde, learned Counsel, the Rules in respect of the election to the office of Mayor and

Deputy Mayor cannot be interpreted in a manner to indicate that no discretion is vested in the Presiding Officer to adjourn the meeting. In other words, it is urged before us that the provision in the said Rule particularly Sub-rule (3) of Rule 3 cannot be interpreted to hold it mandatory to indicate that the meeting could not be adjourned. It is then urged before us that undisputedly even according to the respondents, after respondent No. 3 had left the meeting hall, all the Corporators were not present. The petitioners have annexed copy of the minutes of the meeting to indicate that the meeting had been adjourned. Whether the chaotic situation in the meeting was of such magnitude that it necessitated an adjournment of the meeting is not a question which can be gone into by this Court as the decision to adjourn the meeting was the subjective satisfaction of the respondent No. 3 - the Presiding Officer which was arrived at on an objective assessment of the situation. It is also urged before us that the affidavit of respondents No. 3 and 4 as well as affidavit of respondent No. 6 clearly indicate that the meeting had been adjourned. If the meeting had not been adjourned, there was no plausible reason whatsoever for respondents No. 3 and 6 to leave the meeting hall. In the absence of the original record and in the absence of any material to contradict the minutes of the meeting at Exh.H, the minutes of the meeting at Exh.H would certainly have a great persuasive value on preponderance of probability to persuade this Court to come to a conclusion that the meeting had been adjourned despite a contrary stand taken by the respondents in their affidavit in reply. It was then urged by Shri Dhorde, learned Counsel for the petitioners that in the event the meeting held on 29-6-2006 had been adjourned, the holding of the subsequent meeting after a gap of nearly 2 to 3 hours cannot be said to be a continuation of an earlier meeting and, therefore, the election of respondents No. 7 and 8 to the office of Mayor and Deputy Mayor cannot be said to have been held in a meeting which had been duly convened. It is lastly urged that assuming that the meeting had not been adjourned and respondent No. 3 had left the meeting hall, the subsequent convening of the meeting after a gap of nearly 3 to 4 hours cannot be said to be a continuation of the first meeting as some of the Corporators had left the hall and, therefore, in the absence of any notice to the Corporators including the petitioners who were the candidates aspiring for the post of Mayor and Deputy Mayor in the respective petitions. It is further stated that in the absence of original nomination papers and in the absence of a valid scrutiny being conducted by the Presiding Officer, the election of respondents No. 7 and 8 cannot be said to be an election which had been held in accordance with law after properly convening a meeting for that purpose. Mr. V. D. Salunke, learned Counsel appearing on behalf of the petitioners in the other petition has adopted the submission advanced by Shri Dhorde and has submitted that the election to the office of the Deputy Mayor which is questioned by the petitioners whom he represents, deserves to be set aside.

18. The learned A.G.P. representing respondent No. 1 has submitted before us that the Rules in respect of meeting which is convened for the purpose of

