
(1977) 10 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 1697 of 1977

Panditrao Daji Kulkarni

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-10-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 80 BOMLR 544 : (1978) MhLj 703

Hon'ble Judges : Naik, J;Bharucha, J

Bench : Division Bench

Judgement

Naik, J.—This petition raises an interesting question about the stage at which the President of a Municipal Council under the Maharashtra Municipalities Act, 1965 ("the Act of 1965", for short) could nominate members of the Subjects Committees u/s 63(3B)(i) of the Act. It also incidentally raises the question as to whether the Collector could interfere with that order-under the provisions of Section 308 of the Act and whether the Government could revise any such order u/s 318 of the Act.

2. The question arises on the following facts: For the town of Ichalkaranji which has a population exceeding 75,000, "A" Class Municipal Council has been constituted under the Act. The first elections to this council were held in November 1974. At that time the total number of members of this council consisted of forty-two elected and four co-opted councillors, in addition to the President. The elections to the Subjects Committees of this council were held in January 1975, and January 1976. It may be mentioned that it was resolved that there should be fifteen members in each of the five Subjects Committees. The term of the members of the Subjects Committees was due to expire on February 4, 1977. That is why the President issued a notice dated January 20, 1977 fixing the date of election of the members of the Subjects committees on January 27, 1977. The time mentioned was 4 p.m. On January 27, 1977, there were only twenty councillors present for the meeting, in addition to the President who was

also present. The quorum required for this meeting which was a special meeting was twenty-three. Since there was no quorum, relying on a circular letter dated October 23, 1972, (annexed as "F" to the petition) issued by the Director of Municipal Administration, the President took the view that the meeting had lapsed for want of a quorum and he, therefore, proceeded to nominate the members to the subjects committees purporting to act under Sub-section (3B) of Section 63 of the Act. He also purported to nominate three members for the Standing Committee. He also passed an order (annexed as "A" to the petition), directing that the councillors nominated to the subjects committees mentioned in that order shall meet in the municipal council hall on January 29, 1977 at 11 a.m. to elect the Chairman of their respective subjects committees. This action was challenged by respondent No. 5, an elected councillor, on February 3, 1977 by filing an application to the Collector of Kolhapur. A similar application was also filed by respondent No. 4, a co-opted councillor, on February 5, 1977.

3. The action of the President was challenged on several grounds. But the President resisted those proceedings firstly, on the ground that the Collector had no jurisdiction to enquire into the matter having regard to the provisions of Section 308 of the Act. The Collector, however, took the view that the act of the President was unlawful inasmuch as he did not give an opportunity to the councillors to elect the members of the subjects committee. It may be mentioned that he accepted the contention of the President that having regard to the provisions of Section 63(3B)(i) of the Act, it was not compulsory on the part of the President to call for a second meeting before proceeding to nominate the members of the subjects committees u/s 63(3B)(i) of the Act. Relying also on the circular of the Director he held that the meeting which was called by the President had lapsed. Dealing with the contention about his jurisdiction he took the view that although the action which was challenged was not the action of the council, it was an action which was taken by the President on behalf of the council. He also held that there was no question of breach of peace or injury or annoyance to the public. But he, however, took the view that the action of the President nominating the members was unlawful. In that connection he observed as under:

In the present case before me, it is to be decided whether the council has failed to elect or not. The President convened the meeting and 21 councillors remained present. Nomination papers had been filed in time. But according to the applicants, a number of councillors chose to remain absent with the intention that the council should fail to elect so that the President may get jurisdiction u/s 63 (3B)(i) of the Act. No reason has been adduced by the concerned councillors for their absence. The applicants contend that actually the councillors who were absent from the meeting, were found to be present in the premises of the municipal council during the relevant time. This has not been denied on behalf of the president. The intention of these absent councillors seems to be to avoid the election, but get only nominated by the President. It seems to be a concerted attempt to twist the provisions of law to their own advantage.

