
(1985) 02 GUJ CK 0010
In the Gujarat High Court

Gopaldas Bakubhal Rana

APPELLANT

Vs

Lunavada Nagar Panchayat and Others

RESPONDENT

Date of Decision : 04-02-1985

Acts Referred:

Gujarat Gram and Nagar Panchayats (Procedure) Rules, 1963 — Rule 18, 18(1), 5
Gujarat Panchayats Act, 1961 — Section 48, 48(1), 48(5), 48(5)(a), 48(5)(a)
Gujarat Taluka and District Panchayats (Procedure) Rules, 1963 — Rule 5

Citation : (1985) 2 GLR 1047

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—In this petition under Article 226 of the Constitution, the petitioner who is one of the members of Lunawada Nagar Panchayat constituted under the provisions of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the said Act"), has challenged a resolution passed by the said panchayat by which a motion of no confidence was passed against the Chairman of the Panchayat, respondent No. 2 herein Kamlashanker Bhuleshwar Dave. Mr. A. H. Mehta, learned advocate for the petitioner requested me to permit transposition of respondent No. 2 as petitioner No. 2 in order to meet the preliminary objection raised by the respondents to the effect that the person who is affected by no confidence motion was remaining in the background and. was not interested in challenging the said resolution. Respondent No. 2 is accordingly permitted to be transposed as petitioner No. 2 at the oral request of Mr. Mehta. The impugned resolution passing motion of no confidence against petitioner No. 2 is dated 21-1-1983. The said resolution was passed by majority wherein 14 persons present and voting supported the said resolution, while two persons including petitioner No. 2 voted against the resolution and one member remained neutral. The panchayat at the relevant time consisted of 18 members. The aforesaid resolution had been challenged on various grounds in the present petition.

Notice was ordered to be issued in this petition and pursuant to the said notice,

the respondents who are members of the panchayat and who had voted in favour of the resolution have appeared through their learned advocates M/s. N.J. Mehta and Girish Patel.

2. Mr. A. H. Mehta for the petitioners has raised the following four contentions in respect of the petition:

1. The notice for convening meeting for passing no confidence motion was served on the panchayat on 27-12-1982; while petitioner No. 2 Chairman by his decision dated 10-12-1982 decided to call the special meeting to consider no confidence motion on 21-1-1983. Thus, the Chairman had not called the meeting within 15 days of the date on which the notice reached the panchayat and consequently, the impugned resolution was passed at the meeting which was null and void being violative of the statutory provisions of Section 48(5)(a) of the said Act.

2. The impugned resolution is also bad on account of the further fact that three clear days' notice was not given to the concerned members held on 21-1-1983 as required by Rule 5 of the Gujarat: Gram and Nagar Panchayat (Procedure) Rules, 1963 (hereinafter referred to as "the said Rules")

3. As per Rule 5 of the said Rules, the Secretary of the panchayat has to call a meeting in question; while in the present case, one Chandrakant Dave had called the said meeting. In this connection, Mr. Mehta submitted that as per the decision of P. D. Desai, J., in Special Civil Application No. 4386 of 1982, one Mr. P. J. Dave, who was earlier appointed as the Secretary of the Panchayat was held to be entitled to resume his duties as Secretary and consequently, P. J. Dave only can be considered to be validly appointed "Secretary of the Panchayat. Consequently, the notice in the present case was issued by a person who was not entitled to act as Secretary at the relevant time and hence also, the meeting of 21-1-1983 was null and void.

4. The notice signed by the proposers and other 9 members as served on the panchayat for calling a meeting for considering no confidence motion, was bad as it was not signed by requisite number of members who can move such notice and hence, also, all subsequent proceedings pursuant to the said notice were bad in law.

