

**(2003) 07 GUJ CK 0054**

**In the Gujarat High Court**

**Case No :** Special Civil Application No's. 7886, 7921 to 7932, 7948, 7967, 7994, 7996 and 8032 of 2003

Haresh K. Borisagar

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 23-07-2003

**Acts Referred:**

Constitution of India, 1950 — Article 14, 21  
Gujarat Municipalities Act, 1963 — Section 260

**Citation :** (2003) 4 GLR 493

**Hon'ble Judges :** H.K. Rathod, J

**Bench :** Single Bench

**Advocate :** Thakkar Assoc. for Petitioner No. 1-30 in Special Civil application No. 7886 of 2003 and G.M. Joshi in Special Civil application No. 8032 of 2003, for the Appellant; P.K. Parekh and Government Pleader for Respondent Nos. 1 and 2-3 in Special Civil Application No. 7886 of 2003 and P.K. Parekh, in Special Civil Application No. 8032 of 2003, for the Respondent

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## **Judgement**

H.K. Rathod, J.—Recently, the Hon"ble Apex Court has made important observations and raised important questions relating to Article 21 of the Constitution of India in case of Kapila Hingorani v. State of Bihar reported in 2003 Indian Law Decisions, Vol. 6 Part I page 19, which are reproduced as under:

"It is also well settled that the interpretation of the Constitution or the Statutes is changed from time to time. Being a living organ, it is all going and with the passage of time, they must change. New rights may have to be found out within the constitutional scheme. Horizons of constitutional law are expanding."

Whether in a case of this nature, the Court would take a sheer legalistic approach in holding that the corporate veil would not be lifted although its conscious stand satisfied that there has been violations of citizens" right to life and liberty as adumbrated under Article 21 of the Constitution of India ?

"Term "life" used in Article 21 of the Constitution of India has a wide and far

reaching concept. It includes livelihood and so many other facets thereof. "Life" as observed by the Field, J., in *Munn v. Illinois* (1877) 94 US 113 means something more than mere animal existence and the inhabitation against the deprivation of life extends to all those limits and faculties by which life is enjoyed."

2. Heard learned advocates Mrs. Sangeeta Pahwa, Mr. Gautam Joshi, Mr. Jayant P. Bhatt, Mr. Kamlesh Mehta, Mr. B.S. Brambhatt appearing on behalf of the petitioners in the respective petitions and learned advocate Mr. P.K. Parekh on behalf of the respondent - Gondal Municipality, so also, learned AGP Mr. R.V. Desai and learned Government Pleader Mr. A.D. Oza for respondent State Government Authorities.

3. Against this group of petitions, the respondent Gondal Municipality has filed Caveat. Thereafter, this Court has issued notice to all the respondents. On behalf of the respondent - Gondal Municipality, affidavit-in- reply has been filed and a copy thereof has been served on the other side.

4. In this group of petitions, the petitions have challenged the order of termination dated 3rd June, 2003 passed by the Chief Officer, Gondal. Before issuance of the termination order, show cause notice dated 10th March, 2003 has been served to the petitioners and the reply was submitted by the petitioners and thereafter, personal hearing was given by the Chief Officer, Gondal Municipality to the petitioner. Thereafter, the Chief Officer, Gondal Municipality come to the conclusion that appointment of the petitioners is irregular and considering the order passed by the Regional Director of the Municipalities dated 10th July, 2001, it has been decided by the Chief Officer, Gondal Municipality to terminate services of the petitioner considering Rule 33 of the B.C.S.R.. According to the Municipality, one month notice is necessary but instead of one month notice, notice of mere 10 days was given and wages of 20 days paid to the petitioners in cash to the petitioner and service of the petitioners came to be terminated with effect from 12th June, 2003 and therefore, this is the order under challenge in this group of petitions.

5. In view of above, some factual background of the case requires to be referred. Initially, all the petitioners were appointed as daily wager and they were working as the Labourers, Peons, Clerks in various departments of the respondent Gondal Municipality. Thereafter, each petitioner came to be appointed on probation since record of the petitioners were clean and without any charge. However, on date 10th July, 2001, the Regional Director of the Municipalities directed the respondent Municipality to dispense with the services of the petitioners without giving any opportunity of hearing to the petitioners. Aggrieved by the aforesaid order, the petitioners preferred Special Civil Application No. 678 / 2002 which came to be dismissed on the ground the same being premature and the on the basis of the statement made by the learned Advocate for the respondents that each individual employee would be given opportunity of hearing to represent their case. However, it is case of the petitioners that without complying with the

