

(1982) 08 GUJ CK 0008
In the Gujarat High Court

Mukundrai Jivram Pandit

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 30(2), 451
Civil Procedure Code, 1908 (CPC) — Section 30(2)

Citation : (1983) 1 GLR 106

Hon'ble Judges : D.H. Shukla, J

Bench : Single Bench

Judgement

D.H. Shukla, J.—The present three Special Civil Applications, namely, Special Civil Application No. 1894 of 1981 (District Rajkot), Special Civil Application No. 3174 of 1981 (District Ahmedabad) and Special Civil Application No. 2840 of 1981 (District Surat) raise a common legal issue before me and therefore, they have been heard and disposed of by this common judgment.

2. The respective facts which have given rise to these three Special Civil Applications may first be narrated in brief.

Special Civil Application No. 1894 of 1981 (District Rajkot):

3. The petitioner Shri Mukundrai Jivram Pandit, Chairman, Drainage Committee, Rajkot Municipal Corporation, has assailed the order dated 20th May, 1981 passed by the respondent Nos. 1 and 2 whereby, under the powers conferred by Sub-section (1) of Section 451 of the Bombay Provincial Municipal Corporation Act, 1949 (Bombay Act No. 59 of 1949)(hereinafter referred to as "the Act" or "the said Act"), the Government of Gujarat suspended the execution of the old resolution passed under Sub-section (2) of Section 30 of the Act and prohibited the doing of any act by the Corporation as well as the Special Committee appointed by the said Corporation on the basis of the old resolution.

4. After the General Election of the Rajkot Municipal Corporation, the Special Committees were constituted by the Corporation at its General Board Meeting

held on 17th February, 1981, vide resolution No, 33. It appears that prior to the said resolution, one Shri Jayantilal Kundaliya, a leader of the opposition party in the Corporation, raised a point of order stating that it was necessary to define the sphere of business of the Special Committees u/s 30(2) of the said Act. The Mayor ruled that since there already existed a resolution defining the sphere of business of the Special Committees, it was not necessary to again define the sphere of business. Thus he ruled out the point of order raised by Shri Jayantilal Kundaliya. A copy of the point of order raised by Shri Jayantilal Kundaliya and the ruling made thereon by the Mayor is at Annexure "A" to the petition. 24 Councillors belonging to the opposition group had also raised another point of order on the ground that the delegation of the powers to the Special Committees u/s 30(2) of the said Act was also illegal, since the requirements of Section 30(2) of the said Act have not been complied with. The said point of order was also ruled out. Annexure "B" is a copy of the said point of order and the rule passed thereon on 17th February, 1981. Thereafter, by a resolution No. 33, 12 Special Committees consisting of six members for a period of one year were constituted. Annexure "C" is a copy of the said resolution. It is submitted that these resolutions were passed in accordance with the provisions of Section 30(2) of the said Act and the sphere of business of each Special Committee was delineated.

5. The petitioner alleges that the Cong. (I) Ruling party is not prepared to tolerate the running of the Corporation by the Bharatiya Janata Party which acquired a lean majority. In order, therefore, to create spokes in the smooth working of the administration, the State Government in which the Cong. (I) Party is in majority issued the impugned notification dated 20th May, 1981 in the exercise of the powers u/s 451 of the said Act and suspended the execution of the old resolution which was passed on 21st February, 1976 in regard to the defining of the spheres of business of the Special Committees u/s 30(2) of the Act, and has prohibited the doing of any act by the Corporation as well as Special Committees based upon the basis of the old resolution.

6. The petitioner submits that in Ahmedabad Municipal Corporation also, the Special Committees have been constituted and their spheres of business are defined on the basis of the old resolution which was passed in 1950 and no new resolution defining the sphere of business was passed either every year or each time when the Special Committees were constituted after every fresh General Election. The Mayor of Rajkot Municipal Corporation addressed a letter on 15th April, 1981 to the Mayor of the Municipal Corporation of Ahmedabad seeking information in this regard and came to learn that a resolution was once passed defining sphere of Special Committees and delegation of the power by the Municipal Corporation of Ahmedabad and that such a resolution was not passed every time when the Special Committees were constituted after fresh election. A copy of the letter received by the Rajkot Municipal Corporation is at Annexure "J".

7. The petitioner alleges that the State Government could not be unaware of the alleged illegal constitution Of the Special Committees of Ahmedabad Municipal

Corporation. However, the mala fides of the respondents are apparent from the fact that though the State Government has passed order u/s 451 of the said Act against the Special Committees of the Rajkot Municipal Corporation, no such or similar order is passed with regard to the Special Committees of the Ahmedabad Municipal Corporation. The petitioner, therefore, submits that the impugned order is mala fide and deserves to be so declared and consequently further deserves to be quashed and set aside by the order in this Special Civil Application.

8. The impugned order is further assailed as regards its legality on the ground that it is against the principles of natural justice. It is submitted that the Special Committees are entitled to the opportunity of hearing before the Special Committees are suspended. By virtue of the impugned order, the members of the Special Committees shall cease to be the members thereof, whereas once Special Committees are constituted, they have a tenure of one year as per the resolution of the Corporation. The members are entitled to serve on the Special Committees till the full term of office. The curtailment of the said term results in entailing civil consequences. The responsibility for adhering to the principles of natural justice was all the more when the petitioner and the other members of the Committee had specially demanded a personal hearing in the matter. No show cause notice was issued either to the petitioner or to other members of other Committees as to why an action u/s 451 of the Act should not be taken. If such a notice was issued, it is submitted, the petitioner could have shown that the interpretation placed by the Corporation on the provisions of Section 30 of the said Act was correct and that a similar decision was accepted and acted upon by the Government in the case of Ahmedabad Municipal Corporation which had constituted the Special Committees for several years without passing afresh resolution defining the sphere of business of Special Committees either after every general election or before the constitution of the Special Committees. The petitioner could have also shown that the provisions of the relevant section were directory and not mandatory. Thus, violation of the principles of natural justice has resulted in injustice to the petitioner and other members of the sub-Committees.