3. So far as the first contention of Mr. Mehta is concerned, it is necessary to keep in view of certain admitted and well established facts. As per Section 48(1), any member who "intends to move a motion of no confidence against the Sarpanch or Upa-Sarpanch or, as the case may be, the Chairman or Vice-Chairman may give notice thereof in the prescribed form to the panchayat concerned. If the notice is supported by one-half of the total number of members of the panchayat concerned, the motion may be moved. In the present case, one Devisinh Punval who is a member of the panchayat and who is respondent No. 11 herein gave such notice which was supported by the signatures of 10 members in form. No. 2, being apprised of the said fact wrote a letter as Chairman on 6-1-1983 to the

District Development Commissioner, District Panchayat, Godhra pointing out the said fact and he sought further instructions from him as to what was to be done in the matter, as there were two such notices received by him from two different members seeking to move motion of no confidence against him. "Thereafter on 10-1-1983, petitioner No. 2 Chairman, presumably because the D.D.O did not give any further instructions in the matter, took his own decision to call a meeting for discussing no confidence motion against him on 21-1-1983 at 2-45 p. m. in the afternoon. He informed Shri Chandrakant Dave, Secretary of the panchayat to call a special meeting accordingly. The said two letters have been annexed to the petition by way of annexures. It appears that pursuant to the said direction given to Shri Chandrakant Dave by petitioner No. 2 Chairman, the said Chandrakant Dave called a meeting of the panchayat on 21-1-83 and for that purpose issued necessary notices to "the members on 17-1-1983. It is thereafter that the meeting in question was held on 21-1-83 where petitioner No. 2 came to suffer the motion of no confidence against him which was passed by overwhelming majority of the members, present and voting. In the background of the aforesaid facts, contention No. 1 raised by Mr. Mehta for the petitioner has to be appreciated. He placed strong reliance on Section 48(5)(a) and (b) in support of his first contention. The said sub-sections are required to be quoted in extenso

(5)(a) Notwithstanding anything contained in Sections 80, 83 or 85 a meeting of the Panchayat for dealing with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which the notice of such motion is received by the panchayat and a meeting of the gram Sabha for dealing with such motion shall be called within a period of fifteen days from the date on which the motion is carried by the gram panchayat. (b) If the Sarpanch or, as the case may be, the Chairman fails to call such meeting, the Secretary, of the Panchayat shall, forthwith make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the Panchayat or gram sabha within a period of fifteen days from the date of the receipt of the report.

Mr. Mehta submitted that meeting of the panchayat for dealing with the motion of no confidence u/s 48 is to be called within a period of 15 days from the date on which notice of such motion is received by the panchayat. That in the present case, notice of such motion was received by the panchayat on 27-12-1982. Petitioner No. 2 Chairman, however, directed convening of the meeting on 21-1-1983 which was clearly beyond the period of 15 days from 27-12-82. He, therefore, contended that the entire exercise which was undertaken in the said meeting on 21-1-1983 was de hors the provisions of Section 48(5)(a) and was null and void. M/s. N. J. Mehta and Girish Patel for the respondents on the other hand submitted that all that Section 48(5)(a) contemplates is that moment a notice of the proposed motion of no confidence is received by the panchayat, within 15 days thereof a decision has to be taken by the concerned authority viz., the Chairman or the Sarpanch, as the case may be, to call such meeting. In the

present case petitioner No. 2 did take decision to call such meeting within 15 days of 27-12-1982 as his decision to convene such meeting was taken on 10-1-1983. That the actual meeting is not necessarily required to be convened within 15 days of the date on which notice for moving such motion is received at the end of the panchayat. They submitted that the legislature has advisedly used the phrases "meeting shall be called within a period of 15 days from the date on which notice of such meeting is received." That the legislature has not provided in the said sub-section that such meeting should be convened or held within a period of 15 days from the date on which notice of such action is received.