electing the Mayor and Deputy Mayor mandates that the said meeting cannot be cancelled or adjourned. According to the learned A.G.P. if this is the legislative mandate, the adjournment of the said meeting by respondent No. 3 is illegal and consequently the meeting which had been held subsequently cannot be termed as illegal but would be a continuation of the earlier meeting. Mr. P.R. Katenshwarkar, learned Counsel representing respondent No. 3 and Mr. Gaware, learned Counsel representing respondent No. 4 the outgoing Mayor and Deputy Mayor in the said meeting, have surged before us that on account of the chaotic situation which prevailed after the commencement of the meeting, respondent No. 3 had no other alternative but to adjourn the meeting. Consequently respondent No. 3 had declared that the meeting had been adjourned and no business had been transacted till the adjournment of the business. It is further stated that the rule that the meeting cannot be adjourned has to be read as a directory rule and not a mandatory rule. It is further stated that after the meeting had been adjourned, a majority of the elected Councillors had left the meeting hall. Mr. Hon. learned Counsel appearing on behalf of respondent No. 5 has urged before us that a meeting convened for the purpose of election of Mayor and Deputy Mayor cannot be adjourned as per the Rules framed in that behalf. It is further stated that the original record of the proceedings of the said meeting are not available with the Corporation and accordingly a complaint has been lodged with the police against the Secretary - respondent No. 6. During the course of argument since the replies of respondents No. 3 and 6 were silent in respect of some material aspects, we had asked the learned Counsel representing both respondents No. 3 and 6 to take instructions from the respective clients and make oral submissions to this Court. Accordingly Mr. Katneshwarkar, learned Counsel representing respondent No. 3 has stated before us that on the day of the meeting respondent No. 6 Secretary came with the proceeding books and the Secretary wrote the draft/rough minutes of the meeting. The record remained with the respondent No. 6 Secretary. On the next day the Secretary came with a typed copy and obtained the signature of respondent No. 3 who had presided over the meeting. It is admitted that the minute book had not been signed by respondent No. 3 till today. Learned Counsel representing respondent No. 3 had stated that the Secretary had commenced writing of the rough/draft minutes. It is then stated that on the same day the signature of respondent No. 3 had been obtained on the minutes. It is stated that the signature of respondent No. 3 however has not been obtained on the minute book. Respondent No. 3 Secretary has stated that the minute books have been deposited with the Corporation authorities.

19. Mr. P.M. Shah, learned Senior Counsel representing respondent No. 7 has urged before us that assuming that the Rules are directory and a meeting can be adjourned but was the meeting in fact adjourned. According to Mr. Shah, a disputed question of fact, therefore, arises whether meeting in fact had been adjourned. The minutes which have been annexed by the petitioner at Exh.H are produced from very extremely dubious source. The original minute book or the

proceeding book have not been tendered by respondents No. 3 and 6 before the Court. The minutes which are placed at Exh.H are all loose papers which bear the signature of respondent No. 3. In the light of that therefore Mr. Shah, learned Senior Counsel submitted that the petitioners do not even by preponderance of probabilities establish that the meeting had been adjourned. Mr. Shah then submits that if in reality the meeting had not been adjourned, the holding of the meeting subsequently albeit after few hours would not render the said meeting as illegal as the subsequent meeting can be said to be in continuation of the first meeting. Mr. Shah then submitted that respondent No. 3 was instrumental in getting a petition filed in this Court in an attempt to stall an election which was scheduled to be held on 29-6-2006. The conduct of respondent No. 3 all along has been to delay the holding of the elections as far as possible in order to ensure that respondent No. 3 continues to occupy the chair of Mayor of respondent No. 5 Corporation. In a last ditch effort at stalling the meeting, therefore, the respondent No. 3 left the meeting hall and walked away along with the Secretary - respondent No. 6. Since there was no valid adjournment of the meeting, the meeting was subsequently continued in accordance with the Rules and the procedure in which respondents No. 7 and 8 came to be elected as the Mayor and Deputy Mayor, respectively. There is no breach of the Rules in respect of holding of the election and, therefore, the election of respondents No. 7 and 8 is not liable to be interfered with. Mr. Naphade, learned Senior Counsel appearing on behalf of respondent No. 8 has also argued on similar lines and has urged before us that the parties are at issue as to whether the meeting had been adjourned and such disputed question of fact would not normally be adjudicated in the exercise of writ jurisdiction by this Court.

20. The first question, therefore, which arises for consideration before us is whether the Presiding Officer, who had presided over the special meeting held on 29-6-2006 for the purpose of electing Mayor and Deputy Mayor had the necessary power under the relevant Rules to adjourn the meeting. A reference in this regard may usefully be made to the relevant Rules. A Notification dated 11-2-2005 came to be issued under the Bombay Provincial Municipal Corporations Act. The notification has ostensibly been issued u/s 456A of the Bombay Provincial Municipal Corporations Act, 1949. Section 456A of the Bombay Provincial Municipal Corporations Act, 1949, hereinafter referred to as "the Act" for the sake of brevity, reads as under:

(1) Notwithstanding anything contained in Sections 454 and 456 the State Government may, by notification in the Official Gazette, make rules consistent with the provisions of this Act generally to carry out all or any of the purposes of this Act generally to carry out all or any of the purposes of this Act. Such rules may provide for charging of fees for any of the purposes of this Act :

Provided that, no rules in respect of any matter relating to the preparation of electoral rolls and conduct of elections shall be made without consultation with the State Election Commissioner.

