

**(1981) 04 GUJ CK 0010**  
**In the Gujarat High Court**

Indravadav Occhavlal Modi

APPELLANT

Vs

Vadodara Municipal Corporation and Others

RESPONDENT

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**Date of Decision :** 29-04-1981

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 452, 452  
Constitution of India, 1950 — Article 100, 226

**Citation :** (1982) 1 GLR 88

**Hon'ble Judges :** N.H. Bhatt, J

**Bench :** Single Bench

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## Judgement

N.H. Bhatt, J.—This is a petition under Article 226 of the Constitution of India filed by the two Councillors of the Vadodara Municipal Corporation impleading the remaining 58 Councillors as respondents and also the Vadodara Municipal Corporation, its Commissioner, its Ex-Mayor, continuing as Mayor because of the non-election of the new Mayor, its Ex-Deputy Mayor, the Secretary of the Corporation and the State of Gujarat as other respondents. This petition presents a unique situation in the sense that no reported case presents the peculiar factual aspects which we come across in this case.

2. In order to comprehendfully the controversy that had been rigorously raged before me, certain facts require to be stated. The respondent No. 1 Vadodara Municipal Corporation is a Corporation constituted under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 (the "Act", for short) The term of the Councillors of this Corporation elected in the year 1975 had become over and so fresh elections were held on January 25, 1981 and 60 accredited representatives of the people, the voters of Baroda, were declared elected. The two petitioners and other respondents were duly notified as having been duly elected as per the notification in the Gazette dated 30th January 1981. The first meeting of the Councillors was convened by the Commissioner of the Corporation as required u/s 19 of the Act. As Section 19 of the Act requires, at the first meeting after general elections, the Councillors shall elect one of their members to be the Mayor and another to be their Deputy Mayor. These two office bearers

are to be elected in each succeeding year. As per Section 20(2) of the Act, the Corporation has to "appoint twelve persons out of its own body to be members of the Standing Committee." So the first meeting of the elected Councillors was convened by the Commissioner of the Corporation on 10th February 1981 and the Ex-Mayor, the respondent No. 3 herein, presided over that meeting held at 5 p.m. The Act in question does not recognise political parties as such to contest such municipal elections unlike the provisions of the Representation of People Act, ostensibly because the Legislature did not envisage or anticipate the political wrangle over these offices earmarked exclusively for social services. The fact of life, however, is that political parties jump into the arena, perhaps because the posts of such corporate bodies rightly or wrongly assume the character of power pockets having their sway or influence in the final balance of political power in the general elections. Political parties, as a matter of fact, nominate their members to contest elections. Out of those 60 fortunate citizens elected by the voters of Baroda, 30 were candidates sponsored by the Congress (I) Party which admittedly is presently ruling at the Gujarat State level. The other 30 members were sponsored by the other political parties. The Janata Party had 22 candidates, a local unit known as Vikas Manch had six candidates, CPI (M) had one candidate and two were independents. As against the homogeneous group of 30 Congress (I) sponsored candidates, the remainder of the Councillors formed a unified block and when the meeting was convened on 10th February 1981, the Congress (I) candidates sponsored the name of one Dr. Jatinbhai Venibhai Modi as their candidate for Mayorship whereas the other group of 30 Councillors proposed the name of one Mr Hasmukhlal Dhanjibhai Zaveri, these two being respectively the respondents Nos. 23 and 19. The Presiding Authority, namely, the respondent No. 3, put these two candidates' names to vote and each of the two candidates got 30 votes each as it appears to have been previously decided by their respective groups. The Presiding Authority then put the situation to the Councillors and they unanimously agreed to adjourn the meeting of 13th February 1981. All this was over just in 10 minutes. This adjournment was brought about as per the provisions of Clause (m) of Rule I in Chapter 2 of Schedule A which schedule contains various rules framed u/s 453 of the Act. The proceedings of that meeting are to be found at Annexure "A", page 35 of the petition.

3. On 13th February 1981, the Councillors reassembled under the Presiding Authority of the respondent No. 3, the outgoing Mayor, who had not sought to be reelected but who could continue in the office by virtue of Section 19(2) of the Act. The Mayor opened the meeting with exhortation to the members of both the groups to hammer out some solution because on the earlier occasion, namely, on 10th February 1981, two prospective candidates for Mayorship had procured equal number of votes, namely, 30 each. As many as 12 out of the elected Councillors also addressed the meeting and then there prevailed a pandemonium in the hall, as the Commissioner's report at pages 71, 72 and 73 shows. Dr. Jatin Modi, one of the two aspirants for the post of a Mayor and one Mr. Jayantibhai

Ravjibhai Patel, the respondent No. 5. the Chairman of the (sic) Standing Committee elected by the earlier body were busy with finding out some solution. As is usual with our people, the spectators gallery also was full to capacity with heterogeneous elements present there and they were shouting slogans suggesting their vociferous views one way or the other. In this situation of pandemonium that was prevailing in the hall, the respondent No. 3, the Presiding Authority, concluded the meeting at 6.30 p.m. It is to be noted that the meeting was convened at 5 p.m. and at 6.30 p.m. the President declared that the proceedings of the meeting stood concluded, (There is a controversy as to whether the Mayor took this decision on his own or whether he did it with the opinion of the Councillors present. Even the Mayor does not say that he had put the subject matter of the alleged closure or termination to vote. All that he says is that he had gathered a sort of a consensus and had, therefore, taken the decision to conclude the meeting or to close the meeting. The petitioners and their supporters in this fray before the Court, including 17 members from the Congress (1) Party support the version of the petitioners that out of desperation and helplessness,, the Presiding Authority, namely, the respondent No. 3 had arbitrarily and unauthorisedly concluded the meeting, almost suddenly. I shall deal with this question in details at the proper stage). The matter rested there and the remaining 17 days of February rolled by; different rumours were running in the atmosphere and the local and the other press were busy giving vent to various views as could be gathered from the press reports annexed to the second affidavit of the respondent No. 3. Those reports are at pages 104 to 111 covering these various dates. In the meantime, the members who were elected on the alleged ticket of the Congress (1) Party probably realised the unhappy and suicidal situation that had developed because of the tie of votes and so on 5th March 1981 a letter was addressed by the Congress (I)-sponsored-candidate for Mayorship, Dr. Jatin Modi, and other 17 members of Congress (1) Party so called, in the body of Councillors newly elected. The said letter was addressed, to the Mayor requesting him to call the requisitioned meeting for the business that was earmarked at the statutory first meeting, namely, the election of the Mayor, the Deputy Mayor and appointment of 12 members of the Standing Committee. This representation is at Annexure "C" and is at page 40.