4. The aforesaid contention raised on behalf of the respondents is well borne out from the language of Section 48(5)(a). It is pertinent to note that what is enjoined upon the concerned authority under the said provision is that such a meeting has to be called within 15 days of the receipt of the notice of motion of no confidence by the panchayat. It is nowhere provided that such meeting should be actually convened or held within that period of time. In the present case, it is an admitted position that the meeting in question was called by the Chairman petitioner No. 2 within 15 days of 27-12-1982 the date on, which the notice of motion of no confidence was received by the panchayat. It is true that the actual holding of the meeting took place beyond the period of 15 days that is on 21-1-1983. However, once a decision to call the meeting was taken by the Chairman within 15 days as contemplated by Section 48(5)(a) the provisions of the said section were duly complied with by him. In this connection, it would be profitable to have a look at Section 44 of the Act. Sub-section (1) of Section 44 provides that on the constitution of a gram panchayat or a, nagar panchayat or on its reconstitution u/s 17 or under any other provision of this Act, there shall be called the first meeting thereof for the election of Upa-Sarpanch or, as the case may be, Chairman and Vice-Chairman. u/s (2) of Section 44, it is provided that the meeting shall be held on such day within four weeks from the date on which the names of members elected at the general election are published. Thus, the legislature is fully conscious of the distinction between the terms "calling of the meeting" and "holding thereof. In Section 48(5)(a), what has been enjoyed upon by the legislature is calling of the meeting within 15 days of the receipt of the motion of no confidence by the panchayat and not actually holding thereof. Thus, holding of the meeting can be beyond the period of 15 days from the date on which such notice of motion of no confidence is received by the panchayat. The aforesaid conclusion is further fortified by the relevant rules framed by the State Government in exercise of rule making powers flowing from Section 323(1) of the Act. Under the said provision, the State Government may, by notification in the official gazette, make rules for carrying out the purposes of this Act. The rules so framed are to be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to such modification as the Legislature may make during the sessions in which they the session immediately following, as laid down by Sub-section (4) of Section 323. The relevant rules which are framed by the State Government in exercise of the

aforesaid statutory power are styled as Gujarat Gram and Nagar Panchayats (Procedure) Rules, 1963. Chapter II of the said" rules deals with procedure for calling meetings of a panchayat. Rule 4 deals with procedure for issuance of notice of calling ordinary meetings. It provides that the Secretary shall, at least ten clear days before the date fixed for any ordinary meeting cause to be sent to all the members intimation of the date, time and place of and the business to be transacted thereat. No meeting shall be held on any day observed as holidays by the panchayat. Rule 5 provides for special meeting and states that the Secretary shall, at least six clear days before the day fixed for a special meeting, send or cause to be sent to all the members intimation of the date, time and place of such special meeting and of the business to be transacted thereat. Then follow two relevant rules which are required to be quoted in extenso. Rule 17 deals with procedure for issuing notice of no confidence motion; while Rule 18 deals with meeting for consideration of no confidence motion. These two rules read as under:

17.(1) Any member of a panchayat who desires to move a motion of no confidence against the Chairman, Vice-Chairman, Sarpanch or Upa Sarpanch of the panchayat shall give notice thereof to the Secretary in form A. Where the motion of no confidence is to be moved against the Chairman and also against Vice-Chairman or as the case may be against the Sarpanch and also against the Upa Sarpanch two separate notices shall be given. If the notice is given jointly by more than one member, the motion may be moved by any of the members who have signed the notice.

(2) The member giving any notice under Sub-rule (1) shall forward therewith three additional copies thereof to the Secretary who shall deliver one copy to the Chairman or as the case may be Sarpanch, one copy to the Vice-Chairman, or as the case may be, Upa-Sarpanch and one copy to the District Development officer.

18(1) A motion of which a notice has been given under Sub-rule (1) of Rule 17 shall be considered by the panchayat at the next ordinary meeting if it is to be held not earlier than the expiry of seven days and not later than the expiry of thirty days after the date of receipt of the notice by the Secretary.

(2) If an ordinary meeting of the panchayat is not due at any time during the period specified in Sub-rule (1) a special meeting of the panchayat shall be convened during that period for considering the motion.

5. A mere look at Rule 18(1) shows that moment a notice of motion of no confidence is given to the panchayat, the same is required to be considered by the panchayat, at the next ordinary meeting if it is to be held not earlier than the expiry of seven days and not later than the expiry of thirty days after the date of receipt of the notice by the Secretary. As per Sub-rule (2) of Rule 18. in the absence of ordinary meeting being available, for considering the said motion of no confidence, a special meeting of the panchayat shall be convened during the same period as laid down under Rule 18(1). Thus, it is clearly visualised by Rule