order passed by this Court on the basis of the statement made before this Court by the learned advocate for the respondent Municipality, the respondent municipality has informed the petitioners that their services would be terminated with effect from 16th April, 2002 without giving any opportunity of hearing and without giving opportunity to represent their case. Being aggrieved of the aforesaid decision of the respondent Municipality, the petitioners again filed writ petition being Special Civil Application No. 4115 / 2002 before this Court. This Court, while dealing with aforesaid petition, directed the respondents to give opportunity of hearing to the petitioners and also directed that if any adverse order is passed against the petitioners, the respondent Municipality may provide in the order itself that the order in question will come into effect from a particular date after expiry of seven days from the date of the order. Thereafter, the petitioners were given notice individually which came to be served on the petitioners on date 10th March, 2003, against which, the petitioners have individually filed reply before the Chief Officer, Gondal Municipality and ultimately, the order of termination dated 3rd June, 2003 came to be passed against the petitioners individually, with effect from 12th June, 2003, which is under challenge before this Court.

6. Considering the prayer made in the petitions, it becomes clear that in none of the petition except Special Civil Application No. 7948 / 2003, the petitioners have not challenged the order passed by the Regional Director of Municipalities dated 10th July, 2001 but the challenge involved in all these petitions, is only, against the order of termination dated 3rd June, 2003.

7. It is pertinent to note one aspect that at this juncture, learned AGP Mr. R.V. Desai and learned GP Mr. A.D. Oza request before this Court for grant of time to file reply because they have parawise remarks with them and the concerned the Deputy Mamlatdar has also remained personally present before this Court for passing requisite instructions to the Government Pleaders. Similarly, learned advocate Mr. P.K. Parekh also requests for some time to file additional reply over and above the reply already filed on behalf of the respondent Gondal Municipality. However, learned advocate Mr. P.K. Parekh and the learned AGP Mr. R.V. Desai for the respondent State contended that if at this juncture, this Court is inclined to pass any interim order adverse to the respondents authorities, in that case, they may be heard and permitted to advance their submissions to make out their case against grant of such interim relief. Accordingly, both the learned Advocates have made their submissions against interim relief. However, learned advocate Mr. Parekh has also made a request that all these matters were placed before the Bench [ Coram : Justice K.A. Puj, J.] which passed the order observing that "It is made clear that this Court has not granted any interim relief nor extended any relief" and thereafter, the order of termination has been made effective by respondent Gondal Municipality. He also submitted that some observations made by this Court [Coram : Justice P.B. Majmudar, J.]. He, however, while pointing out the financial liabilities of the Gondal Municipality, submitted that the respondent Municipality is required to pay Rs. 2.00 crores to

the Gujarat Electricity Board, Rs. 66 lakhs towards provident fund and thirdly they have been receiving demands from the employees for implementation of 5th Pay Commission and lastly, pointed out that the employees presently working with Gondal Municipality have proceeded on strike with effect from 17th July, 2003 and not allowing the Officers to work. Except the submissions referred above, no other submissions made by the learned advocate Mr. P.K. Parekh on behalf of the respondent - Gondal Municipality.

8. However, considering submissions made by the learned advocate Mr. P.K. Parekh and the learned AGP Mr. R.V. Desai, at this stage, this Court is inclined to consider the case of the petitioners on its maintainability of this group of petitions and if the finding of this Court turns into affirmative, then whether the petitioners are entitled to any interim relief at this stage or not.

9. It may be appreciated that these issues concerned right now, can be examined by this Court, while considering the prima facie case and the materials produced on record before this Court at this stage. Looking to the order of termination itself impugned in these petitions, that contains four paragraphs. The first paragraph of the impugned order suggests that notice was issued seeking explanation and personal hearing was given. The second para reflects that after considering the notice, explanation and personal hearing and the various documents and resolutions, Circulars, B.C.S.R. Recruitment and Promotion Rules for Gondal Municipality, so also, the order of Director of Municipality and considering the written as well as oral submissions made by the petitioner, as also, the arguments and representations made by the employees concerned, the Chief Officer of Gondal Municipality come to the conclusion that the petitioners' recruitment is irregular. It may be noted that except that no other reason is given by the Chief Officer of the respondent Municipality that on what basis and material, such conclusion is arrived at by the Chief Officer of the respondent Municipality to the effect that these appointments found to be irregular and as such, no discussion in the impugned order and therefore, prima facie, it can be said to be an unreasoned and non-speaking order inasmuch as the contentions raised by the petitioners in reply to the show cause notice do not seem to have been considered in its true spirit by the Chief Officer while passing the impugned order. In sum and substance, prima facie this Court is satisfied that the Chief Officer of the respondent Municipality has remained silent, not acted in the spirit of the directions issued by this Court and passed a non-speaking and unreasoned order. The third para of the impugned order reflects that this order of termination is passed based on the instructions issued by the Regional Director of Municipality dated 10th July, 2001 wherein the Regional Director of Municipality directed the respondent Gondal Municipality to the effect that the employees whose recruitment is illegal and irregular, their services are required to be terminated and therefore, on the basis of the directions issued by the Regional Director of Municipality, termination orders came to be passed against the employees. The last fourth para of the impugned order suggests that the Chief Officer has considered the provisions of Rule 33 of the B.C.S.R. in cases of the petitioners

and as a result thereof, the petitioners' services came to be terminated while giving notice for ten days and twenty days wages in cash.