(2) All rules made under this section shall be subject to the condition of previous publication.

Provided that, if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the requirement of previous publication of the rules to be made under this section, for the purposes of Conduct of Elections, under this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

As pointed out above, the said Notification dated 11-2-2005 came to be issued under the provisions of the Act. The aims and objects of issuing this notification are to be found in the notification itself and the purpose for issuance of this notification were for regulating the election to the office of Mayor and Deputy Mayor the elections for which were likely to be held in third week of February, 2005. The notification further recites that the Government of Maharashtra was satisfied that circumstances exist which render it necessary to take immediate action to make Rules for the purposes aforesaid and for that purpose to dispense with the condition of previous publication thereof. The Government, therefore, by virtue of the enabling provision u/s 456A of the Act issued the notification. The title of these Rules is Bombay Provincial Municipal Corporations (Conduct of elections to the office of Mayor and Deputy Mayor) Rules, 2005, which shall be hereinafter referred to in this judgment as the "Election Rules". Sub-rule (3) of Rule 3 of the "Election Rules" states that for the purpose of holding elections to the office of Mayor and Deputy Mayor of the Corporation a special meeting be held by the Corporation. Sub-rule (2) of Rule 3 of the said Rules states that the Municipal Secretary in consultation with the outgoing Mayor and in case the Mayor is to be elected in consultation with the Municipal Commissioner, fix a date for holding the special meeting under Sub-rule (1). The proviso to Sub-rule (2) states that the date which would be fixed should be fixed so as to enable a Councillor to submit his nomination for the said posts giving at least three days clear prior notice of such meeting. Sub-rule (3) of Rule 3 mandates that the special meeting so called shall not be cancelled or adjourned. Rule 3 of the Election Rules, therefore, reads as under:

3. Special meeting for Election to the office of Mayor and Deputy Mayor. - (1) For the purpose of holding elections to the office of Mayor and Deputy Mayor of the

Corporation, a special meeting shall be held by the Corporation.

(2) The Municipal Secretary shall, in consultation with the outgoing Mayor and in case, the Mayor is to be elected after General Elections to the Corporation, in consultation with the Municipal Commissioner, fix a date for holding the special meeting under Sub-rule (1):

Provided that, the date shall be so fixed, as to enable a Councillor to submit his nomination to the said posts, at least three clear days prior to such meeting.

(3) The special meeting so called, shall not be cancelled or adjourned.

21. Mr. Dhorde, learned Counsel appearing on behalf of the petitioner has invited our attention to the judgment of the Allahabad High Court in Ravi Kiran Jain Vs. Bar Council of U.P. and Others, . In the aforesaid judgment the learned Single Judge of the Allahabad High Court was considering the provisions of the Advocates Act and the Rules framed thereunder in relation to the election of the Bar Council of Uttar Pradesh. The learned Single Judge, therefore, observed that since there were no limitations or restrictions placed on the Bar Council in exercise of its powers in fixing dates for holding election under Rules 4 and 6 either expressly or by necessary implications, a resort could legitimately be made to the provisions of Section 21 of the General Clauses Act. The learned Single Judge was of the opinion that the provisions of Section 21 of the General Clauses Act were fully applicable in construing Rules 4 and 6 of the U.P. Rules and the power of the Bar Council to fix time, place and date of the election is not exhausted merely on the issue of notification of the programme and it could alter, modify or rescind its order fixing the various dates. The learned Single Judge was of the opinion that if the Rules were construed otherwise, preposterous results would follow.