Moreover, if the council has to fail to elect the members, it has to be given a chance, to meet at least. Once the meeting has taken place, then, it can be seen whether the council succeeds or fails to elect. Failure or success to elect would depend upon the meeting of the council, In. the instant case, for want of quorum, the meeting could not commence at all, and could not be adjourned either. But the fact remains that it is the duty of the President to call a special meeting for the said election. Merely issuing the notice does not serve the requirement of law; but the meeting has to take place. In the present case, has the council met? or has the meeting taken place? The answer is No. A meeting short of quorum is no meeting at all. It has no existence as meeting in the eye of law. Can a still born be counted among one's children. Thus, (I) find that the failure of the council to meet once is a fact, but the failure of the council to elect is not proved. My finding becomes all the more effective if we presume that the absent councillors deliberately absented themselves. In fact, if they constituted the majority, there was no reason for this absence which has led to an ineffective meeting. If they were the minority, then it is deliberate attempt to side-track the provisions of law. Either way, the finding is clear that the council did not get a chance to meet at all and hence it is not correct to say that there was a failure on the part of the council to fill up by election any vacancy or vacancies of the subjects committees. Moreover in the instant case, though it lapsed on 27.1.1977, there was an opportunity for the president to try once more. Rule 3 of the Maharashtra Municipalities Act, 1965 reads:

3... all subsequent elections to the Subjects Committees shall be held at a special meeting of the Council convened for that purpose on a date not later than one week before the expiry of the term of the members of the Subjects Committees.

In the present case, the term was to expire on 4.2.1977 at midnight. That means the meeting u/s 63(2)(b) would have to be held not later than 29-1.1977. Vide Sub-section (4)(b) of Section 81 of the Act, it was possible for the president, for reasons to be recorded in writing, to call a special meeting of the council within only one day's notice served upon the councillors and posted up at the Municipal office. If this had been done and yet the election could not be held then it would have been lawful for the president to proceed u/s 63 (3B)(i) of the Act.

In view of the foregoing fairly detailed discussion, I come to the conclusion that it was not lawful on the part of the President to have decided that the council has failed to elect. That being so, he does not derive jurisdiction u/s 63(3B)(i) of the Act, and hence the order he has passed is not permitted by law in the present case, and hence, in my opinion, it deserves to be suspended u/s 308(1) of the Act...

4. Consistently with that view the Collector in exercise of the powers purporting to have been vested in him u/s 308 of the Act, suspended the execution of the said order and also directed that the suspension shall take immediate effect.

5. When the matter went to the Director as required by Sub-section (2) of Section 308, the Director by his order dated April 18, 1977 agreed with the Collector that in view of the circular issued by the Director, the meeting had lapsed for want of a quorum. But he did not agree with the Collector that the President ought to have given one more opportunity to the councillors u/s 81(4) of the Act. On the other hand he observed that the notice given by the President on January 20, 1977 did give an opportunity to the council to meet for electing the members of the subjects committees and the standing committee. But the councillors did not avail of the opportunity by not allowing the required quorum to be formed for reasons best known to them, and thus the meeting lapsed. He further held that the Collector was in error in holding that there was no failure of the council to hold elections because the council did not get a chance to meet for holding elections to the committees. He also observed that the assumption of the Collector that there was scope for the President to hold fresh election to the committee was not correct inasmuch as in his opinion there is nothing explicit in Section 63(3B)(i) which makes it obligatory for the President to make a fresh attempt to hold elections to the subjects committees. He, however, found that the President has no authority to appoint the members of the standing committee. Therefore, he set aside the order of the Collector and confirmed the order of the President dated January 27, 1977 nominating the members of the subjects committees and at the same time he set aside the order of the President appointing three members to the standing committee

