

(1982) 12 GUJ CK 0027

In the Gujarat High Court

Case No : Spl. Civil Application No. 2099 of 1981

Kantilal Chunilal and Others

APPELLANT

Vs

Modasa Nagar Panchayat, Modasa and Others

RESPONDENT

Date of Decision : 02-12-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144
Gujarat Gram and Nagar Panchayats (Procedure) Rules, 1963 — Rule 47, 51, 52, 53, 55
Gujarat Gram and Nagar Panchayats Secretaries (Functions and Duties) Rules, 1963 — Rule 4
Gujarat Panchayats (Amendment) Act, 1962 — Section 2(24), 47, 82(1), 82(2), 82(3)
Gujarat Panchayats Act, 1961 — Section 115, 81, 82

Citation : AIR 1983 Guj 109 : (1983) 1 GLR 537

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Advocate : M.A. Panchal, for the Appellant; R.N. Shah and G.K. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

A.M. Ahmadi, J.—The election to the Modasa Nagar Panchayat was held on 10th April 1981. The petitioners are members of the said Panchayat. The first meeting of the Panchayat was held on 18th April 1981 for the election of its Chairman and Vice-Chairman. The respondent No. 2 was elected the Chairman of the said Panchayat at the said election. The next meeting of the Panchayat was held on 18th May, 1981 for the constitution of the statutory as well as other Committees of the Panchayat. At the said meeting the statutory Committees, namely, the Executive Committee as well as the Social Justice Committee and few other Committees were constituted. On the very same day, respondent No. 2 issued a circular calling the meetings of the Committees so constituted for the election of their Chairman on 22nd May, 1981. It appears that in the meantime on 19/20th May, 1981 some of the members of the various Committees so constituted

submitted their resignations. On the same day, that is, 20th May 1981, respondent No. 2 cancelled the meetings of the Committees called on 22nd May, 1981. The case of the petitioners is that after they learnt about the cancellation of the meetings, petitioner No. 1 and another member met respondent No. 2 to find out why the Committee meetings were cancelled. It is their case that respondent No. 2 did not give a satisfactory reply for the cancellation of the Committee meetings but merely stated that the reason was stated in the circular cancelling the said meetings. It may here be mentioned that the reason assigned by respondent No. 2 in the circular, Annexure "A" to the petition, for the cancellation of the Committee meetings was "some unavoidable reasons". Since respondent No. 2 did not elaborate, some members submitted a Memorandum to him on 26th May, 1981 complaining about the arbitrary manner in which the Committee meetings were cancelled for no good reason. On the same day, they also issued a circular in the form of Annexure "C" to the petition, convening the Committee meetings on 30th May, 1981. They also wrote a letter to the Secretary of the Panchayat on the same day, Annexure "D" to the petition, requesting him to remain present at the said Committee meeting for recording its minutes. A copy of this letter was forwarded to respondent No. 2 for information. Respondent No. 2 thereafter wrote a letter on 27th May, 1981, Annexure "E" to the petition, stating that the reason for the cancellation of the Committee meetings which were proposed to be held on 22nd May, 1981 had been stated in the notice of cancellation and that the Committee meetings which were called on 30th May, 1981 were illegal in that under Rule 51 of the Gujarat Gram and Nagar Panchavats (Procedure) Rules, 1963, (hereinafter called "the Rules"), only the Chairman of the Panchayat was entitled to convene the first meetings of the Committees constituted u/s 82 of the Gujarat Panchayats Act, 1961 (hereinafter called "the Act"). A postscript was added to that letter, Annexure "E", addressed to the Secretary of the Pachayat instructing him to forbear from recording the minutes of the Committee meetings as the said meetings were inconsistent with the provisions of the Act. On receipt of this letter from respondent No. 2, a few members of the various Committees wrote to him on 30th May, 1981, Annexure "F" stating inter alia, that they would have no objection if he chaired the meetings of the various Committees to be held on that day. They also complained in that letter that the instruction to the Secretary of the Panchayat not to record the minutes of the meetings was contrary to law. After the receipt of that letter on that very day the Committee meetings were held as proposed and were attended by all the members of the various Committees. Annexure "G" to the petition is a copy of the minutes of the meeting of the Executive Committee held on that day for the election of its Chairman. Similar minutes in respect of the election of the Chairman of other Committees were also prepared and were forwarded to respondent No. 2 for being entered in the proceeding book of the Nagar Panchayat. Respondent No. 2 by his letter of even date, Annexure "H", addressed to Shri Becharbhai J. Bharwad, one of the Committee members, refused to take cognizance of the election of Chairman of various Committees and forwarded a copy thereof to the