10. Now, if the reliance placed by the Chief Officer, Gondal Municipality on the directions issued by the Regional Director of the Municipality, Rajkot vide his order dated 10th July, 2001, in third para of impugned termination order dated 3rd June, 2003 is taken into consideration, wherefrom it transpires that the Regional Director of the Municipality while exercising the powers u/s 260 of the Gujarat Municipalities Act, 1963 has come to the conclusion that Gondal Municipality has illegal recruitment in irregular manner and therefore, 111 posts came to be abolished by the Regional Director of the Municipalities but in turn, directed that while implementing such directions, the procedure laid down under the law may be following while terminating services of said 111 employees. This is the first limb of the order passed by the Director of Municipality and the second limb is that, it was further directed to the respondent Gondal Municipality just to implement the order in question against those employees who have been recruited by Gondal Municipality illegally and in an irregular manner and their services required to be terminated after due procedure of law, meaning thereby, it is kept open and the discretion was left to the respondent Gondal Municipality to terminate services of the employees and even in case, if Gondal Municipality decides to terminate services of those employees, the prescribed procedure under the law, ought to be following while terminating the services. Thus, the contents of the second para of the impugned order does not make it clear, the petitioners are the employees, recruited illegally in an irregular manner and there is no such justification in operating portion even in the order passed by the Regional Director of the Municipality. In other words, there is no clear mandate or directions issued by the Regional Director of the Municipality on respondent Gondal Municipality to terminate services of the employees - the petitioners herein. It is not understood one of the contradictions in the order passed by the Regional Director of the Municipality in para-3[1] wherefrom it clearly transpires that all these 111 employees petitioners have been selected by Gondal Municipality Staff Selection Committee on 7th May, 2001 and on completion of probation, they all have been made permanent with effect from 8th May, 2001. This fact clearly reveals that at the time when the services of the petitioners came to be terminated by the respondent authority, none of the employee was working as daily wager or temporary because they all were made permanent by Gondal Municipality by order dated 7th May, 2001 / 8th May, 2001. Therefore also, considering the contents of the last para of the termination order, Rule 33 of the B.C.S.R. apparently would not have been applicable in the case of the petitioners, as it applies only to temporary employee. Thus, prima facie, it also reveals that legal procedure which required to be followed for terminating services of the employees, is not at all followed by the Chief Officer of the respondent Gondal Municipality, nor the Regional Director of the Municipality had directed the Chief Officer of Gondal Municipality for not following the due procedure of law while terminating the services of the petitioners. Even in the

third para of the termination order, there is no clear mandate from the Regional Director on the Municipality to terminate the services of the petitioners. Whereas, considering the contents which mean as the reasons given by the Chief Officer, that also can be said to be unreasoned and non speaking order after calling the explanation from the petitioners. There is some purpose to follow the principles of natural justice. It is not merely useless formality which required to be followed by Respondent Gondal Municipality. In substances and reality, an effective opportunity of hearing requires to consider all the contentions or representations of the petitioners raised by the petitioner in response to the show cause notice while dealing with the fact that whether the representation or contentions raised by the employees petitioners are correct or not and if not correct, on what ground, and some detail reasoned order just to satisfy that the order has been passed with application of mind and the order should be reasoned and speaking one. In absence of such ingredients, apparently and prima facie, the order impugned seems to have passed without any application of mind in respect of the contentions raised by the petitioners in response to the show cause notice served by the respondent Gondal Municipality on the petitioners.