4. As already stated by me above, the Commissioner of the Corporation had his own assessment of the situation and he had made the report to. the Government in its Panchayat Department setting out his assessment of what had transpired at the two meetings dated 10th February 1981 and 13th February 1981 and his unsuccessful attempts to get the tangle solved by seeking legal opinion of the District Government Pleader and the Corporation's Legal Advisor which was favourable to the view of the Mayor's exercising his so called second or casting vote. The said report inter alia reads as under.

Categorical appeals from both sides (on 13-2-1981) requesting the Mayor to exercise his casting vote, and an assurance that the house would receive in a sporting manner whatever decision he would take, did not make any impression

on the Presiding Authority. Lobbying in small groups in a confused manner went on even while the House was in session in search of a solution. The Mayor suddenly rose in his chair, and declared the proceedings of the house as closed, and rushed to his room.

Thus the historic tie continued unresolved. This has lead to a deadlock and near constitutional break-down in the Municipal Corporation....

Viewing in terms of overall public interest, administrative efficiency and convenience, a Board with a slender majority of one, even if established, will create a climate of all round uncertainty and indecision. Past experience has shown that despite comfortable majority the process of decision taking in a local body like a Municipal Corporation is relatively slow as compared to State Government AS things stand today it is not certain whether a stable majority can be established by any group in the foreseeable future. Any waiting for a political solution arising out of the present political impasse may in the meantime do considerable damage to public interest and to the citizens of Baroda. In broad scenario of uncertainty and confusion following the meeting of 13-2-1981, it is doubtful whether the present Mayor, who is not a member of the present General Board, can continue to remain effective as a Presiding, Authority in subsequent meetings, if held.

(certain expressions are highlighted by me)

5. One significant development, however, had taken place on 16th February 1981 which deserves a special note. A meeting was convened of all the elected Councillors on the 16th February 1981 and it was adjourned to 18th February 1981 and again to 20th February 1981 on which day the budget proposals tabled by the Standing Committee's Chairman, obviously with the assistance of the Commissioner and other officers of the Corporation were passed with one voice. This circumstance in my view, has got colossal importance because it would exhibit an anxiety on the part of the Councillors to see that the day-to-day work of the Corporation is not totally paralysed and that the Corporation does not become a defunct body, resulting into a then legitimate supersession of the elected body.

6. I have already referred to the letter written by Dr. Jatin Modi and other 17 cooperators elected on the Congress (?) ticket. In the mean time, the Government machinery also had its wheels moving and there came to be issued on 13th March 1981 a notice Annexure "B", which is at page 39 of the compilation, communicated to the Commissioner and addressed to the Corporation as a body. The said notice when translated reads as follows:

By the time this notice is being written, there was failure in electing the Mayor or the Deputy Mayor or appointing members to the Standing Committee at the first meeting held after the general elections on 10-2-1981 and adjourned to 13-2-1981 and so the Government presently holds the tentative view that no account of the Corporation, having failed to elect its Mayor or Deputy Mayor and

in appointing its Standing Committee and other committees, is not able to discharge its various obligatory and discretionary duties laid down under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 and therefore as per the powers conferred u/s 452 of the said Act the show cause notice is issued to give in writing the reason why this Baroda Nagarpalika for the city of Baroda should not be superseded. The written reason is to be shown within 15 days from the receipt of this notice.

7. Before the Mayor, there was already pending the requisition of Dr. Jatin Modi and his partyman, 17 in number calling upon the Mayor to convene the first meeting for achieving "three-fold purposes" set out above. Having come to know of this show cause notice issued by the Government, at Annexure "B", the other Councillors had addressed a letter to the Government in connection with the said show-cause notice. By that letter at page 46, these members insisted upon the service of the individual notices on them so that they could effectively give reply to it and they also prayed that the Municipal Commissioner should be directed by the State Government to convene the meeting of the Corporation, that is of its Councillors, to give reply to the said notice. Those members had also addressed a letter to the Municipal Commissioner requesting him to call the meeting of the members of the Corporation so that they acting for the Corporation could give reply to the Government's show cause notice dated 13-3-1981 issued u/s 452 of the Act. Similar letter was addressed to the Mayor and also to the Secretary of the Corporation and then there came to be filed on 25th March 1981 the present petition in which the following prayers are put forth in paragraph 31:

(a) to issue a writ and/or writs or in the nature of Mandamus and/or prohibition and/or any other writ or writs or directions or orders

(b) to set aside the decision of the third Respondent closing or terminating the First meeting of the Vadodara Municipal Corporation on 13th February, 1981;

(c) to direct the Municipal Commissioner, the Mayor of the Vadodara Municipal Corporation and/or its secretary to take immediate steps to recall or assemble the First meeting of the Corporation which has been closed or terminated by the Presiding Authority as mentioned above for the purpose of electing the Mayor, the Deputy Mayor and the members of the Standing Committee and/or to direct them to call a fresh meeting for the said purpose and for the purpose of giving a reply to the Show Cause Notice, if it is found by this Hon'ble Court that the First Meeting of the Corporation cannot be re-convened and to direct the third respondent or the Presiding Authority to exercise a casting vote if such occasion arises;

(d) to direct the aforesaid 3 authorities of the Municipal Corporation to take steps for the election of the Deputy Mayor and the members of the Standing Committee, even if, the Mayor, on account of any cause, cannot be elected;

(e) to direct the State Government to withdraw the Show-cause Notice that it has issued in purported exercise of its powers u/s 452 of the Bombay Provincial

Municipal Corporations Act, 1949 and/or to quash the said notice;

(f) to issue an order, of injunction restraining the State Government from taking action of supersession of the Baroda Municipal Corporation on the basis of the said Notice or on any of the grounds mentioned therein.