Panchayat Secretary with instructions not to take note of the said Resolutions. It appears that in the meantime the respondent No. 2 had called a meeting of the Panchayat on the same day for the purpose of accepting the resignations of members of some of the Committees constituted at the meeting of 18th May 1981. These resignations were accepted at the said panchayat meeting. On the next day, that is, 1st June 1981, respondent No. 2 issued a circular for calling the panchayat meeting on 8th June 1981 with a view to filling in the vacancies created on the acceptance of the aforesaid resignations. At the meeting of 8th June 1981, twenty members were present. Respondent No. 2 took the chair and conducted the business of filling in the vacancies caused in the various Committees by the resignations earlier accepted. The name of respondent No. 2 was proposed as a member of the Executive Committee, Health and Public Works Committee, Water Works Committee, Octroi Committee and Town Planning Committee. Admittedly, he did not vacate the chair on his name being proposed as a member of the aforesaid Committees, but continued to conduct the business of that meeting in his capacity as the Chairman of the Panchayat. Even though the petitioners objected to the name of respondent No. 2 being proposed as a member of the aforesaid Committees, as he was in the chair, the said objection was overruled by respondent No. 2. The names of other members of the Panchayat were also proposed for filling up the said vacancies in the various Committees and consequently the matter was put to vote. There was a tie, ten members voting for the appointment of respondent No. 2 on the aforesaid Committees and the remaining ten voting against him. As a result of this tie, respondent No. 2 acting u/s 82 of the Act, utilised his casting vote in his own favour and thus got himself appointed as a member of the aforesaid Committees. It may here be mentioned that according to the proviso to Sub-section (5) of Section 82 of the Act, if the Chairman of the Panchayat is a member of any Committee constituted u/s 81 of the Act, he shall be the ex-officio Chairman of such Committee or Committees. Thus, by the exercise of the casting vote, respondent No. 2 got himself appointed as a member of the aforesaid Committees and by virtue of the proviso to Sub-section (5) of Section 82 of the Act, he would have automatically become the ex-officio Chairman of the said five Committees. The petitioners, therefore, were left with no alternative but to question the appointment of respondent No. 2 as Member of the aforesaid Committees.

2. After the institution of the present petition, my learned brother B. K. Mehta, J., while admitting the petition, granted an ad interim injunction in the following terms :--

"Ad interim relief of Injunction restraining the respondent No. 2 from participating in meetings of Octroi Committee, Water Works Committee and Social Justice Committee to be held on 17/18/19th June 1981 respectively. The Committee shall elect the Chairman for each of the said meetings. Respondent No. 3 is directed to remain present at and record the proceedings of the said meeting. Notice of interim relief returnable on 2nd July 1981."

By a subsequent order made on 19th June 1981 the aforesaid Interim relief was extended to the meetings of the Health and Public Works Committee to be held on 20th June 1981. Subsequently, on 26th June 1981, my learned brother, P. D. Desai, J., directed the rule to be heard on 3rd July 1981 but for one reason or the other, it could not be heard on that date or immediately thereafter.

3. Three questions, therefore, arise for consideration In this petition, namely :--

(1) Whether respondent No, 2 was in law entitled to cancel the Committee meetings scheduled to be held on 22nd May 1981 after having called the same for the purpose of electing the Chairman of the said Committees by the circular of 18th May 1981?