11. Now, this Court would like to refer the vehement arguments made by the learned AGP Mr. R.V. Desai for the respondent - State Authorities. Learned AGP Mr. Desai vehemently urged before this Court to the extent that in the larger interest of the public, the Regional Director of the Municipality has passed the order on date 10th July, 2001 while exercising the powers u/s 260 of the Gujarat Municipality Act considering such illegal and irregular appointment which is ultimately a burden upon the Government and since the Government is facing financial constraints and that is how, such persons required to be terminated from service by respondent Gondal Municipality and rightly done so. To ascertain the vehemence expressed by the learned AGP Mr. R.V. Desai, this Court has put certain following query to the learned AGP Mr. Desai in presence of the Officer representing the Regional Director of the Municipality. The first query put by this Court to the learned AGP, How many posts including the post of the daily wagers, have been sanctioned by the office of the Regional Director of Municipality in respect of the set up of respondent Gondal Municipality for the period from 1985 upto the date ? No answer is given either by the learned AGP Mr. Desai, nor even by the responsible representative of the Regional Director of the Municipality, Rajkot. The second query put by this Court that how much is the increase in the population of respondent Gondal City and Municipality as a whole in last more than 18 years and whether, it requires any additional hands to meet with the requirement in the larger interest of the public. However, no answer is given by the learned AGP Mr. Desai, nor even by the officer present in the Court room assisting Mr. Desai. The third query raised by the Court that how much financial burden shared by the respondent Government for these 111 employees petitioners herein towards their salaries and other service benefits and what is quantum of grant given by the Government to the respondent Gondal Municipality for these petitioners during last 20 years ? No answer is given even

to this query.

12. These hard realities, require to be compared with the vehemence expressed by the learned AGP Mr. Desai on behalf of the State. It is clear that as such no burden has been born by the State Government by giving grant to Gondal Municipality in respect of these employees who are said to have been recruited beyond approved set up of the Municipality. Naturally, that burden has been born by Gondal Municipality by paying salaries and other benefits to such employees. Learned AGP Mr. R.V. Desai has placed reliance on a decision of this Court [ Coram : Justice M.S. Shah, J. ] in case of GUJARAT PRADESH MUNICIPALITY KARMACHARI MAHA SANGH V. STATE OF GUJARAT AND OTHERS reported in 2003 [1] G.L.H. 475. With all respect, it is stated that there is no dispute in the ratio decided by this Court. But what is important is, whether the power has been rightly and properly exercised, in reasonable time, by the Director of Municipality or not ? This being the question of fact, requires to be examined on the basis of the impugned order of termination passed by respondent Gondal Municipality. Therefore, according to my opinion, the question which has been raised in this group of petitions requires consideration. Because the challenge centers in this group of petitions against the termination order passed on the petitioners who have put in service of more than 15-20 years employed in permanent services of Gondal Municipality after due selection procedure conducted by the Gondal Municipality Selection Committee, meaning thereby, after following due process of law but now only in the guise of some directions of the Regional Director of the Municipality, Rajkot, the appointments of these employees petitioners are said to be illegal and irregular appointments and that is how, after number of litigation, termination order has been passed by Gondal Municipality.

13. However, learned advocate Mr. P.K. Parekh has relied upon the order passed by this Court [ Coram : Justice K.A. Puj, J.] on date 12.6.2003 which is quoted as under :

"After hearing Mrs. Pahwa, the learned advocate appearing for the petitioners in Special Civil Application No. 7886 of 2003, a request was made by Mrs. Pahwa and other advocates who are appearing in similar matters which are listed today for adjourning the matter to 17th June, 2003 as they are not fully equipped with the authorities and other relevant materials. Hence, adjourned to 17th June, 2003. However, it is made clear that this Court has not granted any interim relief nor extended any relief."

14. Therefore, learned advocate Mr. Parekh for the respondent Gondal Municipality submits that earlier on 12th June, 2003, this Court has made it clear that this Court has not granted any interim relief nor extended any relief and thus, this Court has not passed any interim order. The reason given by this Court on 12th June, 2003 that because of some difficulty with the petitioners' advocates, request was made to adjourn the matters on 17th June, 2003 since they were not fully equipped with the authorities and other relevant materials.

Considering the request made by the learned advocates of the petitioners, the matters adjourned to 17th June, 2003 and that time, this Court has clarified that there is no interim relief nor any relief is extended. Therefore, the observations and order passed by this Court on date 12.6.2003 does not mean that the matters came to an end at the stage of granting of adjournment on 12th June, 2003. If the matters had concluded on 12th June, 2003 as per interpretation made by the learned advocate Mr. Parekh, then, there is no necessity to hear these matters and examination of the issues involved therein by this Court today. It may be noted that this group of matters are very much listed before this Court for further hearing on admission at the stage of grant of interim relief meaning thereby, that all the matters are still at large open before this Court on admission stage and interim relief.