6. The correctness of that order was challenged by respondent No. 4 by filing a revision application to the State Government. The respondent No. 4, secured an ex parte order of the stay of the said order of the Director pending the decision of the revision application. That ex parte stay order dated April 28, 1977 was communicated to the President namely the petitioner on May 4, 1977. As the said stay order created a deadlock in the working of the council inasmuch as neither the standing committee nor the five subjects committees could function in any manner whatsoever, the President made a representation to the Deputy Secretary to the Government on May 5, 1977 requesting the Government to decide the revision application expeditiously within seven days. As no reply was received the President sent in another representation dated June 3, 1977 addressed to the Deputy Secretary to Government and requested the Government to vacate the said stay order immediately and to fix the revision application, for hearing immediately within seven days. It was mentioned therein that in the event of the Government failing to do so the High Court will be moved for necessary relief.

7. As the matter was not disposed of by the Government and the ex parte stay which was granted was not vacated, the petitioner moved this Court by filing Special Civil Application No. 1309 of 1977 with a prayer that this Court be pleased to quash the stay order granted by the Government on April 28, 1977 and to modify the order of the Director dated April 18, 1977 so as, to conform with the order of the President dated January 27, 1977 and in the meanwhile to

direct the State Government to vacate the stay order and/or fix the hearing of the revision application filed by the respondent No. 4 against the order of the Director.

8. That special civil application was posted for hearing from time to time, as the Court was informed that the Government would dispose of the revision application on or before July 30, 1977. It appears that the Hon'ble Minister actually heard the arguments of the counsel for the parties on July 30, 1977 and the matter was deferred for judgment. When the said special civil application No. 1309 of 1977 came up before the Court on August 5, 1977, the counsel for the State informed the Court that in view of the points of law raised at the hearing of the application, the Hon'ble Minister was pleased to refer the matter to the legal department and, therefore, it could not be stated definitely by what time the revision application could be decided. Thereupon the petitioner's counsel made a grievance in the Court that the legal department might take considerable time and the period of tenure of one year fixed for the members of the subjects committee might expire. In those circumstances on hearing the parties, this Court made an interim order staying the operation of the Government's order dated April 28, 1977 by which the Government had stayed the operation of the order of the Director.

9. Thereafter on August 8, 1977, the revision application filed by respondent No. 4 against the order of the Director was decided by the Honourable Minister and final order was passed as under:

Now therefore in exercise of the powers conferred by Section 318 of the Maharashtra Municipalities Act, 1965, Government

(i) sets aside the order of the Director of Municipal Administration dated the 18th April, 1977;

(ii) confirms the order of the Collector of Kolhapur dated the 13th February 1977;

(iii) sets aside the order of the President of the Ichalkaranji Municipal Council dated the 27th January 1977 regarding nominations to the subjects committees and the standing committee; and

(iv) directs that the President should take immediate action to hold elections to the subjects committees and the standing committee strictly according to the provisions of the law.

10. It may be mentioned that even during arguments in the revision application, the counsel for the President had urged that having regard to the provisions of Section 308 of the Act, the Collector had no jurisdiction to interfere with the order of the President nominating the members to the subjects committees, as appears from the judgment of the Minister annexed as Annexure , "G" to the petition. Although both the Collector and the Director had taken the view that Section 81(9)(b) was not applicable to the facts of the case and, therefore, the meeting called by the President on January 28, 1977 had lapsed, the Minister

took the view that that is a debatable point and observed:

But it should be noted that the Act does not make any provision for a case when there is no quorum at the commencement of the meeting and presumably it is intended that the provisions of Section 81(9)(b) are applicable to such meetings. Therefore, the President should have adjourned the meeting to another day.

11. The Honourable Minister also took the view that the Director of the Municipal Administration had taken a very narrow view in going only by the letter of the law and ignoring the real spirit and intention behind it. Although the Collector had taken the view that the order of the President was not such as to cause or is likely to cause injury or annoyance to the public or is against public interest, the Minister took the view that even if the order is lawful it was against public interest and, therefore, could have been suspended by the Collector and, therefore, the Collector's action in suspending the order was legal and within the ambit of Section 308. It was in that view of the matter that the order which is set out above was passed on August 8, 1977 allowing the revision application of respondent No. 4.