(2) Whether the election of Chairman of the various Committees at the meeting called on 30th May 1981 by some of the members of the various Committees was legal and valid and whether respondents Nos. 2 and 3 were in law enjoined to take cognizance of the minutes of the said meetings? And

(3) Whether respondent No. 2 was entitled to use the casting vote on there being a tie when he was himself the person proposed to be nominated on the five Committees mentioned earlier?

4. Before I deal with the aforesaid three points which arise for my consideration in this petition, it would be advantageous to bear in mind a few relevant provisions of the Act and the Rules to which my attention was drawn by the learned advocates for the contesting parties at the hearing of this petition. Chapter V of the Act is entitled "Conduct of Business, Administrative Powers and Duties, Property and Fund and Accounts Etc., of Panchayats". Section 79 says that the provisions of Part I of the said Chapter shall unless specifically distinguished, apply generally to Gram Panchayats as well as Nagar Panchayats. Section 82 provides for the appointment of Committees for the conduct of business of Nagar Panchayats, Sub-section (1) of Section 82 says that a Nagar Panchayat may constitute an Executive Committee for performing such of its functions and duties (not being those pertaining to its Social Justice Committee) as it may assign to it. So far as the constitution of the Executive Committee is concerned, Sub-section (2) of that Section lays down that it shall not consist of less than five and not more than seven members to be elected by the Panchayat from amongst Its members, out of whom one shall belong to a Scheduled Caste or a Scheduled Tribe and one shall be a woman. Sub-section (3) deals with the constitution of the Social Justice Committee and Sub-section (4) deals with the constitution of various other Committees for the execution of any work or scheme decided upon by the Panchayat or to inquire into and report to the Panchayat on matters which it may refer to such Committee. It further empowers the Panchayat to make regulations for the procedure to be followed by such Committees. Then comes Sub-section (5) which is of some importance and may, therefore, be reproduce ed :--

"(5) Where any committee is constituted under tills Section the members of the

Committee shall elect from amongst themselves the Chairman of the Committee :

Provided that-

(a) where the Chairman and Vice-Chairman of the Panchayat both are members of any such Committee, the Chairman shall be the ex-officio Chairman of such committee and if he declines to hold the office, the Vice-Chairman shall be the ex-officio Chairman of the Committee, unless he also declines to hold the office, and

(b) where only one of them is a member thereof he shall be the ex-officio Chairman of the committee, unless he declines to hold the office."

Sub-section (6) concerns the term of the Executive Committee as well as the Social Justice Committee. Sub-section (8) next provides that a member or Chairman may resign from membership or Chairmanship of a Committee by tendering his resignation to the Panchayat. Sub-section (9) provides for filling in the vacancy "as soon as possible". The rest of the sub-sections are not relevant for our purpose. Section 85 outlines the procedure to be followed at the meetings of such Committees. It says : "Save as otherwise provided in this Act, the time and place of a meeting of a Panchayat or a committee thereof, the quorum for such meeting, the procedure for calling such meeting and the procedure at such meeting shall be such as may be prescribed". "Prescribed", according to Section 2 (24) means, prescribed by rules. That brings us to Section 86 which has relevance on the question of respondent No. 2's right to utilise the casting vote in the event of a tie. It reads as under :--

"86. All questions before a meeting of a Panchayat or Committee thereof or of a Gram Sabha shall be decided by a majority of votes of the members present and unless otherwise provided in this Act the presiding officer of the meeting shall have a second or casting vote In all cases of equality of votes :

Provided that in such circumstances and subject to such conditions as may be prescribed, a decision on any question before a Panchayat or Committee thereof may be taken by circulating the propositions therefore for the vote of members."