18 that on receipt of notice for moving motion of no confidence by the panchayat against its chairman or other authority as the case may be, the said motion of no confidence has to be considered atleast within a period of 30 days from the date of receipt of that notice regarding proposed motion of no confidence. 30 days" period is the upper limit laid down by the said rule for consideration of such motion. If Mr. A. H. Mehta's contention is right, required actual convening of the meeting for considering no confidence motion may be at the special meeting, for the said purpose within a period of 15 days from the receipt of notice for the proposed motion and that "would act as a ceiling our upper limit. This is clearly contra-indicated by the provision of Rule 18(2). Mr. A.H. Mehta is right when he contended that if statutory rule is inconsistent with the said section, it must give way to the section. There cannot be any doubt on this aspect. But in the present case, it is clear that Section 48(5)(a) can be easily reconciled with Rule 18(2). On the combined reading of these provisions, it appears clear that moment a notice for motion of no confidence is received, by the panchayat, the Sarpanch or the Chairman, as the case may be, has to take a decision within 15 days thereof to convene or hold a meeting, whether ordinary or special for the purpose of consideration of the said motion. This decision making part of the action of the concerned Chairman or Sarpanch is contemplated by Section 48(5)(a). That should take place within 15 days. But actual convening of the meeting for considering the concerned motion can be beyond the period of 15 days subject to upper limit of 30 days of the receipt by the panchayat of such notice for moving, concerned motion. In the present case, both these statutory requirements have been well met. Petitioner No. 2-Chairman did take decision on 10-1-1983 to convene a special meeting for discussing motion of no confidence against him. That was within 15 days from 27-12-82 when the notice was received by the panchayat and the actual convening of meeting took place on 21-1-83, which was also within upper limit of 30 days from 27-12-82. Thus, the requirements of Section 48(5)(a) as well as Rule 18(2) are clearly met in the present case. Consequently, it cannot be said that the meeting held on 21-1-83 was procedurally invalid or a void meeting. The first submission of Mr. Mehta, therefore, is found to be devoid of any substance and has got to be rejected. In view of the aforesaid factual finding to which I have reached, it is not necessary for me to consider the alternative contention of Mr. Mehta that if the concerned Chairman or Sarpanch, as the case may be failed to call the meeting for discussing the motion of no confidence as per the requirements of Section 48(5) (a) within the time permitted therein, the only course open to the Secretary of the Panchayat is to move the competent authority u/s 48(5)(b) and thereafter only the competent authority can take up therein in his hand for calling such meeting. In this connection, Mr. N. J. Mehta for the respondents contended that even assuming that the time table prescribed by Section 48(5)(a) is not complied with by the concerned Chairman or the Sarpanch and he does not take decision to call the meeting either ordinary or special within the prescribed time, even then, he is not denuded of his power and the procedure laid down by Section 48(5)(b) only lays down additional procedure which may run concurrently with

the powers which can be still exercised by the concerned Chairman or the Sarpanch for convening such meeting. On the facts of this case, it is not necessary for me to consider the rival contentions of the parties on the interpretation of Section 48(5)(b) as I have found on facts that such a contingency has not arisen in the present case and that in fact, petitioner No. 2 did act u/s 48(5)(a) within permissible time limit and did decide to call the concerned meeting within requisite period.

6. That takes me to the second contention of Mr. A.H. Mehta. He submitted that in the present case, calling of the meeting for discussion of no-confidence motion against petitioner No. 2 was violative not Rule 5 of the said rule inasmuch as three days clear notice was not made available to the concerned members, especially to one Ambalal Vinabhai Patel, respondent No. 15 herein. I have already extracted Rule 5 in the earlier part of this order, which enjoins upon the Secretary of the panchayat to send or cause to be sent to all the members intimation of the date, time and place of such special meeting and of the business to be transacted thereat. In the present case, it is an admitted position between the parties that the special meeting was held on 21-1-83 to discuss the said motion. The Secretary had sent the intimation to the concerned members on 17-1-83. That was obviously before three] clear days of the date on which the meeting was to be convened. But Mr. A. H. Mehta's contention is that one of the members received the notice on 20-1-83 and, therefore, Rule 5 was not complied with atleast in his case. Developing his argument on the aforesaid factual basis, he submitted that when by any action of public body, third party's rights are to be affected, the concerned action (sic authority) has to be strictly complied with legal and statutory requirements for taking such action. He invited my attention to a Privy Council decision in *Radha Krishna Jaikishan (firm) v. Municipal Committee, Khandwa* 61 Indian Appeals, 125 at page 133. Lord Thankerton has made the following observations which were heavily relied upon by Mr. A.H. Mehta for the petitioners:

Their Lordships accordingly find it unnecessary to consider the meaning of the somewhat ambiguous word "Sent" which, is used in the by law: it might well be made more clear. Their Lordships desire to add that, while the attendance of the member, who obviate any objection to the want of notice, they are of opinion that, in the case of a statutory meeting which is to affect the rights of third parties, such as taxpayers, the failure to summon duly all the persons entitled to take part in the meeting is not a defect which can be waived by the individual member concerned.