22. Similarly reliance is also placed on the judgment of Supreme Court in Mohd. Yunus Saleem Vs. Shiv Kumar Shastri and Others, . The Supreme Court in this judgment had observed that where a notification is issued by the Election Commission fixing certain date under Clause (d) of Section 30 of the Representation of People Act for taking poll, it had the power u/s 21 of the General Clauses Act to alter the date of poll to a future date. Reliance is also placed on the judgment of Supreme Court in Chandrakant Khaire Vs. Dr Shantaram Kale and Others, . In this case the Supreme Court had held that in the first meeting of the Corporation there was a total confusion and bedlam inside the meeting hall and, therefore, no business could be transacted and the Municipal Commissioner had merely suspended the proceedings till peace was restored and accordingly had announced on the mike that proceedings would be resumed after 45 minutes for transacting the business and, therefore, it could not be said that the first meeting was "adjourned for the day" or "adjourned sine die". The Supreme Court further held that a properly convened meeting could not be postponed and the proper course is to adopt to hold the meeting as originally intended, and then and there adjourn it to a more suitable date. If this course be

not adopted, members will be entitled to ignore the notice of postponement, and if sufficient to form a quorum, hold the meeting as originally convened and validly transact the business thereat. The Supreme Court further observed that an adjournment must be for no longer than the chairman considers necessary and the chairman must so far as possible, communicate his decision to those present.

23. The judgment of the Supreme Court rendered in *Chandrakant Khaire* (supra) fell for consideration before the Supreme Court in *Jayantbhai Manubhai Patel and Others Vs. Arun Subodhbhai Mehta and Others*, . The Supreme Court relying on Section 21 of the Bombay General Clauses Act held that the Mayor of the Municipal Corporation has the implied power to cancel a meeting or postpone a meeting which was duly convened before the said meeting commenced and to convene the same on a subsequent occasion. The Supreme Court further held that this power must be exercised by the Mayor bona fide and not for a collateral purpose and the power must be exercised for a proper purpose. The Supreme Court further held that if the Mayor was unable to show this, then the postponement of the meeting must be held to be bad but it was not possible to say that the Mayor had no power to cancel the meeting duly convened and to direct that the same should be held at a later day provided that the power was exercised bona fide and for a justified purpose. In respect of the earlier judgment rendered by the Supreme Court in *Chandrakant Khaire's* case (supra), the Supreme Court at paragraph 18 has observed as under:

The word adjournment tends to be used loosely in connection with the meetings. Indeed, as a result, the word is possible in process of acquiring a further, derived meaning of close, conclude or finish, whereas a meeting or a debate is adjourned when its further proceedings are postponed to some subsequent time or to enable it to reassemble at some other place; to a later hour in the same day, to some future date, or indefinitely, i.e. sine die (without a day being named). The business (of the whole meeting or the debate respectively) is indeed suspended, but with an intention of deferring it until resumption at a later time.

The learned author goes on to say that the word "adjourn" has been in use for almost five centuries in connection with meetings, with an early meaning of to put off or defer proceedings to another day, and adds:

This in due course gave rise to the added meaning to break off for later resumption.

In *Jayantbhai Manubhai Patel* case (supra), the Supreme Court was considering the question whether the Mayor had the power to cancel the notice convening the meeting and in the light of facts those observations had been made. In the present case we are considering the power of the Mayor/Chairman of the meeting to adjourn the meeting on account of chaos and pandemonium in the meeting hall after the meeting had been properly convened.