12. Having thus found that the special civil application No. 1309 of 1977 had become infructuous, the President has filed the second petition viz. the present Special Civil Application No. 1697 of 1977 and prays:

(1) that this Court be pleased to quash the order dated 8th August 1977 at Annexure "G" passed by the Deputy Secretary to Government, Urban Development and Public Health Department; and

(2) that this Court be pleased to suitably modify the order of the Director dated 18th April 1977 and to confirm the order dated 27th January 1977 of the President annexed as Annexure "A".

13. Mr. Rane, learned Counsel who has appeared in support of this petition has assailed the order of the Collector and the Government on the ground that in the circumstances of the case the President was perfectly justified in nominating the members of the subjects committees in view of the provisions of Section 63(3B) (i) of the Act, He also submits that in the circumstances as neither Section 81(9) (b) nor Section 81(4)(b) were attracted, the President was not bound to and could not have adjourned the meeting on January 27, 1977 which lapsed for want of a quorum nor could he call a fresh meeting u/s 81(4)(b) of the Act. His second submission is that in any event the Collector had no jurisdiction to interfere with the order and action of the President under the purported exercise of the Collector's powers u/s 308 of the Act. As a corollary he submits that even the Director had no jurisdiction to interfere with that order. His last submission is that in any event the State Government had no power to interfere with the order of the President under the purported exercise of revisional powers u/s 318 of the Act.

14. Mr. Kankaria, learned Counsel for the respondent Nos. 4 and 5, and Mr.

Gurusahani, learned Counsel for the State, while controverting the submissions of Mr. Rane have justified the action taken by the Collector and the Government.

15. The controversy in this petition has got to be resolved by reference to the relevant provisions of the Act and rules.

16. Section 62 of the Act which deals with the appointment of Standing Committees and Subject Committees of "A" and "B" Class Councils provides that for every "A" and "B" Class Council there shall be a Standing Committee and the following five Subjects Committees:

(i) Public Works Committee, (ii) Education Committee, (iii) Sanitation, Medical and Public Health Committee, (iv) Water Supply and Drainage Committee, (v) Planning and Development Committee.

Section 63 which is the most important section and deals with the Constitution of Subjects Committees of "A" and "B" Class Councils, reads as under:

63. (1) Each Subjects Committee of the Council appointed under the last preceding section shall consist of such number of Councillors as the Council may determine, so however that the number of members of a Subjects Committee shall not be less than one-fourth or more than one-third of the total number of Councillors:

Provided that, in so determining the number of the members of any Subjects Committee, a fraction shall be ignored.

(2) The President shall within seven days from the date of publication of the names of co-opted Councillors under Sub-section (1) of Section 20, call a special meeting of the Council for the purpose of-

(a) determining the number of the members of each of the Subjects Committees referred to in the last preceding section, and the Subjects Committee of which the Vice-President shall be the ex-officio Chairman, and

(b) holding elections to the Subjects Committees in the prescribed manner in accordance with the system of proportional representation by means of the single transferable vote:

Provided that, the President shall not be eligible for being a member of any of the Subjects Committees, but he shall have the right to speak in, and otherwise to take part in the proceedings of, any Subjects Committee, except that he shall not be entitled to vote thereat.

(3) If after elections to all the Subjects Committees are held, it is found that any Councillor has been elected to more than two Subjects Committees, such Councillor shall retain the membership of only two such Committees according to his choice and resign the membership of other such Committees within fifteen days from the date on which such elections or last of such elections are held; and the resulting vacancies, if any, shall be filled up in the prescribed manner.

(3A) If such Councillor fails to make his choice within the period prescribed in Sub-section (3), the President shall decide any two of the Committees which such Councillor shall serve, and his decision shall be final, and the resulting vacancies, if any, shall be filled up in the prescribed manner.