(g) to grant to the petitioners such other relief as justice may require and

(h) to allow this petition with costs.

8. The above prayers sought for by the petitioners in this petition can be divided into three groups. The prayer at (b) is for a declaration that the respondent No. 3's decision to close or to conclude or to terminate the first meeting of 13th February 1981 should be set aside as he had no authority at law to do so without putting the matter to vote of the Councillors. The second group of prayers consists of prayers (c) and (d). I have already stated above that the Mayor, the Secretary and the Commissioner were requested to call the requisition meeting of the Corporation for the purpose of electing the Mayor, the Deputy Mayor and appoint the members of the Standing Committee and secondly for the purpose of considering the show cause notice issued by the Government u/s 452 of the Act. In the affidavit filed on behalf of these authorities, namely, the Mayor and the Commissioner, nothing has been stated as to what they did in response to the said demand for requisitioned meetings. It appears that these requisitions were lying with them unattended and when the matter came to this Court on 25th March 1981, they perhaps thought that the Court would deal with the situation and the Commissioner had made it clear that he sided with none and whatever legal orders were issued by this Court would be respectfully submitted to by him and translated into action. The Mayor also has tried to show that he holds no personal interest and that he is continuing as the Mayor because the new Mayor has not been elected. The third group of prayers pertains to the Government because a writ of mandamus is sought by the petitioners against the Government directing it to withdraw the show cause notice issued by the Government u/s 452 of the Act or to quash the same and to issue an order of injunction restraining the Government from taking any action of supersession of the Baroda Municipal Corporation on the basis of the said notice or on any of the grounds mentioned therein. I propose to take up the last group first.

9. The Government has issued the said notice, Annexure "B", purporting to act u/s 452 of the Act. The petitioners represented by advocate Mr. J.G. Shah, the respondents nos. 9, 10, 11, 31, 39, 40, 41, 44, 46, 52, 53, 56, 57, 60, 63 and 64 represented by advocate Mr. Y. V. Shah (these respondents beginning from respondent No. 9 were stated to be elected on the Congress (1) ticket and Mr. Y.V. Shah stated without controversy from other side before me at the time of hearing that these respondents are the members elected on the so called Congress (1) ticket), the respondent No. 23, Dr. Jatin Modi, represented by advocate Mr. B.B. Oza, he (Dr. Jatin Modi, having been elected on the Congress (1) ticket admittedly. Miss, D.T. Shah's clients, respondents Nos. 12, 16, 19, 22,

24. 25 to 29, 33, 35, 36, 38,42, 48, 50 and 55 elected on the Janata party ticket so called) have taken a joint stand in this petition in respect of the Government's show cause notice. As far as the ex-Mayor, the respondent No. 3, the Corporation, its Secretary and the Commissioner are concerned, they have legitimately sat on the fence in this regard. The State Government represented by the Government Pleader Mr. J.R. Nanavati and the respondents Nos. 8, 13, 14, 32, 34, 39, 41, 46,57, 58 and 59 represented by advocate Mr. H.M. Mehta and admittedly elected on the Congress (1) ticket so called, have in this regard taken the stand that the Government's proposed action is open to be dropped, that it is open to the petitioners and others siding with their views to place the relevant material on the table of the Government and that Government being a disinterested august body will dispassionately and impartially consider the case on its merits and reach a valid conclusion and therefore, the quashing of the notice at this stage is absolutely uncalled for.

10. Mr. J.G. Shah, the learned advocate appearing for the petitioners, attacked the notice firstly on the ground that the notice was not in terms of Section 452 of the Act and therefore was a notice issued without authority of law and on that ground it should be set at naught. Section 452 of the Act is quoted below.

452(1). If at any time upon representation made or otherwise it appears to the State Government that the Corporation is not competent to perform, or persistently makes default in the performance of, the duties imposed upon it or under this Act or any other law for the time being in force or exceeds or abuses its powers, the State Government may, after having given the Corporation an opportunity to show cause why such order should not be made, by an order published, with the reasons therefore, in the Official Gazette, direct that the Corporation shall be superseded for a period to be specified in the order. Such period may be longer than the term for which the councillors of the Corporation would have held office u/s 6, if the Corporation had not been superseded under this section.

The Government's show cause notice, Annexure "B", alleges that the Corporation appeared to the Government to be not competent to perform the duties imposed upon it under this Act and the duties that are said to have been not performed and not capable of being performed are set out in the notice, namely, the failure to elect the Mayor and the Deputy Mayor and failure to appoint members of the Standing Committee. Mr. Shah in this connection urged that a Mayor and a Deputy Mayor are more or less ornamental pieces of the Corporation and that they have no vital functions to perform except to move in a fanfare in the name of the Corporation and the only important assignment which they are asked to perform is to preside over the meetings of the Corporation as and when convened. There is considerable force in the submission of Mr. Shah. I had requested the learned Counsels in this matter to bring to my notice the specific provisions of law in which there might be enlisted the duties of a Mayor or a Deputy Mayor and barring this adorning the chair of the General Board, no

other duties as such were shown as cast on the Mayor or the Deputy Mayor. Mr. Shah would like to call it that they are analogous to what a Governor is, when the party-system government is in power. A Mayor or a Deputy Mayor may even be somewhat less because all Governmental actions are stated to be done by order and in the name of the Governor but as far as the Corporation is concerned even that is absent. Mr. Shah, therefore, submitted that failure to elect a Mayor or a Deputy Mayor does not in any way interfere with the working of the Corporation because the whole body is there to take care of the duties set apart and earmarked for the Corporation and as far as the execution of the decisions of the Corporation is concerned, the Government appointed Commissioner is there to mind the situation by virtue of powers conferred on him u/s 67 Sub-section (3) of the Act which provides that the entire executive power for the purpose of carrying out the provisions on this Act and of any other Act for the time being in force which imposes any duty or confers any power on the Corporation vests in the Commissioner.