24. It is no doubt true that Sub-rule (3) of Rule 3 mandates that the special

meeting which is so convened cannot either be cancelled or adjourned. In that behalf, therefore, we have to consider whether the aforesaid Sub-rule (3) is mandatory in nature. In the General Rules at Schedule "D", Rule 32 permits the postponement of poll/adjournment of poll for sufficient reason to be recorded in writing. Apart from that, u/s 21 of the Bombay General Clauses Act, power is conferred to alter, rescind, modify. It would be too hypertechnical an approach to hold that the Presiding Officer did not have the power to adjourn the special meeting which had been convened. Various factors, considerations and circumstances may arise which would impel an adjournment or make the adjournment necessary. All these circumstances cannot be foreseen and, therefore, it would be extremely hazardous to hold that Sub-rule (3) of Rule 3 is mandatory and, therefore, the Presiding Officer/Mayor did not have the power to adjourn the meeting which had been convened for the purpose of electing the Mayor and Deputy Mayor. In fact, Mr. Shah, learned Senior Counsel appearing on behalf of respondent No. 7 has very candidly stated that while construing Sub-rule (3) of Rule 3, the said Sub-rule (3) of Rule 3 cannot be held to be mandatory. It would be extremely preposterous to imagine that the Presiding Officer/Mayor did not have the power to adjourn the meeting. However, according to Mr. Shah, learned Senior Counsel appearing on behalf of the respondent No. 7 the power of adjournment has to be judged on the bona fides and the justified purpose.

25. In the present case we are not considering the question of adjournment of the meeting or the underlying purpose for which the meeting was adjourned. The brunt of the attack made by Shri P. M. Shah and Shri Naphade, learned Senior Counsel on behalf of respondents No. 7 and 8 regarding the bona fides of respondent No. 3, the then outgoing Mayor in adjourning the meeting, cannot be considered. According to the learned Senior Counsel appearing on behalf of the respondents, respondent No. 3 had adjourned the meeting for an oblique purpose as respondent No. 3, because of lure of power wanted to retain the office of the Mayor as long as possible. Assuming that indeed the adjournment of the meeting by respondent No. 3 was not for a bona fide purpose, the question still remains as to whether respondent No. 3 had the necessary power to adjourn the meeting.

26. Therefore, according to us, Sub-rule (3) of Rule 3 cannot be construed that the Mayor/Presiding Officer cannot either cancel or adjourn the meeting and he is completely denuded of the said power. If the rule is construed by us as enabling the Mayor/Presiding Officer to grant an adjournment, we have to hold that respondent No. 3 had the necessary power to adjourn the meeting. We hasten to add that the underlying purpose of the Legislative mandate as is found in Sub-rule (3) of Rule 3 is to ensure that the special meetings which are convened for the purpose of electing the Mayor or Deputy Mayor are not adjourned in casual manner and the adjournments are not granted merely for the sake of asking. The magnitude of the situation must be such as to warrant an adjournment of the meeting. The circumstances prevailing then should, therefore, impel the Mayor/

Presiding Officer to adjourn the meeting as transacting any business of the meeting should be rendered impossible. Therefore, the adjournment of the meeting must be for a bona fide purpose. In the present case we are not examining the question whether the adjournment of the meeting by respondent No. 3 was for a bona fide purpose or was on account of some oblique motive. We are examining the question whether in fact the meeting had been adjourned by respondent No. 3.

27. In this behalf strong reliance is placed by the petitioners on the minutes of the meeting which have been annexed at Exh. H to the petition. The minutes of the meeting clearly indicate that after the commencement of the meeting as scheduled, certain questions, point of orders were raised by some members and thereafter the Chairman ruled that no business could be transacted on account of disturbance in the meeting and, therefore, adjourned the meeting. The meeting was not adjourned to any fixed date and, therefore, the meeting was adjourned sine die. The respondents have taken strong exception to these minutes of meeting which are placed on record by the petitioners. According to them, the respondents in their affidavit in reply have clearly contended that the meeting was in fact not adjourned but only attempted to be adjourned. According to the respondents, respondent No. 3 - the outgoing Mayor and the respondent No. 6 the Secretary left the meeting hall. In the absence of the original record or in the absence of any minutes to the contrary, according to us by preponderance of probabilities, the petitioners have been successful in demonstrating before us that the minutes of the meeting at Exh.H are the minutes of the meeting which was held on 29-6-2006. The other factors which probabalize the adjournment of the meeting are:

(i) The meeting had been convened as scheduled and if respondent No. 3 wanted to delay the holding of the meeting for some oblique purpose, the respondent No. 3 could have cancelled the meeting which had been so convened. However, respondent No. 3 chose to preside over the meeting;

(ii) A vast majority of the members had left the meeting hall after the meeting had been adjourned.