(3B)(i) If the Council fails to fill up by election any vacancy of a member or members of any of the Subjects Committees or if there is failure to elect a member at the fresh election, such vacancy or vacancies may, notwithstanding anything contained in this Chapter, be filled by nomination of a Councillor or Councillors, as the case may be, by the President.

(ii) Any Councillors nominated by the President under Clause (i) shall be deemed to be elected under Sub-section (2)(b), or Section 69, as the case may be.

(iii) Nothing in Sub-section (3) shall apply to any Councillors nominated under Clause (i).

(4) The Chairman of every Subjects Committee (other than the Subjects Committee of which the Vice-President is to be the ex-officio Chairman) shall be elected by the members of that Committee at the meeting convened under Sub-section (2):

Provided that, no Councillor shall be eligible to be the Chairman of more than one Subjects Committee."

17. It appears that elections to the Ichalkaranji Municipal Council were held in November 1974 and, u/s 63 of the said Act, the five subjects committees were formed. The number of members of each of the subjects committee was fixed-fifteen. It was also provided that the Vice-President shall be ex-officio Chairman of the. Planning and Development Committee.

18. u/s 68 of the Act, the term of office of the Chairman of Standing Committee shall be coterminus with his term of office as President and the term of office of the Chairman of a Subjects Committee of which the Vice-President is the ex-officio Chairman shall be coterminus with his term of office as Vice-President and under Sub-section (3) the term of office of the Chairman of other Subjects Committees and of the members of the Standing Committee and all Subjects Committees shall be one year or for the residue of their term as Councillors, whichever is less.

19. Now since the term of office of the members of all the five Subjects Committees and the Standing Committee elected during the year 1976 was to expire on February 4, 1977, it was necessary to hold a meeting for the election of the members of the Subjects Committees and the Standing Committee to fill in the vacancies after the expiry of the term of the sitting members of these committees on February 4, 1977. It would appear from Section 63(2)(b) that elections to the Subjects Committees must be held in the prescribed manner. As appears from Section 2(35) "prescribed" means prescribed by rules. In exercise of the powers conferred by Sub-section (2) of Section 321 read with Clause (b)

of Sub-section (2) and Sub-section (5) of Section 63 and Sub-clause (b) of Clause (ii) of Section 64 of the Maharashtra Municipalities Act, 1965, the Government of Maharashtra has made the rules which are called the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966.

20. Rule 3 which deals with the meeting for elections to the Subjects Committee reads as under:

Except for the first elections to the Subjects Committees held under Clause (b) of Sub-section (2) of Section 63 in respect of an "A" or a "B" Class Council and under Clause (c) of Sub-section (4) of Section 65 in respect of a "C" Class Council, all subsequent elections to the Subjects Committees shall be held at a special meeting of the Council convened for that purpose on a date not later than one week before the expiry of the term of the members of the Subjects Committees.

21. Rule 4 which deals with filling of nominations provides,

Not less than two hours before the time fixed for meeting of the Council at which elections to the Subjects Committee or Committees are to be held, any Councillor may deliver to the Chief Officer a nomination paper in the Form appended to these rules duly filled in and signed by himself as the proposer. The declaration in the Form shall be signed by the candidate."

22. Rule 5 deals with scrutiny of nominations and provides that:

(1) At the commencement of the meeting, the presiding authority shall scrutinise the nomination papers delivered to the Chief Officer under the preceding rule and shall record his decision thereon. If any nomination is rejected, he shall record in writing a. brief statement of his reasons for such rejection. He shall then read out to the meeting the names of candidates, who, in his opinion, have been validly nominated, together with the names of their proposers. Any candidate may withdraw his candidature by a notice in writing given to the presiding authority.

(2) The presiding authority shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

Rule 6 which deals with procedure for election in so far as it is material reads as under:

(1) If the number of validly nominated candidates who have not withdrawn their candidature is equal to or less than the number of persons to be elected, the presiding authority shall forthwith declare all such candidates to be duly elected, and the remaining persons may be elected at any subsequent meeting.