5. As the procedure for the meetings of the Committee shall be such as may be prescribed (Section 85), we may refer to the relevant Rules to which my attention was drawn at the hearing of this petition. Chapter III of the Rules is entitled "Meetings of Committees", Rule 47 says that the Chairman of a Committee shall be the convenor of such meetings. Rule 51 next provides that the Chairman of the Committee shall preside over the meeting whenever he is present and in his absence the members shall elect a Chairman. Rule 52 next provides that the officer of the Panchayat dealing with the subject allotted to a Committee under the Panchayats Functions List shall be the Secretary of the Committee. If there is no such officer, the Secretary of the Panchayat shall be the Secretary of the Committee. According to Rule 53 it is obligatory to maintain a written record of the proceedings of every meeting of such Committees. By Rule

55 the Secretary is enjoined with the responsibility to maintain all proceedings of such Committees. These proceedings have to be placed before the Panchayat at its next meeting as provided by Rule 56. Rule 59 fixes the responsibility on each Committee for the implementation of its decisions in respect of the subjects assigned to it. Rule 4 (b) of the Gujarat Gram and Nagar Panchayats Secretaries, (Functions and Duties) Rules, 1963 says that in the case of a Nagar Panchayat, It shall be the duty of its Secretary to keep minutes of proceedings of all Committees of the Nagar Panchayat. It becomes abundantly clear on a conjoint reading of Rule 52 of the Rules and Rule 4 (b) referred to above that the duty to maintain the minutes of the proceedings of all Committees of the Nagar Panchayat is that of its Secretary.

6. I will first deal with the question whether in view of Section 86 of the Act reproduced earlier, respondent No. 2 was, in the circumstances then obtained, entitled to use his second or casting vote in view of a tie at the meeting of 8th June 1981. The first part of Section 86 with which we are concerned does state that all questions before a meeting of a Panchayat shall be decided by majority of votes of the members present and unless otherwise provided by the Act, the presiding Officer of the meeting shall have a second or casting vote in all cases of equality of votes. On a plain reading of this Section it becomes clear that after the presiding officer has utilised his first vote, if there is a tie. he is entitled to a second or a casting vote. It was, however, submitted by Mr. Panchal, the learned counsel for the petitioners, that ordinarily the Presiding Officer is entitled to a second or casting vote in the event of a tie but this right is subject to the condition that by doing so, he does not become a Judge in his own cause. In other words, according to Mr. Panchal, the second or casting vote would be available to the presiding Officer provided he is not personally interested in the issue on which there is equality of votes. In support of this contention he invited my attention to the following observation from Blackwell's Law of Meetings, Ninth Edition, at page 42 under the caption "presiding At One's Own Election":--

"It is settled law that a person who presides at an election is disqualified from being a candidate. The principle is only an extension of the rule which prevents a judge or any person acting in a judicial capacity from deciding matters in which he has a personal interest which might affect his impartiality as a Judge." Lord Campbell's observations in R. v. Owens (1859) 28 LJQB 316 which have been reproduced by the learned author may be reproduced with advantage :--

"Upon the maxim that no man shall be judge in his own cause, I am of opinion that a returning officer cannot be allowed in the election at which he presides to return himself. This is not a mere peculiarity of election law according to which the sheriff of the county cannot return himself Member of Parliament for his own county."

This is so because on his election he has the opportunity of acting partially. In the instant case also, it is obvious that by using the second or casting vote, respondent No. 2 elected himself as a Member of the aforesaid five Committees

of the Panchayat. Since the field is now covered by the decision of my learned brother, P. D. Desai, J., in *Balwantrao Bhimbhai Desai Vs. Taluka Panchayat, Kamrai and Others*, I do not deem it necessary to enter into an extensive elaborate discussion in this behalf. It would be sufficient to refer to the relevant observations made by my learned brother in the said decision with which I am in complete agreement. The Section which my learned brother was required to consider was Section 115 of the Act which is substantially the same as Section 86 of the Act with which we are concerned (Paras 6 to 8 of AIR.).

"..... If there is equality of votes on the question of the constitution of one or more of the statutory committees at a meeting of the Taluka Panchayat, the presiding officer of the meeting would have a second or casting vote unless he is personally disqualified from exercising such vote.