11. Mr. Shah's submission, however, in respect of the failure to nominate the members of the Standing Committee is difficult to be accepted. Mr. Shah feebly as I understand submitted that to some extent the Standing Committee also did not discharge any important functions which could not be discharged in the absence of a Standing Committee. Here Mr. Shah, in my view, is eminently incorrect. The provisions of Sections. 38, 45, 51, 56, 57, 59, 73(c), 79, 85, 84(2), 87, 95, 96, 99 and administrative control provided for in Section 465, Section 466(2) and the duties imposed under Sub-rule 2 of Rule I are some of the very important duties cast on the Standing Committee. When three alleged inabilities or failures are enlisted by the Government in their notice and when at any rate one of them can be justified by the Government, the whole notice cannot be set at naught. So it can be said that the Government's notice, Annexure "B", ostensibly emanates from the Government's power u/s 452 and therefore, it cannot be said to be a notice without any authority of law and therefore ultra vires Section 452 of the Act.

12. Mr. Shah in this connection invited my pointed attention to other provisions of Chapter XXVIII of the Act. In that chapter, Government's various controlling powers are enumerated. As for example, u/s 448(1) of the Act, it is perfectly within the competence of the State Government to direct the Corporation to do a particular duty, prescribing a period for the performance of that duty which may include even the duty to appoint the members of the Standing Committee. What power the Government should exercise in a set of circumstances is the matter for the Government's administrative consideration. When it is open to these petitioners and others siding with them to bring all these facts to the notice of the Government, when it is open to these petitioners to show that these Councillors, despite the initial tie in the matter of electing the Mayor, with one voice passed the budget proposals placed by the erstwhile Standing Committee's Chairman and the Commissioner, when it is open to them to show that as back as on 5-3-1981 persons none other than Dr. Jatin Modi and other people elected

on the Congress (1) ticket had in the Corporation's interests called upon the competent authority to convene a meeting to elect the Mayor and the Deputy Mayor and to appoint the members of the Standing Committee, when it is open to these people to tell the Government that the situation that prevailed on 13-2-1981 has materially altered with the passage of time and when it is open to them to tell the Government that not only the members elected on the alleged Congress (1) ticket but many others also had sought a requisitioned meeting for the purpose of carrying out those very duties and fulfilling those very obligation which afforded the grounds of the notice u/s 452 of the Act, it is to be expected of the august and impartial institution like the Government to consider all these material facets in their proper perspectives and decide the question in the wider interests of the people of Baroda rather than its" being swayed away by the party politics and petty, parochial local political considerations which are said to have been apprehended by these petitioners and others. It is equally open to them to show that if a similar tie develop even in future, the Presiding Authority, who ever it may be, can be called upon to discharge its public duty of placing a second or casting vote in the balance and tilt the balance one way or the other. This is of course not tenable according to me) I am only enumerating these possible pleas that can be advanced by these petitioners and others while giving their reply to the show cause notice issued by the Government. They can put forth all these pleas collectively when they consider the notice at the specially convened meeting which they have sought for and which I am going to order below to be convened by the competent authority for the purpose of enabling these councillors to decide in their capacity as the Corporation as to what reply they should give to the Government's show cause notice. It is because of this character of the notice and the potentialities that prevail in that regard, I decline to grant the relief in respect of quashing the notice or directing the Government to withdraw it. The prayers (e) and (f), therefore, in my view, cannot be granted.

13. This takes me to the prayer (d) set out in paragraph 31 of the petition. It pertains to the decision of the Mayor regarding the alleged closing or concluding or terminating the first statutory meeting convened u/s 19 and Section 20 of the Act. It is to be remembered that the meeting of 10th February 1981 had been adjourned with a unanimous vote. Whether the meeting should be adjourned or not is the right of the Corporation. In this connection reference to clause (m) of Rule I in Chapter 2 of the rules in Schedule A appended to the Act deserves to be pertinently noted. Said Clause (m) is reproduced below.

Any meeting (which, in my view, includes the first meeting also) may, with the consent of a majority of the councillors present, be adjourned from time to time to a later hour on the same day or to any other day, but no business shall be transacted and, except as is hereinafter provided, no proposition shall be discussed at any adjourned meeting, other than the business or propositions remaining un disposed of at the meeting from which the adjournment took place....

When the Mayor had put the decision in respect of the first meeting of 10th February 1981 to the Councillors, what prevented him from seeking the Councillor's opinion on the similar point on 13-2-1981 is difficult to be comprehended. The minutes of the proceedings dated 13-2-1981 that are made say that it was the President who had declared the conclusion of the said meeting. It is the contemporaneous record which cannot be lightly brushed aside. The Commissioner who is an independent and very responsible officer of the Corporation belonging to the I.A.S. cadre and who is above the occasional political dust of political controversies had made his report when everything was fresh in his mind. In the said report also he unequivocally states that "the Mayor suddenly rose in his chair and declared the proceedings of the house as closed and rushed to his room." (vide page 8 of this judgment). The Commissioner had no reason to make any incorrect record particularly when he was apprising the controlling authority, namely, the Government, of what had transpired on that day. The above underlined words "suddenly" and "rushed" are extremely significant. They, in my view, clearly show that finding the situation tense which was prevailing rampantly, spectators voicing loudly different belligerents views. Councillors not able to hammer out any solution despite the stint of one hour and twenty minutes, when Dr. Jatin Modi and the Chairman of the erstwhile Standing Committee were rubbing their shoulders in his cabin, it appears that what he did was his own sudden impulse born out of his desperateness and helplessness. It appears that he had no coolness of mind to decide what he should do. It is because of these circumstances that I hold that the respondent No. 3, the Presiding Authority, had almost summarily dissolved the meeting on his own without taking the vote of the Councillors there. It is nobody's say that most of the Councillors were not there in the meeting or they could not be called upon to have their final say.