9. It is further submitted that the result of the impugned order would ultimately result in bringing the entire administration of the Corporation to a halt or a deadlock because the State Government is well aware that there is only a majority of one member, and therefore, it is not possible to pass any resolution by two-thirds majority at present. It is alleged that the only intention of the State Government is to create a dead-lock in the Rajkot Municipal Corporation so that ultimately it can take a drastic action of superseding the Corporation. The sole idea is to grab power in the Rajkot Municipal Corporation by laying aside all norms of democratic and federal set up accepted in the Constitution of India.

10. It is submitted that the intention of the Legislature in requiring two-thirds majority for passing a resolution defining the sphere of business is that there should be continuity in the administration without any abrupt change after every

fresh election. The prominent idea of the Legislature would be to see that the smooth working in a local self -Government is maintained. The Rajkot Municipal Corporation having passed a resolution in the year 1976 has already defined the spheres of business of each Special Committee and there is no need to do so afresh every time after every election. It is wellnigh impossible for any party to have a two-thirds majority in the Corporation, and if such majority is not obtained the spheres of business of Special Committees cannot be defined at all. This would lead to an anomalous and absurd position. Such a situation has never been and could not have been the intention of the Legislature in enacting Section 30(2) of the Act. The interpretation placed by the Government is, therefore, clearly illegal and not warranted by the provisions of the said Act.

11. The resolution passed by the Municipal Board remains in full force until it is valid in accordance with the provisions of the Act. If a resolution is passed u/s 30(2) of the Act, it continues to have effect till it is changed in accordance with the provisions of Section 30(2) of the said Act.

12. The State Government has no jurisdiction, power of authority to exercise or invoke the provisions of Section 451 of the said Act to suspend the resolution dated 21st February, 1976 because it has already become operative with effect from that date. Once it has become operative, the provisions of Section 451 of the said Act cannot be invoked.

13. The petitioner further alleges that the State Government is guilty of non-application of mind in passing the impugned order even when the provision of the said section is not attracted. It does suffer from malice in law also.

14. The petitioner has thus challenged the impugned order on the aforesaid grounds.

15. The respondent Nos. 1 and 2 have contested this application by filing an affidavit-in-reply. The following are the main contentions raised in the reply:

It is contended that the Government takes action only after appreciating the relevant facts and considering them on the basis of the provisions of law. The Government is not concerned as to which particular party rules a particular Corporation. The Government took the action after considering the legal opinion. It was not necessary to give any hearing of the matter to the Corporators because the Government wanted that the illegal execution of the resolution, issued in the year 1976 be suspended immediately.

It is true that the Resolution No. 83 was passed on 21st February, 1976 by the Rajkot Municipal Corporation under the provisions of Section 30(2) of the said Act, but it could not be taken to be the basis for conferring the powers to the Special Committees appointed by the new Corporation in view of the provisions of Section 30(2) of the said Act. Government has no knowledge that the Ahmedabad Municipal Corporation has also been acting under an old resolution passed u/s 30(2) of the said Act. The Government has written a letter 10 the

Commissioner of the Ahmedabad Municipal Corporation asking for details of the constitution of the Special Committees and conferment of powers u/s 30(2) of the said Act. It is stated that the necessary action would be taken if it is found that the Ahmedabad Municipal Corporation has also been acting in the same manner in which the Rajkot Municipal Corporation decided to do. It is further stated that the Surat Municipal Corporation which is in the hands of the Cong. (I) Party is also proceeded against u/s 451 of the said Act. Government comes to know about various resolutions and working and functions of the Corporations only from the reports made by the Commissioners of the Corporations. If the Commissioners do not make any reports, they do not come to the notice of the Government. It is denied that the State Government has decided to take action only against the Rajkot Municipal Corporation.

It is contended that it was no use flinging allegations of mala fides against the State Government. The matter is required to be examined from the entire scheme of the Act. The Corporation is supposed to pass the resolution u/s 30(2) of the said Act before conferring any powers to the Special Committees. If the ruling party in the Corporation cannot pass any resolution u/s 30(2) of the said Act, it can function under other provisions of the Act. It is denied that there would be a stalemate in the Administration of a Corporation if a resolution u/s 30(2) could not be passed for want of two-thirds majority in the General Board.

It is not necessary u/s 451 to issue any show cause notice because what the Government is supposed to consider is whether the execution of any resolution is illegal or not.

It is not admitted that the interpretation of Section 30 of the Act put forward by the petitioner is correct. The provision is mandatory and not directory. If the interpretation put forth by the petitioner is accepted, one Corporation would bind the subsequent Corporation for all times to come and this could never be the intention of the Legislature because one elected body could not snatch the powers of the subsequent elected body.

It is denied that the Government had no power, jurisdiction or authority u/s 451 of the said Act to suspend the execution of the resolution dated 21-2-1976 because the said resolution has already become operative with effect from 21-2-1976. It is denied that the impugned exercise of power is void as alleged. It is denied that the conditions u/s 451 of the Act are not satisfied. It is denied that there is non-application of mind on the part of the Government in suspending the execution of the old resolution dated 21-2-1976. It is submitted that it is only after considering the facts involved and appreciating the provisions of the Act that the impugned action has been taken.