15. The whole defence of the Gondal municipality is that they have acted on the basis of the directions issued by the Regional Director of Municipalities, Rajkot by his order dated 10th July, 2001. The powers which have been exercised by the Director of Municipalities Rajkot u/s 260 of the Gujarat Municipalities Act, 1963 which is giving powers in case, if, in the opinion of the Director, the number of persons who are employed by a municipality as officers or servants, or whom a municipality proposes to employ or the remuneration assigned by the municipality to those persons or to any particular person is excessive the municipality shall, on the requirement of the Director reduce the number of the said persons or the remuneration of the said person or persons. Thus, the Regional Director of Municipalities, Rajkot has, in exercise of these powers u/s 260 of the Gujarat Municipalities Act, 1963, issued the letter dated 10th July, 2001 to the Gondal Municipality. Now, if the proviso to the said section 260 of the Act is taken into consideration, it provides that the Municipality may appeal against any such requirement to the State Government whose decision shall be conclusive. Thus, the proviso to the said section 260 of the Act provides appeal against such decision if it is aggrieved by such order of the Director u/s 260 of the said Act.

Meaning thereby, that these powers are required to be exercised by the Director a moment such contingency arises as specified in the said section. There is no limitation prescribed by the statutory provisions that these powers are required to be exercised within the particular time from the date on which such contingency arose in the Municipality. Therefore, when the Gondal Municipality has pointed out that these petitioners initially appointed prior to 15 to 20 years as a daily wagers and continued them, as such, for more than 15 to 20 years and meanwhile all the petitioners are confirmed by the Staff Selection Committee of the Gondal Municipality, till then, the Director of Municipalities has remained silent. These facts must have been noticed or must be within the knowledge of the Regional Director of Municipalities, Rajkot. However, no action, whatever being irregular appointment of the petitioners, has been initiated from the inception of their appointment as a daily wagers. Why the action has not been taken immediately ? Why the powers have not been exercised immediately or

within the reasonable period by the Regional Director of Municipalities ? Normally statutory powers are required to be exercised within the reasonable period. The law on this point is settled. The reasons behind it is that not to take any action or to exercise the powers within the reasonable period, then, meanwhile, affected parties would have materially altered their position and irreparable injury would be caused to them if the actions are taken at the belated stage, after unreasonable period. That is why the law provides that such an action has to be taken immediately or within the reasonable period.

16. In the facts of this case, it prima facie appears that the Regional Director of Municipalities, Rajkot has not exercised such powers u/s 260 of the Gujarat Municipalities Act, 1963 immediately or within the reasonable period. If the appointment of the petitioners were made before about fifteen to twenty years without following any procedure, contrary to the Government Circular and Resolution and without prior permission of the Finance Department, then, why immediate action has not been taken by the Regional Director of Municipalities who is the statutory authority as these facts were open and known to the said statutory authority. Therefore, not to exercise such statutory powers within the reasonable period and after lapse of 15 to 20 years, during the interim period, whole scenario has been changed, the employee who was appointed as a daily wager and thereafter was confirmed having some legitimate expectation from the employer namely statutory authority that now he will remain continue in service as a permanent employee till the date of his superannuation. In such circumstances, such statutory powers are required to be exercised within the reasonable period as per the view taken by this Court in case of RANCHHODBHAI LALLUBHAI PATEL V. STATE OF GUJARAT & ORS. reported in 1984 (2) GLR 1225 wherein it has been observed by this court in para 4 of the said decision as under:

"But the said statutory powers like any other statutory powers have to be exercised within reasonable time. If that concept is kept out, any statutory powers would be exercised after a number of years or decades. In the meantime, the affected parties would have materially altered their position and irreparable injury would be caused to them and it would be impossible to put the clock back. If such powers can be exercised after unduly long delay."

In the same decision, it has also been observed by this court as under:

"The exercise of power has to be justified on the facts of each case and if on the facts of a given case, it is found that the exercise of power after lapse of sufficiently long period between the impugned transaction and date of exercise of that power would be arbitrary and unreasonable due to the fact that in the meanwhile parties had changed their position irremediably oblivious of any possibility of future action by the authorities functioning under the Act or on account of prolonged inaction on the part of these authorities and any attempt to put the clock back, would result in irreparable injury to the concerned parties, then such exercise has to be treated to be unjust and illegal. "