(iii) The petitioners and respondents No. 3, 4 and 6 in their affidavits have clearly stated that on account of chaos, bedlam or pandemonium the meeting was required to be adjourned.

28. Though the respondents have denied the existence of a chaotic situation or pandemonium in the meeting hall, the minutes of the meeting at Exh.H clearly indicate to the contrary. If the meeting had not been adjourned, we see no reason as to why a sizable number of members would leave the meeting hall and particularly the petitioners who had themselves submitted their nominations for the post of Mayor and Deputy Mayor, respectively. If respondent No. 3 had only attempted to adjourn the meeting by leaving the meeting hall, the petitioners at least would have remained in the meeting hall as they were the candidates and

obviously would be interested in the outcome of the election at least to ensure that they were successful in the election. Therefore the fact that a sizable number of Counselors/Cooperators had left the meeting hall would clearly indicate that the meeting had been adjourned. The reason for adjournment of the meeting may not be bona fide and may have been actuated on account of an oblique motive or the adjournment may have been pre-designed looking to the fact that the political party to which respondent No. 3 belongs may not have the majority or the chaotic situation in the meeting hall may not be of such a magnitude as to warrant the adjournment. Assuming all these in favour of the respondents, the fact remains that respondent No. 3 had adjourned the meeting. As pointed out by us above, we are not examining the bonafides of respondent No. 3 in adjourning the meeting nor are we considering if the meeting had been justifiably adjourned. The limited question before us is whether the meeting had, in fact, been adjourned. According to us, therefore, looking to the various circumstances enumerated by us above, we conclude that the meeting had, in fact, been adjourned. In fact, whether the meeting had been illegally adjourned or was adjourned for an oblique purpose is not germane for the decision of these petitions and the only question which is germane for the decision of these petitions is whether the meeting was adjourned. We have already recorded a finding that according to us on 29-6-2006 after the meeting had been properly convened, for some reason the meeting had been adjourned.

29. The question, therefore, arises is whether the subsequent meeting which had been convened can be said to be an extension of the first meeting. From the affidavits of respondents No. 3 and 4 it is apparent that the meeting was required to be adjourned after about 30 to 45 minutes of its commencement. The meeting, therefore, came to be adjourned at about 11.30 or 11.45 a.m. On the basis of the affidavits of the petitioners and even on the basis of the affidavits of the respondents, some of the members had left. About 37 members still remained in the meeting hall. The Commissioner thereafter sought instructions from the Government and was informed that the meeting could not have been either cancelled or adjourned and, therefore, proceeded to hold a meeting thereafter, which we refer to for the sake of convenience as "the second meeting". The minutes of the second meeting has been annexed at Exh.R-5. The said second meeting commenced at 1.00 p.m. Since neither the outgoing Mayor and the Deputy Mayor were available, one Chandrakant Kashinath Kele who is the senior most Councillor was requested to chair the meeting. The minutes of the meeting further state that a majority of the members had desired that the first meeting be continued and, therefore, the second meeting was convened. The minutes further state that the original proceeding book was not available and a search was taken for the same but was not found in the premises of respondent No. 5 Corporation and, therefore, the minutes were being scribed on loose sheet of paper. The minutes further state that about 37 members were present, out of which 2 were co-opted members who had no right of vote. When the meeting had been convened at 11.00 a.m., 62 elected representatives were

present and 5 co-opted members were present. Out of the 62 elected members, only 35 members were present. The minutes of the meeting further undisputedly state that the nomination papers were not available and, therefore, on the basis of the availability of the nominations in the computer the scrutiny was conducted. The meeting electing both the Mayor and the Deputy Mayor i.e. respondents No. 7 and 8 concluded at 4.30 p.m. A fax message at Exh.R-4 from the Deputy Secretary of respondent No. 1 was received at 3.30 p.m. informing the Commissioner to hold the meeting as scheduled.