Special Civil Application No. 2840 of 1981 (District Surat):

16. The petitioners are elected Councillors of the Surat Municipal Corporation (Respondent No. 1). Respondent No. 2 is an elected Mayor of respondent No. 1-Corporation. The main opposition group in the said Corporation consist of Janata

Party and Bharatiya Janata Party.

17. After the election of the said Municipal Corporation in January, 1981, the Corporation passed resolution No. 247 to 255 on February 24, 1981 by which Special Committees of the said Corporation were appointed from amongst its members. In all nine such Committees were appointed by the said Resolution passed at the meeting of the General Board.

18. After the General Election, the respondent-Corporation wanted to delegate its functions and powers to the Special Committees u/s 30(2) of the said Act. In view, however, of the controversy on the question of interpretation of Section 30(2) of the said Act, the Municipal Commissioner of respondent No. 1-Corporation sought the opinion from the Legal Department of the Government of Gujarat. A clarification was sought whether delegation of such power u/s 30(2) of the said Act could be by a Resolution passed by a simple majority. The Commissioner was informed by the Deputy Secretary to the Government of Gujarat, Legal Department, by a letter dated April 18, 1981 that the opinion of the Legal Department has always been that such delegation of powers could only be made by a two-thirds majority of the Councillors of the Corporation present and voting in the meeting and that the provision was absolutely clear to that effect and had to be followed in all cases where new Boards of Corporation came into existence. The correspondence between the Commissioner and the Legal Department is at Annexure "A". Pursuant to the instructions so received, an agenda was circulated by the Secretary of the respondent No. 1-Corporation incorporating therein the items to be transacted at the meeting of the Corporation scheduled to be held on May 19, 1981. Item No. 2 in the said agenda was material for the relevant purpose. It is at Annexure "C". At the meeting held on May 19, 1981, a resolution was adopted by which Special Committees were delegated powers. The said resolution was adopted by a simple majority. It is at Annexure "D". The petitioners submit that the resolution at Annexure "D" is illegal and in violation of the provisions of Section 30(2) of the said Act. The petitioners allege that the party in power of respondent No. 1-Corporation, headed by respondent No. 2 has been acting arbitrarily. It has appointed large number of members who belong to the Cong. (I) Party to these Special Committees. It is also alleged that the resolution has been passed in mala fide exercise of powers and is aimed at avoiding inclusion of the members of the opposition parties to the Special Committees. The said resolution is politically motivated. It is arbitrary, discriminatory illegal, ultra vires and void. The say of the petitioners is that the powers could be delegated to the Special Committees only by a two-thirds majority and not by a simple majority. The resolution is thus patently illegal. The petitioners contend that very vital decisions are required to be taken by the General Board through the aforesaid Special Committee in the interest of general public. The said Committees have at their command very huge funds which are required to be utilised for providing better amenities to the citizens. It is, therefore, in public interest that elected representatives of the Municipal Corporation should exercise their discretion in

taking decision in this regard. The said vital decision cannot be left to the sweet will of the Special Committees by delegating functions and powers of the respondent-Corporation by a simple majority, Such a resolution could be passed by two-thirds of the Councillors present and voting and not by a simple majority as has been done in the instant case. The resolution adopted in the past has no bearing and is a dead letter for all practical purposes.

19. The petitioners have filed a Special Civil Application bearing No. 1903 of 1981 in the High Court. When, however, the matter came up for hearing on June 24, 1981, it was withdrawn in view of the fact that the respondent-state had issued an order on 19th June, 1981 u/s 451 of the said Act suspending the impugned resolutions of the respondent-Corporation (vide Annexure "G"). However, respondent-State has issued another order on July 16, 1981 addressed to the respondent-Corporation through its Commissioner whereby the respondent-State has kept the order issued at Annexure "G" in abeyance till a decision was reached by the High Court in Special Civil Application No. 1894 of 1981. The impugned resolutions have therefore again come into play in view of the order of abeyance, vide Annexure T. The petitioners submit that the order at Annexure T is clearly illegal and is made on a wrong reading and a wrong interpretation of the interim orders passed by the High Court in Special Civil Application No. 1894 of 1981. The petitioners seek the issuance of an appropriate writ to quash and set aside the resolution No. 44 dated 19-5-1981 passed by the respondent No. 1-Corporation, vide Annexure "D" to the petition.

20. It is thus clear that the prayers sought in Special Civil Application No. 1894 of 1981 and the present Special Civil Application are just contrary to each other.

21. The respondent Nos. 1 and 2 have contested the Special Civil Application by filing an affidavit in reply wherein the following main contentions are raised. It is submitted that the Corporation did appoint in its meeting of 24-2-1981 out of its own body members to the Special Committees under Sub-section (1) of Section 30 of the said Act. The Special Committees were already delegated the powers and duties of the Corporation by the Corporation by its resolution Nos. 358(1) to 358(9) dated 19-1-1977 as amended by Resolution No. 105 of the meeting of the Corporation dated 20-5-1978. The sphere of business of each of the Special Committees were already defined under the aforementioned resolutions dated 19-1-1977 amended by the resolution of May 20, 1978 and the Corporation has also delegated some of its powers and duties to specified Special Committees under the said resolutions.

22. It is denied that the resolution at Annexure "D" is illegal and is in violation of the provisions of Section 30(2) of the said Act. It is denied that the said resolution is arbitrary, mala fide, ultra vires, illegal and void.