14. There is one additional reason also why the action of the respondent No. 3 can be said to be bad at law. There were as many as three items on the agenda. It is not the requirement of law nor the legal obligation that unless a Mayor is elected a Deputy Mayor cannot be elected and the members of the Standing Committee cannot be appointed. Mr. H.M. Mehta in this connection urged that it was reasonable to infer that as there was a tie on the question of election of the Mayor, there would be a similar tie in the election of the Deputy Mayor and in the appointment of 12 members of the Standing Committee also. As there is a possible assumption of this nature, there is equal possibility of the assumption of the other nature also. The post of a Mayor being a post of social status and standing, there may be a very keen controversy but it may not be so with respect to the Deputy Mayor's post or appointment of the Standing Committee. So the Presiding Authority, namely, the respondent No. 3, should have gone ahead at least with the election of the Deputy Mayor and appointment of the 12 members of the Standing Committee. Had it then turned out that there also the same tie persisted, the matter perhaps would have assumed a different texture.

15. Finding that his action was assailed as one without the authority of law, the

respondent No. 3 has tried to spin a sort of a defence for him. What he has to say in this regard can better be placed in his own words extracted from his two affidavits filed in this matter.

At the meeting held on 13th February, with the same Agenda, the same situation prevailed. I state that the deliberations and discussions took place over a period of 1", hours and various Councillors addressed the House from the Platform on their individual views. In spite of these efforts on their own part and on my part, it appeared to me that there was no consensus likely to be attained. I, therefore, sought the sense and general approval of the House to conclude the meeting. I state that under the prevailing circumstances it was not possible to put the same before the House by way of resolution, since the meeting was both acrimonious and noisy. However, I state that the response I received in respect of my queries on the subject, I was given to understand that the consensus of the opinion of the House was to declare the meeting as concluded. Accordingly I so declared the meeting as concluded.

As regards para 2 of the petitioner's affidavit-in-rejoinder I state and assert that I had sought the sense and the general approval of the House before I took the decision to conclude the meeting of 13th February 1981. I also re-assert that in my view and in my opinion the circumstances then prevailing in the House during the meeting of 13th February 1981 were such that it was ml possible to put the proposals to conclude the meeting before the House by way of a resolution.... I once again emphasis that this consensus was not obtained by vote or a resolution put to the House, since, as I have already emphasized, this was my view and my understanding of the situation, which I believe and assert to be the correct view in the situation then prevailing....

(Emphasis is by me.)

16. To me it appears that the poor Mayor, the respondent No. 3 herein, has made a pitiable attempt to save what is defenseless. If he bad done what he did with the alleged consensus, there was nothing to prevent him from getting it noted in the proceedings themselves. The proceedings themselves state that he concluded the meeting, obviously on his own. The contemporaneous report of the Commissioner is also to the same effect. "To the same effect" are words, not only of the petitioners but all other deponents also, namely, the respondent No. 5 Mr. Jayantibhai Ravjibhai Patel, the Chairman of the erstwhile Standing Committee, at pages 75 to 78, and Dr. Jatin Modi, the respondent No. 23's affidavit, pages 112 to 117. In the light of these circumstances, in my view, the only reasonable and probable conclusion that can be reached is that finding the atmosphere tense and finding no ray of hope and wrongly feeling that there was no possibility of putting the question of adjournment to vote, he helplessly left the chair uttering that the meeting was closed.

17. In this connection one circumstance, however, was very vehemently pressed into service. The proceedings of the meeting of 13th February 1981 were put to

vote in the meeting called for passing the budget proposals presented by the Chairman of the erstwhile Standing Committee and the Commissioner. Admittedly what was recorded on 13th February 1981 was unanimously approved. From this, an attempt was made to show that the conclusion of the meeting was with the consent of all the Councillors or at any rate, the Mayor's decision was acquiesced in. The proceedings can be objected to by a member at the subsequent meeting if they do not depict the correct situation. The proceedings of 13th February 1981 mentioned that it was the President who had concluded the meeting. If the members at the subsequent meeting find that the minutes of the earlier proceedings represent the situation correctly, there was no occasion for them to object to those proceedings" From such a non-objection a positive consensus cannot be deduced. It is in my view a strain on the language and the commonsense too to do so.

18. Mr. H.M. Mehta, the learned advocate appearing for some of the respondents, who tow the line contrary to the one adopted by Dr. Jatin Modi and his Congress (1) supporters listed above, urged that whether there was consensus or not is a question of fact disputed in this matter and this High Court exercising jurisdiction under Article 226 of the Constitution of India should not embark on the fact finding mission, This is a technical plea raised by Mr. Mehta in order to desist this Court from deciding a point which was vigorously put forth in the form of affidavits pros and cons. In my view it was a last attempt to save the situation. No proposition of law is there which absolutely precludes this High Court from deciding a question of fact. The history of proceedings of this Court also abounds in cases in which this Court has reached a finding of fact. It is more a rule of discretion than a rule of compulsion that this Court would not embark on a fact-finding enquiry when elaborate oral evidence will be a condition precedent to deciding a particular matter. The material that has been placed on the file of this Court is more than enough to enable this Court to reach a finding of fact. In my view, the conclusion can be reached only on this side and not even remotely possibly on the other side. There is no scope for any further evidence on this point and I therefore do not shut out my conclusion on this point on the technical plea that this enquiry into the fact, this Court should decline to deal with.