..... The President of the Taluka Panchayat who presided at the meeting was himself a candidate for the Executive Committee. It is inconceivable that he could have presided over such a meeting. A person presiding over such a meeting might have to give his ruling on any number of questions including a question intimately connected with the proposal relating to the constitution of one or more of the statutory committees.....

This would show that when the president is himself a candidate for one of the statutory committees, he might have to decide questions which affect his own interest and more often than not, he would be a Judge in his own cause in such situations. Under such circumstances, there would be a clear conflict between his duty and interest and in normal course, therefore, the President should vacate the chair in favour of the Vice-President, or, if he is absent or disqualified on the same or any other ground, the members present at the meeting should be allowed to choose one of the members present and entitled to vote but who is not a candidate, to preside over the meeting. Since this course was not adopted in the present case and the President, although he was a candidate for the Executive Committee, continued to preside over the meeting and decided, an important point of order raised by the petitioner in his own favour, the election must be held to be invalid."

In the instant case also the facts clearly reveal that the petitioners had raised an objection that respondent No. 2 having been proposed to be elected as a member of the aforesaid five Committees, ought not to continue to preside over the meeting but the said objection was overruled. Even after there was a tie, an objection was raised to his exercising the second or casting vote but that too was spurned. The facts are, therefore, clearly identical with the facts of the aforesaid decision and hence the conclusion which this Court must reach be the same. In this behalf the observations of P. D. Desai, J., in paragraph 10 of the aforesaid decision are germane :--

"When there was a tie on account of equality of votes cast on the proposal with regard to the election of the members of the Executive Committee, the

President, who was himself a candidate, resolved the deadlock by giving his second, or casting vote. The direct and immediate result of the exercise of the right of giving a second or casting vote was that the panel of which the President was himself a member was declared elected. Since a casting vote is conferred on the officer, namely, on the presiding officer of the meeting, and not on the individual, it is required to be exercised as a fiduciary power in the interest of the institution as a whole (see *The Conduct of Meeting* by T. P. E. Curry and J. Richard, Twentieth Edition at page 118). The vesting of such power postulates its exercise in an impartial and bona fide manner and not for one's own benefit. There might conceivably be situations where in order to maintain his impartiality the presiding officer may feel it unwise to exercise his right to use his casting vote and this case presented one such situation. It is unfortunate that the President chose to give his second or casting vote in the circumstances under which it was highly improper for him to have so done. He was himself a candidate and was, therefore, interested in the outcome of the proposal. It is against all canons of justice for a man to be a Judge in his own cause. Under circumstances such as those that are present herein, it would be difficult to believe that a person could have exercised his right of second or casting vote in an impartial or bona fide manner. There was a clear conflict between interest and duty. The casting vote could not, therefore, have been allowed to turn the scales."

I am in respectful agreement with the view expressed by my learned brother and would add that in view of the proviso to Sub-section (5) of Section 62 it was all the more necessary that the second, respondent should not have presided over the meeting since the effect of the casting vote was not only to elect himself as a member of the aforesaid five Committees but also as the Chairman of those Committees. I have, therefore, no hesitation in; coming to the conclusion, (as was reached by my learned brother) that the election of respondent No. 2 to the aforesaid five Committees at the panchayat meeting of 8th June 1981 is clearly illegal and unsustainable.

7. Mr. R. N. Shah, however, submitted that the view expressed by my learned brother in *Balwantraj's case* (supra) is in conflict with the subsequent two decisions of this Court in *Aryakumar v. Town Planning Officer* (1979) 20 GLR 543 and *Indravadan Occhavtal Modi v. Vadodara Municipal Corporation* 1982 (1) 23 GLR 881 do not think that there is any conflict as submitted by Mr. Shah. In *Aryakumar's case*, a Division Bench of this Court to which my learned brother P. D. Desai, J., was a party, held that if a power is conferred on an authority by statute and the conditions laid down for the exercise of that power are satisfied, the authority has no discretion to refuse to exercise the discretion, albeit, the power, that is, discretion must be exercised in a lawful manner with a view to carrying out the objects of the statute. In the case of *Indravadan*, the Court was concerned with Clause (o) of Rule 1 of Chapter II of Schedule A of the Bombay Provincial Municipal Corporations Act, 1949, which provided as under:--

"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 present and voting 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."