30. A reference in this behalf may usefully be made to a recent judgment of the Division Bench of this Court in Hemant Shriram Patil Vs. Nanded Waghala City Municipal Corporation and Others, . In the reported authority, the Division Bench of this Court observed that after the adjournment of the special meeting of Corporation for appointment of the Chairman of the Standing Committee by the Mayor, the Councillors who were present after the adjournment commenced the meeting. Such meeting can only be described as merely a gathering of the Councillors and cannot be said to be a meeting.

31. In the present case, according to us the first meeting had been adjourned by respondent No. 3, We may again reiterate that the motive or the reason whether it be malicious or not in adjourning the meeting need not be inquired into by us. The meeting had, in fact, been adjourned and consequently the second meeting which had been, convened cannot by any stretch of imagination be said to be a continuation of the first meeting nor an extension of the first meeting. Since respondent No. 3 had adjourned the meeting sine die, a fresh meeting could only be convened in accordance with the Rules in this behalf. The Rules require a notice giving three days time for convening the meeting. No notice of the second meeting was given to the Councillors who had already left the meeting hall. The reason as to why the Councillors left after the meeting had been adjourned is wholly immaterial. From out of 62 elected Councillors only 35 Councillors were present in the meeting and, therefore, a sizable number of Councillors had left the meeting hall. No notice was issued to the Councillors intimating that the second meeting had been convened. The petitioners in both the petitions were candidates who were contesting the office of Mayor and Deputy Mayor, respectively and part from the other Councillors, it was incumbent that a notice convening the second meeting ought to have been given. Even otherwise the question would still remain whether such a notice if given to the absent Councillors, make the second meeting a legally valid meeting if it was held in breach of the statutory Rules regarding convening of the special meeting for the purpose of electing the Mayor and the Deputy Mayor. At this juncture we may make a reference to the fact that the second meeting was, in fact, a truncated meeting. The first meeting had been adjourned and a second meeting had been convened only on the basis of the advice given to the Commissioner that a special meeting could not have been either cancelled or adjourned. The convening of the second meeting was in flagrant breach of all Rules and statutory mandate of the Bombay Provincial Municipal Corporations Act, 1949 and the

Rules framed thereunder. We need not enter in the arena of the motives ascribed to the respondents in convening the second meeting. Suffice it to say that the second meeting was a wholly illegal meeting which had been convened in flagrant breach of the necessary Rules regarding convening of the second meeting for the election of the Mayor and Deputy Mayor. The original nomination papers were not available in the meeting and a farce of scrutinizing the nomination papers and election of respondents No. 7 and 8 had been conducted. The election of respondents No. 7 and 8 in the truncated second meeting cannot be sustainable in the eye of law as the convening of the second meeting itself, according to us, was not legal.

32. It is necessary at this stage to make some observations regarding the conduct of respondents No. 3 and 6. We had given opportunity to the learned Counsel representing the respondents to obtain the necessary instructions from the respondents and inform us accordingly. Respondent No. 3 was the outgoing Mayor and the Chairman of the important meeting which had been convened for the election of the Mayor and Deputy Mayor. The proceedings book and the other relevant papers had been brought to the meeting hall by Secretary respondent No. 6. When the meeting had been convened, respondent No. 3 was entrusted with the relevant documents/papers. Thus respondents No. 3 and 6 had the custody of these documents/papers. After adjourning the meeting both these respondents left the meeting hall with the papers and the record. Respondent No. 3 as the outgoing Mayor and respondent No. 6 as a responsible officer of respondent No. 5 ought to have taken proper care and custody of the documents and papers which had been entrusted to them. These original papers have still not been found and we are informed that a complaint in this behalf had been lodged against respondent No. 6 in the police station which is under investigation. Be that as it may, as a responsible Officer respondent No. 6 ought to have deposited the documents and the papers with respondent No. 5 Corporation or some authorised person or if he had retained the custody of the documents and papers ought to have produced it when demanded. Since the police are investigating as to whether respondent No. 6 had still retained the documents/papers or had deposited the same with the respondent No. 6, we refrain from making any observations in that behalf. However, according to us, both respondent No. 3 and respondent No. 6 have acted irresponsibly and negligently and not taking proper care and custody of the vital documents and papers relating to the election to the office of Mayor and Deputy Mayor.