23. Surat Municipality was converted into Surat Municipal Corporation with effect from 1-10-1966. The General Board of the Surat Municipal Corporation had passed resolution Nos. 19(1) to 19(7) in its meeting dated 20th May, 1968 by

which the sphere of business of each of the Special Committees was defined and it was also directed that all matters shall in the first instance be placed before the appropriate Committee and shall be submitted to the Corporation with such Committee's recommendations. The General Board had also by the said resolutions delegated some of its powers and duties to specified Special Committees u/s 30(2) of the said Act. The said resolutions were passed unanimously. The Corporation sought legal opinion in the year 1976 as to whether it was necessary for the Corporation to pass a fresh resolution u/s 30(2) of the said Act, defining the sphere of business of Special Committees and delegation of power to such Committees after every election of the Corporation. The Legal Advisor of the Corporation opined that defining of the duties and powers of the Special Committees under Sub-section (2) of Section 30 of the said Act by the Board of the Corporation made in previous year would hold good and it is not necessary that after every general election such resolutions are required to be passed afresh. It is submitted that looking to the provisions of the Act and the scheme of the Act and further considering that the Corporation has a perpetual succession and common seal, the resolutions passed by the Corporation are binding on the Corporation as such irrespective of the fact of the councillors constituting the Corporation for the time being. Such resolutions continue to be binding unless the Corporation by its subsequent resolution alters the said resolutions. The delegation of powers and duties of the Corporation is to be made by the Corporation under Sub-section (2) of Section 30 of the said Act and once that delegation is made, it is binding on the Corporation unless an alteration is made in such delegation by the Corporation subsequently. The resolution is not required to be passed with the requisite majority after every general election. If a different view is taken, it would upset the working of the Corporations in the State of Gujarat and would upset the view which prevails with all the Corporations in the State of Gujarat upto now.

Special Civil Application No. 3174 of 1981 (District Ahmedabad):

24. This Special Civil Application is filed by the petitioners who are rate payers and tax payers and are residents within the limits of the Municipal Corporation of Ahmedabad and as such they are interested in the legal constitution of the Special Committees of the Corporation and the administration of the Corporation in accordance with law. The petitioner No. 1 is also an elected Corporator of the Ahmedabad Municipal Corporation.

25. After the election of the Municipal Corporation in January, 1981, the Corporation has constituted a Special Committee of the said Corporation appointed from amongst its members. In all, there are nine Committees and such Committees are appointed by the said resolution passed by the respondent No. 1-Corporation at the meeting of the General Board. It is the contention of the petitioner that the Sub-committees are not constituted as required u/s 30(2) of the said Act. The aforesaid Committees were constituted on 23rd February 1981, but a resolution as contemplated u/s 30(2) of the said Act has not been passed.

The constitution of the Special Committees is ultra vires the provisions of Section 30(2) and is, therefore, void. All actions taken by the Special Committees and all the proceedings of the Special Committees are null and void. It is contended that one Mukundrai Jivram has filed Special Civil Application No. 1894 of 1981 in which a categorical challenge is made to the order of the Government in regard to the constitution of the Committees by the Rajkot Municipal Corporation. No such action has been taken by the State Government in regard to the Constitution of the Sub-Committees by the Ahmedabad Municipal Corporation although no fresh resolution has been passed for the purpose of defining spheres of business of Special Committees after the general election. It is alleged that since the Rajkot Municipal Corporation was under the control of Bharatiya Janata Party, the Government had issued the impugned order but since Ahmedabad Municipal Corporation was ruled by Cong. (I) Party, no such order was passed even though both the Corporations, are similarly situated in the matter of constitution of the Special Committees because both the Corporations are acting under old Resolutions without passing fresh Resolutions after the new electioning. The petitioner submits that it is, therefore, just, fit and expedient that the Government should be directed to take similar action in respect of the constitution of the Special Committee by the Ahmedabad Municipal Corporation by an appropriate writ, direction or order.

26. The petition is resisted by an affidavit-in-reply. It is submitted that the contentions of the petitioners are academic so far as Ahmedabad Municipal Corporation is concerned, as in a meeting of the General Board of the Ahmedabad Municipal Corporation held on 29th August 1981 by a resolution No. 751, the General Board defined the sphere of business of various Special Committees and also resolved to delegate to the various Committees powers and functions as stated in the said resolutions. It was further resolved that all the acts, deeds and things and powers and duties exercised and performed by the abovementioned Special Committees in respect of the spheres defined hereinabove and the powers and duties delegated hereinabove on and from 23rd March, 1981 were expressly ratified and confirmed. 87 members were present when the above item was put to vote and transacted in the above mentioned meeting of the Corporation. On votes being taken, 66 members cast their votes in favour of the Resolution, 19 members cast their votes against the Resolution, and two members abstained from voting. The resolution was thus passed by not less than two-thirds of the Councillors present in voting at the said meeting.

27. It is submitted that the contentions of the petitioners are not parawise replied as in view of the aforesaid resolution, discussion has become academic so far as Ahmedabad Municipal Corporation is concerned.

28. A resume of the main contents of all the three petitions would show that a dispute centres round the interpretation of Section 30(2) of the said Act. According to one view, the correct interpretation of Sub-section (2) of Section 30 is that the defining of the spheres of the Special Committees and delegation of

powers of the Corporations to them could only be made by a two-thirds of the Councillors of the Corporation present and voting in the meeting and such a resolution was required to be passed every time when new Boards of Corporation came into existence after usual election. This is the stand taken by the petitioners of Special Civil Application Nos. 2840 of 1981 and 3174 of 1981. On the other hand, the petitioner of Special Civil Application No. 1894 of 1981 provides other view of the interpretation of Sub-section (2) of Section 30 of the said Act, to the effect that once a Corporation has passed a resolution in its General Board as required u/s 30(2) of the said Act, it is not necessary to pass such a resolution every time after general election or every time before the constitution of the Special Committees.