Mr. Shah then placed reliance on the following observations found in paragraph 28 of the judgment:--

"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 that he had been clothed under the abovementioned Clause (o) with the power to exercise a second or a casting vote. This point is dealt with by me only academically."

On the basis of these observations Mr, Shah vehemently contended that the respondent No. 2 was in duty bound to exercise his second or casting vote when there was a tie on account of equality of votes. He submitted that as the presiding authority he was charged with the duty of exercising a second or a casting vote and he cannot be condemned for having done so. This argument would appear to be sound at first blush but in the context of the facts it must be negated, In Indravadan's case the presiding authority was not a candidate for the election in question. He had merely refused to exercise the second or casting vote under Clause (o) reproduced earlier on there being a tie. The question which arose for consideration was, whether he was right in refusing to exercise the second or casting vote or was duty bound to exercise it. In that case, before my learned brother N. H. Bhat, J., the situation was not such as is found in the present case and as was encountered by my learned brother P. D. Desai, J. in Balwantrai's case (supra). The decision relied on by Mr. Shah nowhere states that the Presiding Officer even if he be one of the competitors for the election of a member or members of various Committees is duty bound to exercise the second or casting vote. To my mind, therefore, this decision which is pressed into service is of no application whatsoever. I have, therefore, no hesitation in concluding that the second respondent was not entitled to elect himself by his own second or casting vote.

8.and 9. xxxxx

10. In the circumstances aforesaid, the reasons given in the affidavit-in-reply for

the cancellation of the Committee meetings scheduled on 22nd, May 1981 do not appear to be correct. Be that as it may, the wider question which this Court must consider is, whether the second respondent was entitled in law to cancel the Committee meetings after having called them. The following observations made in Law and Practice of Meetings, by Frank Shackleton. (Fifth Edition), page 165 throw considerable light on the question at issue:--

"When once a general meeting has been convened it is questionable whether it can be cancelled. The correct procedure, where a postponement of a meeting is desired, is to hold, the meeting as convened and adjourn it to the desired date."

These observations would indicate that once a meeting of the Committee is convened, the proper course to follow is to allow the meeting to be held, on the scheduled date and seek its postponement after it is so convened. In *Kantilal J. v. Vinay Sharma* (1971) 12 GLR 741, a Division Bench of this Court held that the right to adjourn a meeting which is properly convened, inherently vests in the meeting itself and the Chairman presiding over that meeting has no unfettered right to adjourn the said meeting and to interrupt its work at his sweetwil) It was further said that the duty of the Chairman of such a meeting is merely to regulate the conduct of the meeting but not to encroach upon the right of the members of the meeting to discharge their statutory duties. Mr. Shah rightly pointed out that this decision has application to the rights of members or councillors to adjourn the meeting after it is convened, but it can have no application to a situation where the meeting is cancelled before the scheduled date.

11. However, in a subsequent decision *Babubhai Gtrdharbhai Patel Vs. Manibhai Ashabhai Patel and Others*, , the question which arose for consideration was precisely the one which I am required to consider in this petition. In that case the President of Anand Municipality issued a notice on 15th January 1974 convening a meeting to transact 46 items of business on 24th January 1974. Two days before the scheduled date of the meeting, that is, on 22nd January 1974, he issued a notice informing the Councillors that having regard to the situation obtaining in the city, the meeting scheduled to take place on 24th January 1974 would take place on 5th February 1974. In other words, after having convened the meeting to be held on 24th January 1974, the President adjourned it to 5th February 1974. There were disturbances in Anand even on 5th February 1974 but the District Magistrate had clarified while issuing the order u/s 144 of the Code of Criminal Procedure that the order would not apply to Municipal Councillors and municipal employees and directed the issue of curfew permits to such Councillors and employees to enable them to assemble for the meeting at the appointed time, that is 4.00 P. M. However, before the Councillors could assemble for the meeting at 4.00 P. M. the President took a mental note of the situation in Anand and issued a circular at about 2.00 P. M. addressed to the Councillors postponing the meeting. Out of the 35 elected Councillors, 20 of them refused to endorse or take cognizance of the circular and assembled, at the