(2) If the number of validly nominated candidates who have not withdrawn their candidature is more than the number of vacancies to be filled, the Councillors present at the meeting shall proceed to elect the candidates in the manner hereinafter prescribed.

(3) The election shall be held in accordance with the system of proportional representation by means of the single transferable vote, and the voting for the purpose shall be by secret ballot. The presiding authority shall furnish each Councillor present at the meeting with a ballot paper prepared in the following form:

23. Now, since the term of office of the sitting members of the subjects committees was due to expire on February 4, 1977 and the elections to fill those vacancies had to be held in the prescribed manner as required by Section 63(2) (b), the President issued a notice on January 20, 1977 calling upon all the councillors to hold a meeting for filling those vacancies on January 27, 1977.

24. That takes us to the provisions with regard to the meetings. Section 81 in chap. VI under the heading "conduct of business" makes provision with regard to the meetings of the council. Section 81(4) on which reliance is placed for the State and other respondents is as under:

81. (4)(a) Seven clear days" notice of an ordinary meeting, and three clear days" notice of a special meeting, specifying the date, hour and place at which such meeting is to be held and the business to be transacted thereat shall be served upon the Councillors, and posted up at the municipal office. The notice shall include any motion or proposition of which a Councillor shall have given written notice, not less than ten clear days previous to the meeting, of his intention to bring forward thereat and in the case of a special meeting, any motion or proposition mentioned in any written request made for such meeting;

(b) notwithstanding anything contained in Sub-clause (a) in an emergency, for reasons to be recorded in writing, the President may call a special meeting of the Council with only one day's notice served upon the Councillors and posted up at the municipal office.

25. Sub-section (6) of Section 81 provides that:

Every meeting shall, in the absence of both the President and the Vice-President, be presided over by such one of the Councillors present as may be chosen by the meeting to be the Chairman for the occasion and such Chairman shall exercise thereat the powers vested in the President by Clause (a) of Sub-section (1) of Section 58.

26. It may be mentioned that Section 58(1)(a) provides that subject to the provisions of this Act and of any rules and by-laws framed thereunder, the President of a Council shall preside, unless prevented by reasonable cause, at all meetings of the Council and regulate the conduct of business at such meetings. Sub-section (9) of Section 81 which deals with the quorum reads as under:

(9)(a) The quorum necessary for the transaction of business-

(i) at an ordinary meeting shall be one-third of the total number of Councillors;

(ii) at a special meeting shall be one-half of the total number of Councillors:

Provided that, in computing the quorum a fraction shall be ignored;

(b) if at any time during a meeting the presiding authority notices or if it is brought to the notice of the presiding authority that the number of Councillors present including the presiding authority falls short of the quorum required, the presiding authority shall after waiting for not less than fifteen minutes and not more than thirty minutes adjourn the meeting to such hour on the following or some other future day as it may reasonably fix. A notice of such adjournment shall be posted up at the municipal office and the business which would have been brought before the original meeting, had there been a quorum thereat, but no other business, shall be brought before the adjourned meeting and may be disposed of at such meeting.

27. It may be mentioned that the expression "presiding authority" also occurs in Sub-section (7)(a) of Section 81 wherein it is provided that the presiding authority shall preserve order at the meeting, and it also occurs in Sub-section (8) and several other Sub-sections of Section 81 including Sub-section (9)(b), But the expression "presiding authority" has not been defined in the Act. For that we have got to refer to the Maharashtra Municipalities (Conduct of Business) Rules, 1966, framed by the Government under the powers conferred by Sub-section (2) of Section 321 read with cls. (11), (13) and (19) of Section 81 of the Maharashtra Municipalities Act, 1965. Rule 6 under the heading Presiding Authority in absence of President or Vice-President reads as under:

If at the time appointed for a meeting, a quorum is present and the President fails to appear at the place of the meeting in time, the Vice-President, and if both the President and the Vice-President fail to appear at such place in time, a Councillor chosen by the Councillors present at the meeting, shall preside over the meeting as provided in Clause (6) of Section 81:

28. Therefore in view of the provisions of Section 81 read with Rule 6 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966, in the absence of both the President and the Vice-President the presiding authority would be one of the councillors present who may be chosen by the councillors present at the meeting for the occasion and he could be only chosen when a quorum is present for the meeting.