19. If the Presiding Authority of the 13th February 1981 meeting had done what he was not authorised to do, his action in treating the chapter as closed is to be treated as a nullity and as a matter of necessary corollary to be treated as an action without authority of law. A meeting stands concluded ordinarily if the business of that meeting is either transacted or dropped. It is the power of the Councillors and the councillors alone to drop or decide a particular proceeding or a topic. The Presiding Authority had no jurisdiction in this fashion to abruptly leave the chair and rush into his room simultaneously declaring that the meeting was terminated or concluded. In my view, therefore, the prayer at (b) in the petition paragraph 31 deserves to be allowed. I would, therefore, hold that the decision of the respondent No. 3, the Presiding Authority, the Mayor, is not in accordance with law and the topic of electing the Mayor, etc. was not completed,

was left incomplete and the question has to be upon hand more particularly when a good deal of majority of members now insist that what is left undone should be done. It is to be recalled here again that apart from the business of the agenda of 13th February 1981 remaining untransacted, there is further a demand of the Councillors to do what was not done and what could not be done on 13th February 1981. On this ground I allow the prayer (b) in full.

20. This brings me to the second set of prayers and it pertains to the requisitioning of the meetings. At the outset I would state that till the Corporation is by law and legal process superseded, it exists as a legal entity. Today the Corporation is as much alive as it was on 10th January 1981 when the successful candidates notified by the Government in the Official Gazette were invited at a meeting. The members today pray to the competent authority by their requisitions dated 5-3-1981 and 18-3-1981 respectively at page 40 and pages 48 to 51 to reconvene the first meeting and to convene a further meeting to discuss the Government's supersession notice. It is the duty of those authorities to convene the meeting. I fail to understand why the competent authority on whom the duty is cast to convene the meetings sleeps over these requisitions. It was contended that no time limit was laid down in clause (d) about calling the requisitioned meeting. The said Clause (d) of Rule I in Chapter II is reproduced below.

The Mayor, in such event as aforesaid, the Deputy Mayor may, whenever he thinks fit, and shah upon a written requisition signed by not less than one fourth of the whole number of councillors or by not less than four members of the Standing Committee, call a special meeting, and every meeting of the Corporation shall, except for special reasons to be mentioned in the notice convening the meeting, be held in the chief municipal office.

It is true that no time limit is prescribed but where no time is prescribed, by legal fiction it is to be understood that this call to public duty is to be answered within a reasonable time. What reasonable time should be would depend upon the facts and circumstances of each case. When on 5-3-1981 Dr. Jatin Modi and 17 other corporators called upon the Mayor to act under the above-quoted Clause (d), there was nothing to deter him from convening the meeting. There was no injunction against him from this Court. What weighed with him in not convening the meeting is difficult to comprehend. If after the alleged conclusion or closure of the meeting of the 13th February 1981 the meeting of the Corporation could be convened on 16th February 1981 and adjourning it to 18th February 1981 for discussion and ultimately passing the budget proposals, it is reasonable to infer that the Mayor, the respondent No. 3 herein, should have called that meeting as per the requisition within a few days. The shield of the pendency of the petition, even if it can be invoked as a shield, came into existence after 25th March 1981, the day on which the petition had come to be filed. Till then there was no occasion for the Mayor not to call the requisitioned meeting for the purpose of carrying out the duties cast on the corporators at its first meeting which was

abortively ended on 13-2-1981.

21. A faint attempt was made by J.R. Nanavati, the learned Government Pleader appearing for the State, and equally by H.M. Mehta for some of the respondents that once the first meeting became fruitless, the chapter became closed for all time to come. I find it impossible to accede to this reading of the legal provisions. If the first meeting convened on 10th February 1981 could be adjourned to 13th February 1981, there is no rationale for holding that if the Mayor out of confusion and chaotic state of mind leaves the chair and declares the meeting concluded, the first meeting is dead for all time to come. Mr. J.R. Nanavati in this connection urged that if this High Court gave a direction to the Mayor to convene the first meeting as per the requisition, the Government's notice might become infructuous. When such an argument was advanced by Mr. J.R. Nanavati, I had to ask him specifically whether this argument was under the instructions of the Government and Mr. Nanavati, known for his usual fairness, said that it was so. I fail to understand the logic behind this argument. When from the top of the roof it was declared and it was stated by the State through Mr. Nanavati, that the State was open-minded and sure to consider both pros and cons and those facts placed by the petitioners and like-minded corporators, the State Government's attitude now that before the action in pursuance to the show cause notice, Annexure "B" could be taken, if the election of the Mayor and the Deputy Mayor is held and appointment of the Standing Committee is effected, the Government's notice would be infructuous is a plea open to serious doubt. The Government is not bound to translate the notice into action. On the contrary, the Government should feel happy if due to happy developments, the unpleasant duty to effect supersession is averted. The power u/s 452 of the Act or as a matter of fact all other powers of the Government are ultimately meant to subserve the public interests. In my view, the interest of the Corporation can be best achieved if it is made to function rather die a premature death. The real valour and discretion can be exercised and employed in resuscitating or reviving a patient rather than killing him. I am sure that the Government which is expected to be impartial and upright and wedded not to any petty parochial party politics will play the role of the real controlling authority having paramount in its heart the desire to see that a public Corporation works through its accredited Councillors instead of its being run by an administrator, however highly placed individual he might be. I am also sure that the Government, as a responsible august body would try to see that the accredited representatives of the public carry out the objects of the Act and thereby lessen the burden of the Government and simultaneously train the Indian citizens into the art of governing the country so that ultimately they become matured rulers as and when they are entrusted with the powers to rule and deal with higher affairs. The Government should not feel shy of a better development, even if somewhat belated. Ultimately the Government's concern is to see that the Act is implemented not only in its letters but also in its spirit and the spirit of all such acts pertaining to local authorities is to see that local affairs are handled locally and managed by

the local people as far as possible. This is the idea written large under all such laws and it should always be the endeavour of the Government to see that such objectives are fulfilled rather than frustrated. I, therefore, hold that the Mayor will be required to be ordained to convene the meeting as per the requisition dated 5-3-1981. Similarly the Mayor will be under an obligation to convene the meeting of the Corporation, that is the meeting of all Councillors, to consider the Government's show cause notice, Annexure "B". As a matter of fact, it surprises me to find that despite a categorical letter addressed to the Mayor, the Commissioner and the Secretary of the Corporation, almost simultaneously requesting them to convene the meeting of the Corporation to consider and give reply to the show cause notice of the Government, the said meeting was not called. There is no injunction issued by this Court against convening such meetings. So the respondent No. 3-Mayor, the Presiding Authority is further directed to convene the meeting of the Corporation for the purpose of considering the show cause notice issued by the Government u/s 452 of the Act. These two directions falling in prayers (c) and (d) will be required to be given in the form of writs to be issued by this Court.