Taking a clue from the aforesaid observations, Mr. Mehta contended that even though it is a fact in the present case that Shri Ambalal who received, the notice on 20-1-1983 did attend the said meeting on 21-1-83, however in the said meeting, rights of third parties like petitioner No. 2 were to be adversely affected. In fact, his very right to remain as Chairman of the panchayat was to be destroyed if the motion was to be passed at the meeting. Consequently,

presence of respondent No. 15 in the meeting would not remove the initial infirmity in not sending due intimation to the concerned member atleast three clear days before the date fixed for a special meeting. It is not possible to agree with the aforesaid contention of Mr. Mehta for the obvious reason that all that Rule 5 enjoins upon the Secretary is to see that intimation of the date, time and place of the special meeting is sent or caused to be sent to all the concerned members, atleast three clear days prior to the date of calling of special meeting. It is an admitted position on the record of this case that the Secretary had sent such notices on 17-1-83 for the ensuing meeting on 21-1-1983. Though the concerned member received the notice on 20-1-1983 for any reason, within time as laid down by Rule 5 cannot be said to have been vitiated only on account of that fact. It is pertinent to note that Rule 5 does not talk of service of intimation of the concerned members atleast three days before the date fixed for the meeting. What it contemplates is sending of intimation or causing intimation to be sent to the concerned members. Even apart from this fact, Section 54 of the Act itself affords a clear answer to this contention of Mr. A. H. Mehta. Section 54(1), second part provides that no resolution of a panchayat or of any committee appointed under this act, shall be deemed invalid on account of any irregularity in the service of notice upon any members, provided that the proceedings of the panchayat or committee were not prejudicially affected by such irregularity. It cannot be said with any confidence by any one that the proceedings of the meeting are vitiated because the notice was served on Shri Ambalal Virabhai Patel a day prior to the date fixed for the meeting. Not only there was no prejudice, but he himself attended the meeting and voted against petitioner No. 2 and supported the motion of no confidence against him. The aforesaid Privy Council judgment cannot be of any avail to Mr. Mehta in the light of the special statutory provisions of the Act viz. Section 54(1), second part as well as the express language of Rule 5. Consequently, it cannot be held that the impugned meeting of 21-1-83 was violative of the provisions of Rule 5.

7. Mr. Mehta next contended that the notice for calling the meeting on 21-1-83 was also bad on account of the fact that it was called by one Chandrakant Dave who was not legally appointed secretary of the panchayat. In this connection. Mr. Mehta invited my attention to Rule 5 which enjoins upon the Secretary to call such meeting by intimating to the members of the date, time and place of such special meeting. Mr. Mehta submitted that as per the definition of the word "secretary" in Section 2(28) the then Secretary means a Secretary of a panchayat appointed or deemed to be appointed under this Act. He stated that the Secretary of the panchayat was one P.J. Dave. Earlier, his services were dispensed with by the panchayat. He had come to this Court by way of Special Civil Application No. 4386/1981 and his petition was allowed by P.D. Desai, J. and he was ordered to be reinstated. During the time he was out of service, Mr. Chandrakant Dave was appointed by the Panchayat. He is a retired Mamlatdar and, therefore, according to Mr. Mehta, as at present advised appointment of Chandrakant Dave as Secretary could not have been held to be a proper one. Mr.