17. It is also necessary to consider that any administrative action like a termination in the facts of the present case by the Gondal Municipality must be a fair, reasonable, just and proper. If the administrative action or exercise of the discretion by the administrative authority to terminate or not to terminate the service of employee, such discretion must be exercised within reasonable time without being influenced by the irrelevant considerations and not to relied upon the discretion of another body, otherwise, such action is ultravires. If the administrative authority would act under the dictates of another body, then, the authority must genuinely address itself to the matter whether his action or decision to terminate the services of employees is proper or not. In light of the facts of the present case, all the employees were working since last about fifteen to twenty years and they were made permanent employees by the staff selection committee of the Gondal Municipality and the Regional Director of Municipalities has exercised his powers u/s 260 of the Act after the period of more than twenty years from the date of initial appointment of the petitioners. As stated earlier, proviso to section 260 of the said Act provides that the Municipality may appeal against any such requirement to the State Government whose decision shall be conclusive. Thus, if the decision of the Regional Director of Municipalities is creating hardship, inconvenience and irreparable loss and/or injury to the persons including the administration of the Gondal Municipality and the ultimate sufferer is the public at large in Gondal Municipality, then, as per the proviso to the said section, the Municipality can approach the State Government against the order of the Regional Director of Municipalities. Why the Municipality has not approached the State Government when there was no fault on the part of any employees because it is not the case of even the Municipality that all the petitioners have received the order of appointment by suppressing some material, on misrepresentation and on fraud. It was a decision of the Gondal Municipality to appoint the petitioners initially as a daily wagers as and when the requirement arise and they remained in continuous service for a period of about fifteen to twenty years and thereafter, they were made permanent by the Gondal Municipality by method of selection and all the expenses in respect of the petitioners in respect of their salary and other service benefits have been borne by the Municipalities. If such appointments are irregular for want of proper procedure, then, it can be regularized by the State Government while protecting the services of the petitioners and to direct the Gondal Municipality to follow the procedure and to grant further set up means number of vacancy and to regularize the services of each petitioners. No such positive stand has been taken by the Gondal Municipality or the statutory authority which has resulted into termination of 111 employees who are the petitioners before this court without there being any fault on their part. It is not the case of the Gondal Municipality that the petitioners are not qualified for being appointed on the post on which they were initially appointed and subsequently made permanent. In such circumstances, mere technical approach and ignorance of the hard realities of life amounts to arbitrary exercise of the powers with an ulterior motive only because of the change of the ruling party in the Gondal Municipality. Relevant

observations made by the Hon"ble Apex Court in the matter of Indian Railway Construction CO. Ltd. v. Ajaykumar reported in 2003 Lab IC 1440 para 13 are reproduced as under:

"13. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi legislative and quasi judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. (See State of U.P. and Others Vs. Renusagar Power Co. and Others, . At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285 287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories (1) failure to exercise a discretion and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body, it acts ultra vires. "

Similarly, the Hon"ble Apex Court has examined this question as to what is the scope of judicial review when the administrative action is under challenge. In case of D.K. Yadav Vs. J.M.A. Industries Ltd., it has been observed by the Hon"ble Apex Court in para 10, 11, 12, 13 and 14 as under:

"10. In State of W.B. v. Anwar Ali Sarkar per majority, a seven Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India, another Bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be

divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

11. The law must therefore be now taken to be well settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So, it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi judicial inquiry and not to administrative inquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

13. In *Delhi Transport Corporation v. DTC Mazdoor Congress* this Court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21 etc. All matters

relating to employment include the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of the Constitution or the rules made under proviso to Article 309 of the Constitution or statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice are an integral part of the guarantee of equality assured by Article 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just and fair and reasonable procedure is an essential inbuilt of natural justice. Article 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the effect thereof is the end result.

14. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In DTC v. DTC Mazdoor Congress the Constitution Bench per majority held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employees was set aside. "

18. When apparently this court feels with prima facie decision to terminate the services of 111 employees after a period of fifteen to twenty years merely having a direction dated 10th July, 2001 from the Regional Director of Municipalities, Rajkot are apparently found irrational, arbitrary and contrary to the principles of natural justice and even contrary to the provisions of the Bombay Civil Service Rules. In such circumstances, when the termination orders which are under challenge, mere issuance of "Rule" would be giving mere hope to the petitioners that this court will examine the legality, validity and propriety of the action of termination as and when the court will have some time and meanwhile they should have to remain without job, without work, without wages and to starve during such intervening period with their family. Therefore, when this court is having prima facie opinion that the basic requirements have not been followed by the Gondal Municipality and the Regional Director has exercised the powers u/s

260 of the Act after unreasonable delay which has resulted in to termination of the services of the petitioner, then, this Court cannot shut its eyes or shirk its responsibility to protect the livelihood and existence of such 111 employees and their family members. In such circumstances, sheer legalistic approach will create havoc in the life of the petitioners. In such circumstances, it is the duty of this court to protect the legal and constitutional right of the petitioners while exercising the powers under Article 226 of the Constitution of India on the basis of the prima facie considerations of the facts of this case in light of the settled law in reference to the facts of this case to prevent injustice which has been caused to the petitioners by the respondents, statutory authority. In such circumstances, what is the role of the judiciary, that aspect has been examined by the Hon"ble apex court in case of RUPA ASHOK HURRA V. ASHOK HURRA reported in 2002(3) GLR 2138. The apex court has observed that

"The role of judiciary to merely interpret and declare the law was the concept of by gone age. It is no more open to debate as it is fairly settled that the Court can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years, there is a discernible shift in the approach of the final Courts in favour of rendering justice on the facts presented before them, without abrogating but bypassing the principles of finality of the judgment."