29. Section 30 of the said Act runs as under:

30. (1) The Corporation may from time to time appoint out of its own body, Special Committees which shall conform to any instructions that the Corporation may from time to time give them.

(2) The Corporation may by a specific resolution passed by the vote of not less than two-thirds of the Councillors present and voting at a meeting of the Corporation define the sphere of business of each Special Committee and direct that all matters and questions included in any such sphere shall in the first instance be placed before the appropriate Committee and shall be submitted to the Corporation with such Committee's recommendation; and the Corporation may also by a like resolution delegate any of its powers and duties to specified Special Committees.

(3) Every Special Committee shall appoint two of its members to be its Chairman and Deputy Chairman:

Provided that no councillor shall, at the same time, be the Chairman of more than one Special Committee.

(4) The Chairman and in his absence the Deputy Chairman and, in the absence of both such other member as may be chosen by the members of the Special Committee present at a meeting thereof shall preside at the meeting.

(5) Any member of a Special Committee who absents himself during two successive months from the meetings of such Committee, except on account of temporary illness or other cause to be approved by such Committee, or absents himself from or is unable to attend the meeting of such Committee during four successive months from any cause whatever, whether approved by such Committee or not, shall cease to be a member of such Committee and his seat shall thereupon be vacant.

(6) All the proceedings of every Special Committee shall be subject to confirmation by the Corporation.

Provided that it in delegating any of its powers or duties to a Special Committee

under Sub-section (2), the Corporation directs that the decision of such Committee shall be final, then so much of the proceedings of such Committee as relates to such powers or duties shall not be subject to confirmation by the Corporation, if such decision is supported by at least half the total number of members of such Committee:

Provided further that any Special Committee may by a resolution supported by at least half the whole number of members direct that action be taken in accordance with the decision of such Committee without waiting for confirmation of its proceedings by the Corporation, where such confirmation is required, if such Committee considers that serious inconvenience would result from delay in taking such action; but if the Corporation does not subsequently confirm the proceedings of such Committee such steps as may still be practicable shall be taken without delay to carry out the orders of the Corporation.

(7) The Corporation may at any time dissolve or alter the constitution of a Special Committee.

(8) The constitution of Special Committees and the conduct of business at meetings of such Committees, the keeping of minutes and the submission of reports and other matters before such Committees shall be regulated by rules.

30. The view canvassed by the petitioners of Special Civil Application No. 2840 of 1981 and by the petitioners of Special Civil Application No. 3174 of 1981 was argued by Mr. H.B. Shah before me. The learned Government Pleader, Mr. R. Vin supported this view. The other view was argued by Mr. P.M. Raval, Advocate for the petitioner in Special Civil Application No. 1894 of 1981 and by Mr. G.N. Desai, Advocate for the Ahmedabad Municipal Corporation, which is respondent in Special Civil Application No. 3174 of 1981.

31.(1) Mr. R.B. Shah submitted that in interpreting Section 30(2) of the said Act, a paramount consideration must be given to the fact that the Corporation is a live body set up in democracy. The basic tenets of democracy requires that the administration of the Local self-Government must be in the hands of the elected representatives of the Society. Unless there is an express provision to that effect, the elected members should not be hampered by past decisions. The elected representatives should have a free hand in carrying on the administration of the Local self-Government which is entrusted to them by the voters. So far as Section 30(2) of the said Act is concerned, there is nothing to suggest that the elected representatives of the voters should go by a resolution passed by the predecessor body of elected representatives.

(2) Mr. Shah further submitted that there is intrinsic evidence in the language of Section 30(2) of the said Act which supports the interpretation as he places it on the sub-section. Mr. Shah's first emphasis was on the word "Corporation". In fact, Mr. Shah stated that key to the interpretation of Sub-section (2) of Section 30 of the said Act lies in correctly interpreting the term "Corporation". He suggested that the word "Corporation does not in this subsection mean mere

legal entity, but it denotes the General Board elected by the voters at the general election. It is true that under the definition of the term "Corporation", vide Section 2(1) of the said Act, "Corporation" means the Municipal Corporation of the City, but in the context, he submitted, the word "Corporation" must mean the General Board comprising elected members, in Section 30(2) of the said Act. He suggested that if we note the term "Corporation" in Section 30(1) of the said Act, it is stated that the Corporation may appoint out of its own body, Special Committees and the emphasis must be given to the phrases "out of its own body". If the term "Corporation" is to be understood in the sense of a legal entity, the phrase "out of its own body" would be out of place. The phrase "out of its own body" clearly, suggests that the term "Corporation" is used to mean a General Board. He again emphasised that if Section 30(1) of the said Act is closely read, the Corporation has to make an appointment "from time to time". If the appointments are to be made from time to time, it provides a pointer to the interpretation of Section 30(2) of the said Act to the effect that a resolution with two-thirds majority is required to be passed for the purpose of defining the sphere of business of Special Committees every time after fresh election.

He further submitted that a further term to be noted in Section 30(2) of the said Act is the term "specific resolution" which is to be passed by the vote of not less than two-thirds of the Officers present and voting at a meeting of the Corporation. He also emphasised the words "present and voting." He suggested that the term "specific resolution" and the phrase "present and voting" go to show that a fresh resolution is to be passed u/s 30(2) of the said Act after each general election.