29. In the instant case as the one-year term of the members of the subjects committees prescribed by Section 68(3) was due to expire on February 4, 1977, the President having regard to the provisions of Section 63 (2)(b) and Rule 3 of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966 and Sub-section (4)(a) of Section 81, which requires seven clear days notice to be given, did issue a notice dated January 20, 1977 convening a meeting of the councillors on January 27, 1977 for holding the elections to fill the vacancies of members of the subjects committees in the prescribed manner. There is absolutely no dispute on this score.

30. It appears, however, that only twenty councillors were present in addition to

the President, pursuant to the notice of the meeting which was to be held at 4 p.m. on January 27, 1977 and the other councillors though served with the notice of the meeting did not bother to attend the said meeting. Admittedly the quorum for holding the meeting was twenty-three members inasmuch as the total strength of the members of the council was forty-seven. Therefore the requisite quorum under Sub-section (9)(a) of Section 81 which is required for the special meeting was wanting. The President faced with this situation acting on a circular of the Director about the interpretation of Section 81 (9)(b), took the view that the meeting had lapsed and he, therefore, held that the council had failed to fill up by election the vacancies of the members of the subjects committees and he, therefore, thought that a stage had been reached which entitled him to fill the vacancies of the subjects committees u/s 63(3B)(i) of the Act.

31. It would be relevant at this stage to refer to the circular of the Director of Municipal administration dated October 23, 1972 (Annexed as Annexure "F" to the petition). The Collector of Thana having found some difficulty in interpreting the provisions of Sub-section (9)(a) and (b) of Section 81 had made a reference to the Director. The points referred by the Collector of Thana to the Director and the opinion of the Director on those points could be gathered from the circular itself. The circular in question reads as under:

? With reference to above I am to state that the points referred to in your letter for opinion are as under:

(a) whether a meeting which could not commence for want of quorum can be adjourned by the authority presiding over the meeting and when it is held subsequently can it be said to be an adjourned meeting; and

(b) whether the quorum specified in Clause (9)(a) of Section 81 would or would not be necessary for such a meeting.

In this connection I am (have) to inform you that both Clause (9)(b) and Clause (14) of Section 81 of the Maharashtra Municipalities Act, 1965, provide for the adjournment of a meeting after it has started with quorum. These provisions do not appear to cover cases where a meeting of a Municipal council could not be commenced for want of quorum. The provisions of Section 81 of the Act, as they stand at present, do not expressly empower the presiding authority to adjourn a meeting which could not commence for want of the quorum. When the relevant enactment makes no special provision to adjourn a meeting which could not commence for want of quorum, such a meeting lapses and becomes ineffective. The presiding authority would, consequently have no authority to adjourn the meeting which could not commence for want of quorum and the question whether the quorum specified in Clause (9)(a) of Section 81 would or would not be necessary for such an adjourned meeting would not survive. The meeting when it takes place on the next date cannot be deemed an "adjourned" meeting and the rule of quorum will apply as in Clause (9)(a) of Section 81. This letter

issues in connection (consultation of) with the Urban Development Public Health and Housing Department Vide its U.O.R. No. DMA/MCB/1171/8/10864 dated the 21st December, 1971.

32. This letter was treated as a circular and the copies of the same were forwarded for information and guidance to all the Collectors, Chief Officers of all Municipal councils and also to Urban Development and Public Health Housing Department, Sachivalaya, Bombay-32.