venue of the meeting at about 4.00 P. M. The President and the remaining 14 other Councillors were however absent. The Vice-President who was present, presided at the meeting in the absence of the President. The meeting transacted business from 4.00 P. M. and onwards which included the election of the Executive Committee and various other Committees of the Municipality. The legality and validity of the business transacted at the said meeting of 5th February 1974 was challenged in a petition brought under Article 226 of the Constitution. Dealing with the core contention whether the meeting presided over by the Vice-President of the Municipality at 4.00 P. M. on 5th February 1974 was validly convened and the business transacted thereat was validly transacted, my learned brother, M. P. Thakkar, J., (as he then was), came to the conclusion that the President of the Municipality had no right to cancel the meeting once convened and since there was the requisite majority at the said meeting, the business transacted thereat was validly transacted. The learned Judge made the following observations which are of relevance:--

"The President is the officer-bearer elected, by the councillors for a smooth", efficient and orderly functioning of the democratic institution for local self Government. He is merely the arm of the body (of councillors) and no more. He has no over-reaching or inherent powers. In the matter of a statutory general meeting all that he has to do is to convene the meeting. Having done so, the future course of action has to be decided upon by the councillors for the councillors acting as a body (not the president) constitute the collective conscience of the democratic institution in whom the electorate has reposed its trust. The councillors collectively have to discharge their public duties and to honour their commitment to the electorate. Can they be prevented from discharging their functions by the simple expedient of cancelling the meeting (once convened) from time to time as per the pleasure or the humour of the president? Would it not tantamount to trifling with the collective representatives of the town, making a mockery of their functions, and reducing their status to that of chess pieces for being played with by the president? If, however, the position of law is such, the Court may feel helpless and yield to such an interpretation of the law. But it is not".

The learned Judge after referring to the passage quoted earlier from Shackleton proceeded to observe as under :--

"I have, therefore, no manner of doubt that a president does not have any such power. It must also be realised that to confer such power by implication is to open the gates to arbitrariness and caprice. It would also be against public policy to confer such power by implication by virtue of a theoretical doctrine that the power to convene a meeting includes the power to cancel a meeting. If that were so, a president would go on cancelling a notice convening a meeting from time to time and make it difficult for the councillors to discharge their public duties."

These observations apply with equal force to the situation with which we are confronted. The panchayat appoints one or more Committees for carrying out

some of its functions as in its view such functions would be better regulated or managed through such Committees. It, therefore, delegates its power to such Committees with or without restrictions. Once it has delegated its power by constituting such Committees, statutory or otherwise, the members of the Committee are charged with the duty to carry out the functions of the Panchayat which are delegated to such Committees. Assuming without deciding that u/s 47 of the Act it was the function of the Chairman of the Panchayat to call the first meeting of the Committees for the purpose of electing their Chairman, could he be clothed with the power to cancel such meetings at his own sweetwill on the theoretical doctrine that the power to convene the meeting carries with it by implication the power to cancel the meetings? If such a contention is upheld the resultant situation is not difficult to imagine. If the power to convene the meeting solely rests with the Chairman and in his absence the Vice-chairman of the Panchayat, if he chooses not to convene the Committee meetings for the purpose of electing their Chairman, he may render nugatory the decision of the Panchayat to carry out some of its functions through the instrumentality of such Committees. If he is permitted the power to cancel the meetings on the theoretical doctrine that the power to convene the meeting implies the power to cancel it, he may cancel the meetings at his sweetwill and refuse to reconvene them. Such an act on his part would adversely affect the welfare of the people for whose benefit the Committees are constituted so that public works beneficial to the society are better carried out through the instrumentality of such Committees. The Chairman or the Vice Chairman, as the case may be, cannot by invoking Section 47 throttle the working of such Committees by refusing to convene their meetings. The remedy for a mandatory order through the intervention of this Court would be a time-consuming remedy as is manifested by this petition itself. I have, therefore, no hesitation in my mind that assuming for the sake of argument that the power to convene the meetings of the Committees is inherent in Section 47, the Chairman has no right to cancel the meetings once convened. I am, therefore, of the opinion that regardless of the question of bona fides, the respondent No. 2 was not entitled to cancel the meetings which were scheduled to be held on 22nd May 1981.