(3) Mr. Shah submitted that everytime when the general election takes place, the voters send their representatives and it was keeping in mind the quality and calibre of the elected representatives that it was to be decided as to how to define the sphere of business of each Special Committee and what powers should be delegated to it. It is not in consonance with the spirit of the Act that such a resolution should be passed once and for all. The newly elected Board is a specific body in which the confidence is reposed by the voters and if their right as well as an obligation that they should give a fresh look at the administration of the Corporation and keeping in mind the circumstances prevailing, such a General Board must constitute Special Committees as required u/s 30(2) on the said Act and it is after the collective application of mind that the powers should be delegated to such Special Committees.

(4) There are three functions contemplated u/s 30(2) of the said Act : (1) to define the sphere of business of Special Committee or Special Committees. (2) to direct that all matters and questions included in any such sphere shall in the first instance be placed before the appropriate Committee and shall be submitted to the Corporation with such Committees recommendation, (3) the Corporation may by a like resolution delegate any of its powers and duties to specified Special Committees. So far as the later two functions are concerned, it is more obvious

that such delegation must be fresh after every election because delegation of powers being a serious matter must be considered in the light of the personnel constituting the General Board. If that be so, so far as function of defining the sphere of business of each Special Committee is concerned, it could not be given, a different interpretation. All the three functions, therefore, must be done every time after the general election so as to be properly responsible to the voters.

(5) I had put to Mr. Shah that if a specific resolution as required u/s 30(2) of the said Act was once passed in consonance with the provisions of the sub-section, would not such a resolution continue till it was altered or modified by a later General Board in consonance with the provision of Section 30(2) of the said Act? There is nothing to suggest that in Sub-section (2) of Section 30 of the said Act that a resolution once passed by a General Board under Sub-section (2) of Section 30, its tenure is coterminus with the tenure of the general body which passed it. Is there not, therefore, a necessary implication that such a resolution once passed must continue till it is substituted or altered by a succeeding resolution. Mr. Shah replied that such implication cannot be carved out from the language of Sub-section (2) of Section 30 of the said Act, particularly when the phrase "out of its own body" employed in Sub-section (1) of Section 30 of the Act gives a clear indication that the term "Corporation" means a General Board and not a perpetual legal body. Since the constitution of the Corporation in the sense of general body changes from time to time, there cannot be any "necessary implication" to justify an inference that a resolution once passed in consonance with Section 30(2) of the said Act should perpetuate, notwithstanding the general election which may be held from time to time. I may only state at this stage that I cannot agree with Mr. Shah, but I shall discuss the reasons for the view which I hold in regard to the necessity of the implication, later in the judgment.

(6) I also suggested to Mr. Shah that if a party holding majority in the General Board is not in a position to commend two-thirds majority, it would not be able to carry through such a resolution under Sub-section (2) of Section 30 of the said Act and if the old resolution is to cease to have effect, a deadlock would be created. There would be a veritable stalemate so far as the administration of the Corporation is concerned. u/s 4 of the said Act, the Municipal authorities charged with the carrying out of the provisions of the Act are a Corporation, a Standing Committee, a Municipal Commissioner and in the event of the Corporation establishing or acquiring a transport undertaking, a Transport Committee and a Transport Manager. A Corporation is thus invested with the definite functions under the provisions of the Act and these functions are to be carried out by the General Body. A General Body in a city like Ahmedabad consists of a large number of persons and therefore, it would be impracticable to expect that such a General Body would carry out the functions under the Act with which the Corporation is invested. The constitution of the Special Committees is, therefore, a must and so also defining the powers of such Special Committees. If the Special Committees cannot be constituted by the General Board for want of two-

thirds majority, it would be highly imaginative to expect that the functions could be carried on by the General Body itself. The deadlock of the functions of the Corporation is not an imaginary apprehension, but it is a stark reality. In fact, want of two-thirds majority in a general board of a Corporation is a rule rather than exception. Mr. Shah indeed appreciated my point of view, but he argued that in that case the majority would be obliged to take support of the minority. Such a necessity would enhance the cause of democracy because it would then be a local self Government in the real sense of the term. But it could further be contemplated that a minority would refuse to cooperate with the majority, or there would be honest differences of opinions in regard to the constitution of sub-committee and in regard to the defining of the sphere of business of Special Committees, then what would happen?

(7) Mr. Shah submitted that one of the basic canons of interpretation of a statute is to first consider as to what is the literal and grammatical meaning of the language employed in a statute and if the language was clear, the interpretation cannot be permitted to twist the language on account of an apprehension about its effect or the consequences which would follow from that interpretation. In the submission of Mr. Shah, the word "Corporation" was used in several sections of the Act but clearly in two senses. In the first sense, it means a legal entity, and in the second it means the general board. It is in second sense that the term "Corporation" is used in the Sub-sections (1) and (2) of Section 30 of the said Act. If that is accepted, the rest of the sub-sections were clear and did not admit a contrary interpretation. As I shall show later, the argument of Mr. Shah is based on an assumption that Sub-section (1) of Section 30 of the Act must necessarily be read in Sub-section (2) of Section 30 of the Act and that both cannot stand independently of each other. That assumption of Mr. Shah is not well-founded.

32. This is one side of the picture in regard to the interpretation of Sub-section (2) of Section 30 of the said Act. I have very closely considered the point of view advanced by Mr. H.B. Shah and supported by the learned Government Pleader Mr. R.M. Vin and Mr. D.D. Vyas.