22. In the above-mentioned prayers (c) and (d) one more prayer is also there. The prayer is to direct the respondent No. 3 or any Presiding Authority to exercise a casting vote if such an occasion arises afresh. This also is required to be considered because a good deal of time was utilised by the learned advocates in dealing with this point.

23. The petitioners and those who side with them wanted that on 10-2-1981 the respondent No. 3 should have conclusively settled the dispute by exercising his casting or second vote. Had it been open to do so, it would have been a better and wiser course of exercise of discretion on his part. But when the question arises before me, I am required to answer whether at the first meeting, the Presiding Authority who is not a Councillor has such a duty or such a power to cast a vote of the nature.

24. In this connection Section 19(1) of the Act requires to be re-stated. Section 19(1) reads as follows:

The Corporation shall at its first meeting after general elections and at its first meeting in the same month...elect from amongst the councillors one of its member to be the Mayor and another to be the Deputy Mayor.

Similarly Section 20(2) reads as follows:

The Corporation shall at its first meeting after general elections appoint twelve persons out of its own body to be members of the Standing Committee.

25. So it is the duty of the Corporation to elect the Mayor and the Deputy Mayor and to appoint the 12 persons out of its members as the members of the Standing Committee. Section 19(1) and Section 20(2) enjoin upon the Corporation to discharge the above-mentioned obligatory functions. What is a

"Corporation"? "Corporation" u/s 5 of the Act is a body corporate consisting of councillors. Section 5(2) of the Act itself mentions that each Corporation shall consist of such number of councillors elected at ward elections as the State Government may from time to time by notification in the Official Gazette fix. Ordinarily such collective bodies have no existence separate from that of the members constituting them, as it is in the case of partners. But in order to have a smooth working of social affairs, the jurisprudence has evolved some abstract creatures of law and such corporations are enjoying separate notional but legal status different from the status of the members that constitute them. However, if any duty is cast upon a Corporation, the said duty is to be discharged or performed by the Corporation through its councillors and in no other manner. Councillors express their view points or opinions at meetings and whatever views or opinions are expressed by the corporators ultimately become the views of the Corporation. Corporation being a non-corporeal unit cannot have its own decision and cannot have its own views. Views of the councillors when viewed together become the views of the Corporation and action of the councillors conjointly taken is ultimately treated by the fiction of law, as the action of the Corporation. When the law, therefore, says that the Corporation shall do a particular thing, what in practical life it comes to be is the obligation of the corporators or members constituting that corporation. So examining the provisions of Section 19(1) and Section 20(2) of the Act quoted above and viewing them from practical aspects, it has to be said that it is the duty of the councillors to elect the Mayor and the Deputy Mayor and it is the duty of the Councillors to appoint 12 members of the Standing Committee. The Corporation acts only through its Councillors and not through other people who are associated with the Corporation even intricately in its activities. A Commissioner or a Mayor may be associated with the activities of the Corporation, that is, with the activities of the Councillors, but when a question of doing any act of the Corporations arises, the said action can be done by the Councillors and by the Councillors alone and no persons other than the Councillors can speak or act for the Corporation. One more thing is to be noted that Councillors can act as Councillors only at a meeting and not individually as their private places. How they shall meet and transact their business is provided for in the rules. Section 43(1) of the Act specifically lays down that the meetings of the Corporation, etc. shall be held and the business before them shall be disposed of in the manner prescribed by rules. It is truism to state that when anything is to be done by the Corporation, it will be done by corporators at a meeting. So the procedure envisaged by law for the Corporation to act, that is, for the corporation to act, is one to be processed at meeting. In order to guide how the procedure or process of the meetings shall be conducted, necessary provisions are required to be made. In order that in an orderly, decorous and decent manner a meeting is conducted, a Presiding Authority is envisaged and that is how the procedure contained in Schedule A Chapter 2 finds its place on the statute book. Clause (g) of the Rule I in Chapter 2 therefore, provides that every meeting shall be presided over by the Mayor, if he is the at the, time appointed for holding the same, and if the office of Mayor is

vacant or if the Mayor is absent, by the Deputy Mayor, or in the absence of the Deputy Mayor by such one of the councillors present, as may be chosen by the meeting as the Chairman. Once it is acknowledged that in order to have the orderly execution of the deliberations of the meeting of councillors, the controlling authority or a chairman; should be there, the purpose of having a chairman becomes evident. That is the way of all decent, educated and responsible people living in a developed social set up and that is why the office of a Presiding Authority is envisaged. By and large a Mayor or a Deputy Mayor would be one of the Councillors. If the Mayor or the Deputy Mayor is not there, the members are required to select one of them to be the presiding authority and it is in the fitness of things. This is the general situation that would be prevalent and available. It is in this strain and train of thinking that Clause (o) is to be read which has given rise to the controversy before me. Clause (o) of Rule 1 Chapter 2 reads as follows:

Every question (other than the question whether the Standing Committee, Transport Committee or Commissioner shall be permitted to bring urgent business before a meeting without notice,) shall be decided by a majority of votes of the councillors and on that question, unless otherwise provided in or under this Act, the presiding authority having a second or casting vote when there is an equality of votes.

(the bracket provided by me for smooth reading)

I say that Clause (o) is not at all attracted to the facts of the present case because as interpreted by me, Sections 19(1) and 20(2) of the Act specifically provided that it is the duty or obligation of the Corporation, that is, of the Councillors, to elect the Mayor and the Deputy Mayor and to appoint 12 members of the Standing Committee. This is the primary and mandatory dictate of law in the form providing for an obligatory preliminary duty of the Councillors. So when reading Clause (o), I would say that Clause (o) will be taken out of application because it is "otherwise provided in these sections," namely, Sections 19(1) and 20(2) and so the question of the chairman voting would not arise.