It has also been observed as under :

"Readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic, it has been experience" (Oliver Wendell Holmes : The Common Law), and again when he declared in another study (Oliver Wendell Holmes : Common Carriers and the Common Law 1943 (9) Curr LT 387 that "the law is forever adopting new principles from life at end", and "sloughing off" old ones at the other."

Therefore, in view of the above discussion and considering the facts of the present case, I am of the opinion that prima facie, there is unreasonable delay on the part of the Regional Director of Municipalities Rajkot in exercising the powers u/s 260 of the Gujarat Municipalities Act as the petitioners were appointed before about fifteen to twenty years as daily wagers and were subsequently made permanent by the Gondal Municipality and thereafter, the action has been taken u/s 260 of the Act at this belated stage. Such an action has to be taken and such powers has to be exercised within reasonable period which has not been done in this case.

19. Therefore, in view of above discussion, according to my opinion, the questions and controversy involved in this group of petitions requires to be examined by this Court and hence, deserves to be entertained. In the aforesaid

background, considering the facts of this group of petitions and the affidavit-in-reply and the condition of the employees who were working with the respondent Gondal Municipality since more than 15-20 years, now, left into lurch to face litigation of challenging the termination order, in my opinion, this Court requires to interfere on the issue of interim relief. Therefore, in these circumstances, if this Court merely issue Rule in this group of matters, all these matter will remain pending before this Court for quite long time looking to the backlog of number of matters pending before this Court awaiting final hearing as per the submissions of the learned advocates for the petitioners. Another possibility which could not be ignored at this stage that if this Court is not considering the grant of interim relief at this juncture and even after a lapse of five ten years, the order of termination is set aside, then also the State Authority shall have to bear huge financial loss by paying the arrears of salaries to each petitioner during the course of passage of such time and it may also happen that the respondent Municipality will not be able to pay such huge amount if the financial status further deteriorates more deepen and this possibility could not be ignored in the event if the termination orders impugned would be set aside by this Court even after lapse of few number of years. On the other hand, the condition of the employees will also deteriorate without regular salaries and without any work and wages during such future passage of time and as a result thereof, they may not be able to maintain their families. This does not end here. In the event of mere admission of these matters by issuing Rule, not only the petitioners and their families will have to suffer lot, but the children and their education will suffer adversely and the petitioners will be left with many other problems so on and so forth, as well as responsibility and down trend in his status in the society. This makes a lot of difference in the individual capacity. If a person is in service, in the even to need, the neighbour will not hasten in giving Rs. 100/- but if not in service, even the neighbour will turn up their face for offering Rs. 100/- to a person not in service and this is very obvious that if a person is in service and / or employment, he will certainly get help and assistance from the society, otherwise, will certainly find it extremely difficult to survive in the society in these hard days. Now, if the reverse situation is anticipated in favour of the respondent municipality, it can be assumed the respondent municipality shall have to pay salaries to the terminated employees against the work that may be discharged by the employees for the respondent municipality. Ultimately, the respondent municipality would be paying the salaries to the petitioners against the work done by the employees. But to decide and choose the best course available to this Court at this stage, the later option is better considering and anticipating the future passage of time uptill final hearing in the matter. It may also be appreciated that when this Court, prima facie, found that the order of termination dated 3rd June, 2003 effective from 12th June, 2003 is bad and illegal on all three counts discussed above and obviously, against the spirit of principles of natural justice and therefore, in such situation, considering the prima facie case in favour of the petitioners, as also, anticipating the situation of the employees without job in future time and on the other hand, the situation of

the respondent municipality and the other social aspects like education of the children of the petitioners, their social status and liability and responsibility in the society as a whole in absence of the wages and such mental agony and the financial liability to fight and contest the litigations, these can be said to be irreparable loss which cannot be compensated in terms of money, if in case, this Court cannot grant any interim relief in favour of the petitioners. Moreover, on the aspect of balance of convenience also much weigh in favour of the petitioners. Therefore, considering the fact that only one month and eleven days have elapsed after effecting the order of termination on the petitioners and there is no much delay by now, for grant of interim relief in favour of the petitioners. Thus, in view of above discussion and keeping in mind the interest of both these parties, if the employees petitioners are ordered to be taken back in service and the respondents municipality is directed to pay them salaries against the work till final decision in the matter, would certainly meet the ends of justice at this stage of admission of the matters and grant of interim relief upto the stage of final hearing.