33. When a necessity arises to interpret a statute, the basic and the accepted principle of interpretation is that the intention of Legislature must be gathered from the language employed. A statute is an edict of the legislature and must be construed according "to the intent of them that make it" and "the duty of judicature is to act upon the true intention of the legislature the mens or sententia legis:" If the language is clear, there is no difficulty. But if a statutory provision is open to more than one interpretation, the duty of the Court is to choose that interpretation which represents the true intention of the legislature. The greatest difficulty in interpreting a statute under such circumstances is to get at the intention of the Legislature without reading one's own ideas and ideologies into it. The Court has to consider a statute which requires interpretation from the view of the meaning of the language employed in it in the

light of the spirit of the statute, the policy underlying the statute and the purpose and object with which the particular provision is enacted. It may be re-emphasised that if the language is clear which can reasonably have only one meaning, the effect must be given to the provision of the statute as conveyed in the language. But when the interpretations are possible because of ambiguity of a term or because of a "referent" meaning thereby the object or a situation envisaged in the provision is not clear, the duty of the Court is to interpret the statute by adopting a functional approach also. In case of doubt, one must have an eye on the object and purpose of the statute or reason and spirit behind it. As put by learned Hand, J. : "Statutes should be construed not as theorems of Euclid but with imagination of purpose behind them". As Lord Watson stated, in an off quote passage, "In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. "A bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility". It is likely, in some cases, that if necessary implication is not borne in mind, the contrary result would frustrate the beneficent purpose of the Act. A literal or mechanical construction would have to be avoided if it tends to bring about an unanticipated mischief. An actual and a guiding principle of interpretation in such cases is to harmonise the words "with the object and spirit of the statute." "Language which on its construction results in absurdity, inconsistency, hardship or strange consequences is not readily accepted is unambiguous. A further guiding principle of interpretation to be borne in mind in interpreting a statute which "one who runs cannot read it" is to consider the provision in the light of consequences which would follow from its interpretation, one way or the other. "When words of statute are clear they must of course be followed, but in their Lordships" opinion where alternative constructions are equally open, that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purports to be regulating and the alternative is to be rejected which would suggest friction or confusion into the working of the system".

34. There is no manner of doubt that the language of Sub-section (2) of Section 30 of the Act is liable to two interpretation. It is, therefore, that it is necessary for me to bear in mind the accepted principles of interpretation.

35. The word "Corporation" is defined in Sub-section (1) of Section 2 of the said Act and the term must be understood in the sense in which it is defined unless a different meaning must of necessity be attributed to the term by the context in which it is employed in a particular provision of the statute. The perusal of Sub-sections (1) and (2) of Section 30 of the Act shows that the term "Corporation" is used in both the sub-sections. It is possible to interpret the term "Corporation" in the sense in which Mr. H.B. Shah wanted me to do so far as Sub-section (1) of Section 30 of the Act is concerned. The words "out of its own body" must be given effect to and they can be given effect to more easily if the term

"Corporation" is understood to mean the general board. However, I do not agree with Mr. Shah that since the term "Corporation" is to be understood in the same sense in Section 30(1), it must necessarily be understood in the same sense in Section 30(2) of the said Act. What strikes the reader of the sections at the very first reading is that both the terms, namely "from time to time" and "out of its own body" are not repeated in Sub-section (2) of Section 30 of the said Act. The omission is significant and must be given due weight while Sub-section (2) of Section 30 is interpreted. For the reasons which I shall soon state, I am of the view that the word "Corporation" used in Sub-section (2) of Section 30 means a legal entity which has of course to act through a general board. The Corporation is a legal entity and it has got to act through the members constituting it. But when a question of interpretation springs up, it becomes necessary to disassociate the term "Corporation" from the members constituting it. To interpret the term "Corporation" in the sense given to it under its definition under Sub-section (10) of Section 2 of the Act is to be consistent with the definition as well as the context and the nature of the contents of Sub-section (2) of Section 30. The Councillors or the members of the Board shall not be identified with the term "Corporation" as, to do so would lead to a possible stalemate or a dead-lock in the functioning of the Corporation.

36. As seen above, the statute charges a Corporation, a Standing Committee, Municipal Commissioner with carrying out the provisions of the Act. These three bodies, namely, a Corporation, a Standing Committee and a Municipal Commissioner are perpetual bodies in the sense that their respective existence does not cease with the expiration of the Councillors. It is with purpose that these three bodies are given perpetual legal existence. A Standing Committee and a Municipal Committee are not legal entities in the sense a Corporation is. Nevertheless, all the three have continuous existence. The continuity is afforded to them in order to have continuity in the administration of the Corporation. It is true that the Special Committees to be appointed under Sub-section (1) of Section 30 of the Act do not have such a continuity given to them u/s 4 of the Act. It is also true that the members constituting the Special Committees must of necessity change with every election. The continuity of the personnel of the Special Committees must break. However, if possible, that should not be so with regard to the Special Committees which have to perform under Sub-section (2) of Section 30 of the Act. If the term "Corporation" is understood in the sense of a legal entity and not in the sense of a general body, it would lead to an interpretation which gives continuity to the assignment of functions to different Special Committees.