26. Even on bare a reading of the text of Clause (o) by itself, I find no difficulty in holding that the said clause does not clothe a non-councillor Mayor or a Deputy Mayor with a power or duty to cast a second or a casting vote. Mr. Shah tried to read this Clause (o) by interpreting the words "second" or "casting" as pointing to two different situations. According to him, a Mayor who is a councillor is under an obligation to cast his second vote in the case of a tie, the second because as a Councillor he is presumed to have cast his vote in the ordinary course. According to Mr. Shah, if the Presiding Authority is not a Councillor, he would be under an obligation to have a casting vote, that is, a deciding vote which will not be a second vote. I would not say that Mr. Shah's reading by itself is in any way unreasonable but there is another surer way of looking at the same thing in the context. It was conceded even by Mr. Shah that in the first round of voting, all members are free to vote or not to vote. Assuming a situation where a

Mayor has already cast a vote in his capacity as a Councillor and then there is a tie, the vote which he will be casting (which will be decisive one way or the other) will be described as a second vote. Being a Councillor and also being the Presiding Authority suppose he has not cast his own vote and a tie develops and then a situation arises under which he is required to give a decisive vote which would be called a casting vote. So the employment of the words "second" or "casting" vote does not necessarily mean that Clause (o) is intended to cover the situation of the type that has unfortunately arisen in this case, namely, the Mayor being a non-Councillor.

27. One more point regarding casting of vote deserves to be noted. In Articles 100 and 189 of the Constitution of India, the Presiding Authority of the House of People and of the Legislative Assembly is enjoined to exercise his casting vote. There the word used is "casting" vote and not "second" vote because the Presiding Authority is prohibited from casting the vote as the member of the House. This also lends support to my view that the word "second" vote and "casting" vote have got two different meanings.

28. When I hold that at the first meeting or as a matter of fact any meeting of the Corporation, a non-Councillor Presiding Authority has no power to vote at all though he may have a power to preside over the meeting, the question of an obligation on the Presiding Authority to cast a second or a casting vote would not arise. However, I would like to answer, of course cursorily, as to what would be my view if I had agreed with Mr. Shah's submissions. Ordinarily a man entitled to vote is free to vote or not to vote. This is conceded on all hands before me and rightly conceded. But in his capacity as the Presiding Authority, a man is clothed with a power to cast a second or a casting vote. What would be the character of that power which he has been clothed with? Had it been a matter of his choice, had it been a matter of his right alone, the matter would have been different. Clause (o) in such circumstances should be reasonably interpreted to suggest that this power is coupled with a duty to the public at large. After all the public body must transact its businesses. Cases are not uncommon when there is a tie because of the equality of votes on both the sides though they may not be of frequent occurrence. The Legislature wants that this unhappy situation should not be a block to the working of the public body like a Corporation. In order to achieve this public object, the power is conferred on the Presiding Authority. In such a situation, the Presiding Authority would be under an obligation to cast that decisive vote in order to see that the public purpose is served and achieved rather than left in despair. If any authority in support of this broad proposition is needed, we can advert to the case of *Aryakumar Mahasabha and Another Vs. Town Planning Officer and Another*, . In that case the Division of this Court speaking through P.D. Desai, J. has held that "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised. In

other words, if the conditions laid down for the exercise of discretion are satisfied, the authority has no discretion to refuse to exercise the discretion. The authority is under a statutory duty to exercise the discretion. If there is omission to exercise discretion, inter alia, on account of the failure on the part of the authority to genuinely address itself to the matter before it or due to misconception of the scope of its power under the statute, mandamus can issue directing such authority to re-hear and determine the matter afresh according to law...."I say. The above exposition of law, is the sound exposition. The condition for exercise of that power to cast a second or a casting vote is satisfied by the development of quality of votes of two sides. On that condition being satisfied, the power comes to be exercised. The second requirement of exercise of that power is also fulfilled. The power is conferred on a public officer, namely the Presiding Authority, and it is conferred for the purpose of being used for the benefit of persons who are specifically pointed out. The persons assumedly pointed out are the citizens for whom and for whose benefit alone, the Corporation is conceived, floated and expected to live and act. I, therefore would have held and even issued a writ of mandamus to the respondent No. 3 had I come to the conclusion the the had been clothed under the above-mentioned Clause (o) with the power to exercise a second or a casting vote. This point is dealt with by me only academically.

29. In this connection Mr. J.R. Nanavati had invited my attention to certain books on the law and practice of meetings and three such books were brought to my notice. But I find that all these observations one way or the other ultimately were made in the context of the laws these celebrated authors had to deal with. What should be done by a particular authority under a particular Act is to be decided with reference to that Act and such analogical references are of assistance, only marginally or peripherally. It is because of this clear reading of the legal provisions on my part that I do not specifically refer to those three books or to the discussions embodied therein.

30. The result is that the prayers (c) and (d) in paragraph 31 of the petition are required to be allowed except for the purpose of directing the Respondent No. 3 or the Presiding Authority to exercise a second or casting vote, if what happened on 10th February 1981 at the meeting of the respondent No. 1-Vadodara Municipal Corporation repeats itself. [Even otherwise such hypothetical directions are hardly given by this Court.] The result is that the petition stands partly, allowed. The decision of the respondent No. 3 at page 36 of the petition regarding closing or terminating the first statutory meeting of the respondent No. 1-Corporation is set aside. The respondent No. 3, the Mayor the Vadodara Municipal Corporation presently, is directed to take immediate steps to recall the first meeting of the Corporation for the purpose of electing the Mayor, the Deputy Mayor and appointing 12 members of the Standing Committee and he is further directed to call a requisitioned meeting of the Councillors of the Corporation for the purpose of deliberating on what reply they should give to the Government's show cause notice, Annexure "B". The prayers (e) and (f) are rejected. Rule is

accordingly partly made absolute with no order as to costs. Appropriate writs should be issued forthwith.