20. However, request made by the learned advocate Mr. P.K. Parekh for grant of some time on the ground of filing of additional affidavit, is not considered only because, reply is already filed by the respondent Municipality and that is sufficient for consideration at this stage of interim relief and admission and hence, the same is rejected. Similarly, request made by the learned AGP Mr. Desai for grant of time for filing of the reply is also rejected on the ground that the State Government is a formal party in all these petitions inasmuch as the order passed by the Regional Director of Municipality, Rajkot dated 10th July, 2001 is not under direct challenge in this group of petitions except in one of the matter. Moreover, as discussed above, when the State Government is not directly sharing the financial liability of these employees in the respondent Municipality, in my opinion, the State is not directly affected party but the real contesting party is the respondent Gondal Municipality and therefore also, considering these aspects, the request made by the learned AGP Mr. Desai for grant of time, is not accepted by this Court at this stage. However, it is observed that since this Court is inclined to admit these matters, it is always open for the respondents to file reply if they so desirous to do so.

21. It is also contention raised by the learned advocate Mr. Parekh that the respondent Municipality is required to pay Rs. 2.00 crores to the Gujarat Electricity Board, Rs. 66 lakhs towards provident fund and thirdly they have been receiving demands from the employees for implementation of 5th Pay Commission and lastly, pointed out that the employees presently working with Gondal Municipality have proceeded on strike with effect from 17th July, 2003 and not allowing the Officers to work, in my opinion irrelevant at this stage. Because by now upto 12th June, 2003 all the petitioners were working with the respondent municipality and survived by now even with all such responsibility of the respondent municipality. Moreover, this has not arisen all of sudden. It is continuous process and as a result there, it has grown up to this stage. This

Court hopes that the respondent Municipality with the help and assistance of these employees petitioners and with their best ability and sincere work efforts, would certainly overcome this situation. Needless to observe here, that all these problems arose on account of abolition of Octroi and after abolition of octroi, the municipality required to make the payment towards salaries of these employees from their own funds and due to financial constraints being faced by the State as submitted by the learned AGP Mr. Desai, the Municipalities are not being financially assisted by the State for the expenses on these heads.

22. Therefore, it is necessary to keep in mind the predicament of these petitioners whose services came to be terminated in the result of having difference of opinion between two State Authorities and not to follow certain guidelines by the respondent municipality. It is not case of the respondent municipality that any of the petitioners has committed any misconduct relating to dishonesty and misappropriation of funds. There is no indiscipline alleged against the petitioners but ultimately, the petitioners are the sufferers because of inaction on the part of the Gondal Municipality while not following certain safeguards before recruitment and confirming the petitioners in service. Therefore, the petitioners can be said to be the victims of inaction on the part of both the State Authorities viz. Gondal Municipality and the Regional Director of Municipality, Rajkot because the Gondal Municipality has not obtained any prior permission of Finance Department nor obtained any sanction from the Regional Director of Municipality for the additional set up in view of the hard reality of increase population in respondent municipality in last 25 years. Therefore, without any lapse or any inaction on the part of the petitioners, they made to suffer in the guise of non compliance of certain administrative instructions and circulars. It is also pertinent to note that the petitioners were working with the respondent municipality since last 15 - 20 years and in the reply filed by the respondent municipality, there is no mention to the fact that the performance of the petitioner were not satisfactory, meaning thereby, inspite of all satisfactory work and confirmation after probation period, now on account of inaction and lethargic approach of the respondent Gondal Municipality and the Regional Director of the Municipality, poor employees are made victims who have not committed any mistake or fault in the entire service record. This is also one of the considerations for grant of the interim relief in favour of the petitioners. Ultimately, it is the spirit and not the form of law that keeps justice alive.

23. In view of above discussion, this Court is inclined to entertain and admit this group of petitions and this being the fit case for grant of interim relief, hence the following order;

Rule, returnable in 3rd week of January, 2004.

By way of interim order, it is directed to the respondents to suspend the operation of the order of termination order and not to implement the order of termination dated 3rd June, 2003 against the petitioners of this group of petitions and further directed to reinstate each of the petitioners in service within

three weeks from the date of receiving the copy of this order.

It is open for the Regional Director of Municipalities Rajkot as well as the State Government to consider this question as to on which date, the sanction or permission was given to the Gondal Municipality for necessary staff within set up or on the last date on which the said set up has been granted in light of the population of the Gondal City and further to consider that the population which has been increased in Gondal City during the intervening period and how many further posts in entire Gondal Municipal limits is required now and also to consider the observations made by this court and to take appropriate decision without being influenced by the pendency of this petition before this court.

24. This Court makes it clear that whatever observations made in the present order, are based on prima facie. At the time of final hearing, this Court will examine the merits of the matter independently without being influenced by this interim order.

Direct Service permitted.