37. I have read and re-read Sub-section (2) of Section 30 of the said Act, but I do not find anything therein to suggest that once a resolution is passed under Sub-section (2) of Section 30 of the said Act, defining the sphere of business of each special sub-Committee, that resolution will come to an end when the term of the members who passed that resolution expired. The language of the Sub-section is to be viewed from the point of time when the statute was enacted. We

may well imagine ourselves to be at the point of time when the statute was enacted and read the sub-section. It then becomes more clear to us. Once a specific resolution is passed by the votes of not less than two-thirds of the Councillors present and voting, at a meeting of the Corporation defining the sphere of business of each Special Committee, is there anything to suggest that such a resolution comes to an end with the terms of the members who passed it, or in other words, is there anything to suggest that such a resolution is intended to be co-terminus with the tenure of the members? Would not one expect that if such was the intention of the Legislature, it would have provided the consequences for not passing a fresh resolution after election? It may further be noticed that the clear language of the Sub-section is that "the Corporation may pass such a resolution". The power to be exercised by the Corporation under Sub-section (2) of Section 30 of the Act is clearly not mandatory, not even directory, but it is discretionary. It is a discretionary power given to the Corporation to pass a resolution under Sub-section (2) of Section 30 of the Act, since no consequences are attached for not passing such a resolution.

38. Viewing the intention of the Legislature from the time when the statute was enacted, two points clearly emerge. One is that the Corporation is invested with a discretionary power to pass a resolution under Sub-section (2) of Section 30 of the Act and that there is nothing to suggest that such a resolution would have a limited tenure. The necessary implication, therefore, arises that once a resolution under Sub-section (2) of Section 30 of the said Act is passed, the resolution stands, notwithstanding the termination of the tenure of the members who passed it. If this interpretation is not accepted, the alternative interpretation is that a resolution under Sub-section (2) of Section 30 of the said Act must be passed every time after a fresh election. This interpretation is likely to result in a deadlock or a stalemate when the majority in the general board does not command two-thirds majority. It is not unlikely that a minority would refuse to co-operate with the majority. How would then the Corporation function? The interpretation that a resolution once passed stands good is not fraught with any risk of tyranny as a succeeding general board commanding two-thirds majority can very well put an earlier resolution at naught or vary it as it chooses. This interpretation helps avoiding a very likely hardship if the other interpretation is accepted.

39. The interpretation chosen by me is also supported by the principle of "Contemporanea Expositio" as the old resolution is adhered to in practice in Ahmedabad Municipal Corporation since 1950, in Surat Municipal Corporation since 1968 and in Rajkot Municipal Corporation since 1976. It may be noted that the principle of Contemporanea expositio was applied in construing National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, .

40. To accept the interpretation in the sense suggested by me is not to violate the literal meaning of the language used in the sub*section. The Corporation must pass a specific resolution. The Corporation must pass a resolution by the

votes of not less than two-thirds of the councillors present and voting at a meeting of the Corporation to define the sphere of business of the Special Committees. But if that is done, there is nothing further to suggest that each time a general body is elected, the process under Sub-section (2) of Section 30 must be repeated. Where does one get the idea of the necessity to repeat the process of passing a specific resolution under Sub-section (2) of Section 30 of the said Act after every election? Let us not project the wording of Sub-section (1) of Section 30 of the said Act into Sub-section (2) of Section 30 of the said Act. Under Sub-section (1) of Section 30 of the said Act, the Corporation has to appoint Special Committees out of its own body from time to time, but this application is not repeated in Sub-section (2) of Section 30 of the said Act, more so because the phrases "out of its own body" and "from time to time" are not repeated in the said Sub-section (2) of Section 32. Mr. Shah's argument that in order to make the democratic working of the Corporation effective, the Legislature has envisaged passing of such a resolution afresh after every election does not stand to reason. In order to keep alive the democratic process, the Legislature has not forbidden passing of a resolution under Sub-section (2) of Section 30 of the said Act every time after an election, if a majority commands two-thirds of the votings in the General Board and there is also nothing to forbid, annulling or modifying or varying a resolution passed under Sub-section (2) of Section 30 of the said Act earlier. The democracy would not be undermined if a resolution once passed is allowed to stand until it is appelled or modified or varied by a subsequent resolution passed under Sub-section (2) of Section 30 of the said Act. Indeed Municipal Corporation is a live body and has to function democratically, but it has to function for the public benefit. Service of society is the prime object of the Local self-Government, and if the interpretation suggested by Mr. Shah is accepted, the very basic purpose of the Act is likely to be jeopardised, if after fresh election a party in power is not likely to command two-thirds majority in the General Board, and therefore, an implication must of necessity be supposed or assumed that a resolution once passed under Sub-section (2) of Section 30 of the said Act must stand, notwithstanding the fact that General Elections are held from time to time.

41. For the reasons above-stated, the correct interpretation of Sub-section (2) of Section 30 of the Act is that once a Corporation has passed a specific resolution by the votes of not less than two-thirds of the Councillors present and voting at a meeting of the Corporation, defining the sphere of business of each Special Committee, it is not necessary that such a resolution should be passed necessarily every time when a new General Board comes into existence after Municipal election. I, consequently, reject the interpretation sought to be put on Sub-section (2) of Section 30 of the said Act by Mr. H.B. Shah.

42. In view of the aforesaid conclusion reached by me as regards the interpretation of Sub-section (2) of Section 30 of the said Act, the following order is passed in each of the present three Special Civil Applications:

The order issued by the Deputy Secretary to the Government Panchayats, Housing & Urban Development Department dated 20th May. 1981 (vide Annexure "H") is held illegal and is quashed, and consequently Special Civil Application No. 1894 of 1981 (District Rajkot) is allowed and the rule is made absolute with costs.

43. Special Civil Application No. 2840 of 1981 (District Surat) is dismissed and the rule is discharged with no order for costs.

Special Civil Application No. 3174 of 1981 (District Ahmedabad) is dismissed and the rule is discharged with no order for costs.