A.H. Mehta fairly conceded that after reinstatement of P.J. Dave as Secretary of the panchayat pursuant to the order of P.D. Desai, J. he has been again suspended for some alleged misconduct; while Chandrakant Dave had continued to act as Secretary. Mr. A.H. Mehta also invited my attention to the further fact that the said P.J. Dave" and one Devisinh who had moved the motion of no confidence against petitioner No. 2 have filed Special Civil Application No. 3765 of 1982, in this Court challenging the appointment of Chandrakant Dave as the Secretary on the ground that he is a retired Mamlatdar and he cannot be legally appointed as Secretary of the said Panchayat. The said Special Civil Application is pending in this Court and is being adjourned from time to time. It may be noted at this stage that no interim relief has been granted in the said petition, though prayed for. It is, therefore, obvious that Chandrakant Dave had continued as Secretary of the panchayat. It may be that. in future, his appointment as Secretary may get affected if this Court takes any adverse view against him in the aforesaid petition. But this is neither here nor there. On the day on which Chandrakant Dave issued intimation to convene special meeting as per Rule 5, he did act as duly appointed Secretary of the Panchayat. P.J. Dave on that day was admittedly under suspension.

8. Consequently, it cannot be said that the Panchayat was devoid of services of any Secretary on the relevant date. Chandrakant Dave did hold the charge of the Secretary and consequently, the action taken by him of issuing requisite intimation to the members of convening a special meeting as per Rule 5 cannot be found fault with by the petitioners at this stage. Even apart from the aforesaid situation, there is one tell-tale circumstance which stares in the face of the petitioners, especially petitioner No. 2. Petitioner No. 2 himself decided to convene meeting on 21-1-83 for discussing the motion of no confidence against him. It was petitioner No. 2 who directed Chandrakant Dave to intimate the members regarding the same. In his letter dt. 10-1-83 written to Chandrakant Dave as Secretary of the Panchayat, petitioner No. 2 has directed him in writing that he may convene meeting on 21-1-83 in the afternoon at 2.45 p m. It is, therefore, obvious that petitioner No. 2 has treated Chandrakant Dave as duly appointed Secretary who was required to carry out the task entrusted to him. It would not now be in the mouth of petitioner No. 2 to say that Chandrakant Dave was not legally appointed Secretary who could have carried out his written instructions, and therefore convening of the meeting on 21-1-83 by Chandrakant Dave at the written instructions of petitioner No. 2 was in no way vitiated in law. Consequently the third contention by Mr. A.H. Mehta also is found to be devoid of any substance and has to be repelled.

9. That leaves out consideration of the last contention canvassed by Mr. A.H. Mehta in support of the petition. Placing reliance of Section 48(1), Mr. Mehta contended that if notice of motion of no confidence is to be moved by any member against Sarpanch or the Chairman, as the case may be, it has to be supported by 1/2 of the members of the concerned panchayat and it is such a notice which can be legally given. In the present case, at the relevant time when

the notice was served on the panchayat on 27-12-82. there were only 18 members in the said panchayat 19th member viz. Smt. Jyotsanaben Doshi had tendered her resignation addressed to the Chairman of the panchayat viz., petitioner No. 2 on 26-11-1982 and it was received by the petitioner at 2-15 p m. The said fact is clearly borne out from the affidavit-in-reply filed by petitioner No. 1 in this petition. It is, therefore, obvious that on the day on which the notice for motion of no confidence was moved there were only 18 members. The covering letter of the notice in Form "A" itself is. signed by 11 members. Thus, the said notice duly complies with the statutory requirement of Section 48(1) as one half of total members of the panchayat would be 9; while the notice is signed by more than 9 members in any case. Thus, the last contention of Mr. A. H. Mehta is also devoid of any substance and has to be repelled.]

10. In the result, there is no substance in any of the contentions canvassed by Mr. A.H. Mehta in support of the petition and consequently, this petition is liable to be summarily rejected and it is accordingly rejected. Notice issued in the petition is ordered to be discharged. Mr. Mehta at the fag end requested me to continue interim relief as modified by me on 1-2-1983 for some time more so as to enable him to prepare a Letters Patent Appeal M/s. N. J. Mehta and Girish Patel for the respondents vehemently contended that stay of operation of the impugned resolution should not be granted as the petitioner No. 2 has lost the confidence of absolute majority of the members of the panchayat. It may be stated that I had earlier granted ad interim relief on 23-1-1983 when notice was issued in the petition and, thereafter, I have modified the said relief pending hearing of this petition. Now that the petition ,is being disposed of on merits, I deem it fit to continue the stay for a period of one week from today subject to the condition that petitioner No. 2 would not exercise power as Chairman in the meantime. Stay, however, (sic operate) against holding of fresh election to the post of Chairman.