12. That takes me to the last question whether the election of Chairman of the various Committees constituted by the Panchayat at the meetings held on 36th May 1981 can be sustained in law. After the Committees have been constituted by the Panchayat u/s 82 (1) of the Act, Sub-section (5) thereof provides that "the members of the Committee shall elect from amongst themselves the Chairman of the Committee". The proviso has application only if the Chairman or the Vice-Chairman of the Panchayat is a member of any one or more of the Committees constituted under Sub-section (1) of Section 82 of the Act. That was not the situation on 30th May 1981. The respondent No. 2 tried to create that situation by electing himself by the use of the second or casting vote. As held earlier, he was not entitled in law to do so. Therefore, on 30th May 1981 the Chairman or the Vice-Chairman of the Panchayat was not a member of any of the

Committees, and therefore, the question of either of them becoming an ex officio Chairman of any Committee did not arise. Under Sub-section (5) of Section 82 the members of the Committee are supposed to elect their Chairman and, therefore if they have done so at the meeting of 30th May 1981, no exception can be taken. It cannot be said that the action of the members of the various Committees in electing their respective Chairman at the meetings called on 30th May 1981 is contrary to law, that is, Sub-section (5) of Section 82 of the Act. If the Chairman or the Vice Chairman, as the case may be, refuses to perform his duty u/s 47 of the Act, assuming that the said Section empowers him to call the meetings, there is nothing in law which prevents the members of the various Committees constituted by the Panchayat to elect their Chairman under Sub-section (5) of Section 82 of the Act. They cannot be left at the mercy of the Chairman or Vice-Chairman of the Panchayat who is out to throttle the functions of the Panchayat delegated to the said Committees. To my mind, therefore, once the members of the Committee meet at a meeting convened by them mutually and elect their Chairman, if the election is necessary for want of an ex-officio Chairman, the election of the Chairman at such a meeting is clearly consistent with Sub-section (5) of Section 82 of the Act. In this behalf the observations found at page 7 of "The Conduct of Meetings" by Curry and Sykes, (Twentieth Edition) are pertinent, It is observed :--

"But if all the persons entitled to attend are present without notice and agree to what is proposed, the proceedings cannot afterwards be invalidated on that ground. "The Court would never allow it to be said that there was an absence of resolution when all the shareholders have expressly assented to that which is being done" ".

No doubt these observations are made in the context of the resolution passed at the shareholders' meeting, but they apply with equal force to a decision taken at a committee meeting, which decision members of the Committee are in law obliged to take under Sub-section (5) of Section 82 of the Act.

13. In the result the petition succeeds. It is hereby declared that the election of the second respondent as a member of the various Committees at the meeting of 8th June 1981 by the use of the casting vote is null and void and ineffective in law. It is further declared that the decision of the second respondent in cancelling the meetings scheduled to be held on 22nd May 1981 was also illegal and of no consequence whatsoever. It is lastly declared that the election of the Chairman of various Committees at the meetings convened on 30th May 1981 at which all the members were present is valid and consistent with Sub-section (5) of Section 82 of the Act. The rule is made absolute accordingly with costs to be borne by respondent No. 2 personally.

14. x x x x x.