33. Mr. Shah, learned Senior Counsel for respondent No. 7 also invited our attention to Sub-rule (10) of Rule 7 of the Bombay Provincial Corporations (Conduct of Elections to the Office of Mayor and Deputy Mayor) Rules, 2005 (for short the Election Rules). The said sub-rule provides that the Presiding Authority, besides recording proceedings in writing, shall also cause the proceedings to be recorded by way of video photography to ensure free and fair elections. Shri Shah submitted that this rule is also breached by respondent No. 3, the outgoing Mayor, who was presiding over the meeting. Mr. Shah submitted that respondent

No. 3 had predetermined to adjourn the meeting on one ground or the other and did so by falsely declaring that there was pandemonium and it was not possible to conduct the elections. To cover up his action of false declaration, he, as soon as the meeting was started first asked the video photographer to leave the place of meeting contrary to Sub-rule (10) of Rule 7 of the Election Rules. We are not inclined to go into this allegation attributed to respondent No. 3 in the arguments of Shri Shah in the absence of sufficient pleadings to that effect in the petition and replies. It would however be sufficient to state that Sub-rule (10) of Rule 7 of the Election Rules does not appear to have been complied with.

34. In the light of the aforesaid discussion therefore, according to us, these petitions deserve to be allowed and the proceedings of the meeting held on 29th June, 2006, deserve to be quashed and set aside. With the result, we quash and set aside the elections of respondents No. 7 and 8 as Mayor and Deputy Mayor of the respondent No. 5 Corporation. We are not wholly satisfied with the behaviour and the conduct of the respondent No. 3 in his conduct of the special meeting on 29th June, 2006. It would therefore be appropriate to issue directions regarding the next special meeting that would be required to be convened for the purpose of electing Mayor and Deputy Mayor of the respondent No. 5 Municipal Corporation. In *Anil Kumar Jha v. Union of India* reported in 2005 (3) SCC 150, the Hon'ble Supreme Court gave directions to the speaker of the assembly regarding conducting of the meeting. We derive force from the said decision in giving directions to the respondent No. 3 regarding the conduct of the special meeting. In the light of that therefore we issue the following directions.

i) Respondent Commissioner or any other Officer authorised in this behalf shall convene a special meeting for the purpose of electing the Mayor and the Deputy Mayor of the respondent No. 5 Corporation as expeditiously as possible giving the election programme which would meet the requirements of the Act and the Rules.

ii) Respondent No. 3 shall, if present, be entitled to preside over the meeting. The respondent No. 3 or the Presiding Officer, in case of the absence of respondent No. 3, shall conduct the meeting strictly and in accordance with the Election Rules and shall follow the Election Rules in letter and spirit.

iii) The only agenda for the special meeting would be the election to the offices of the Mayor and the Dy. Mayor.

iv) It is emphasised that the proceedings in the meeting shall be totally peaceful and disturbance, if any, caused therein shall be viewed seriously.

v) We direct the Municipal Commissioner to take all steps in accordance with law and ensure the conduct of the meeting is held smoothly and peacefully as expeditiously as possible and in no case later than six weeks from the date of this decision.

35. Rule is therefore made absolute to the extent indicated above.

36. We quantify the cost in each petition at Rs. 10,000/- to be paid by respondents No. 3 and 6.