33. It is by acting on that interpretation of the rules as to meeting issued by the Director, since admittedly there was no quorum, the President by referring to the said circular took the view that he could fill the vacancies of the members of the subjects committees under Sub-section (3B) of Section 63 by nomination and he accordingly proceeded to nominate the members for all the five subjects committees.

34. Now as we have already stated when the act of nomination of the members by the President was challenged by respondent Nos. 4 and 5 before the Collector, the Collector evidently relying on the circular of the Director agreed with the view of the President that the meeting had lapsed, and that was also the view of the Director, to whom the matter was referred by the Collector under Sub-section (2) of Section 308 of the Act. When the matter was carried in revision by respondent No. 4 to the State Government, the Minister felt that the point as to whether in the absence of a quorum a meeting could be said to have commenced and as to whether Section 81(9)(b) has any application to such a meeting was a debatable point. However, observed the Minister, presumably it is intended that the provisions of Section 81 (9)(b) are applicable to such meetings. In other words, as at present advised the Government did not seem to agree with the circular of the Director which was issued on October 23, 1972.

35. In fact Mr. Gurusahani, counsel for the State has strenuously argued before us that there is a distinction between a meeting and a quorum necessary for the transaction of the business and that a meeting which could not transact a business for want of a quorum has to be adjourned under Sub-section (9)(b) of Section 81. That is also the submission of Mr. Kankaria, learned advocate for respondent Nos. 4 and 5.

36. In his endeavour to persuade us to accept his view about the distinction between a meeting without a quorum and a meeting which requires a quorum to transact a business, Mr. Gurusahani has taken us not only through the dictionary meaning of the word "meeting" but through several other authorities. He submits that admittedly pursuant to a notice issued by the President, twenty councillors excluding the President had assembled in the council hall and, therefore, he submits that the meeting in question had taken place, although, it could not transact valid business for want of a requisite quorum. The assembly of twenty-one persons he submits on that day must be treated in law to be a meeting though any business if transacted at the meeting could not have any legal

sanction.

37. In support of his submission Mr. Gurusahani relied on the passage from "Words and Phrases Judicially defined" by Roland Burrows, vol. III, p. 351 wherein it has been laid down that the term meeting means "coming together of more than one person". He has also taken us to the decision in *Sharp v. Dawes* (1876) 2 Q.B.D. 26, wherein Lord Coleridge has observed that the word "meeting" prima facie means a coming together of more than one person. He has also taken us to *Shackleton on the Law & Practice of Meeting*, sixth edn., at p. 3, where the dictionary definition of the word "meeting" is set out as the assembly of a number of people for entertainment or the like. At p. 11 it has been observed that "for its proceedings to be of any effect a meeting of anybody or association with a definite membership must consist of a quorum." He has also taken us to Lord Halsbury in his *Laws of England*, fourth edn., seventh vol., p. 334, para. 567, in which it is stated:

Articles of association usually prescribe the number of members who must be present in order that a valid general meeting may be held. If there is no provision in the articles relating to a quorum, in the case of a private company two members, and in the case of any other company three members, personally present, are a quorum. If the quorum is not present within the prescribed time after the time appointed for the meeting, no business can be transacted, except as provided by the regulation of the company.

38. He has also referred us to *Re Hartley Baird, Ltd* [1954] 3 All E.R. 695. There the Court was concerned with the interpretation of two Articles viz. Articles 52 and 53. They are as under:

52. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. For all purposes the quorum shall be ten members personally present.

53. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

39. There a curious position had arisen because whereas at the beginning of the meeting there was a quorum as provided by Article 46 of the Articles of Association, which deals with the modification of class rights, one holder who objected to the proposed reduction left the meeting after it had proceeded to consider the business for which it had been called, thus reducing the numbers present to a number below the quorum provided for by Article 46. Interpreting this provision Wynn Parry J. observed,

?That article is clearly designed to save a meeting which has been properly

convened, but which cannot proceed to business because no quorum is at any time present, but it does not meet the case of a meeting at which a quorum is present at the beginning and when the meeting proceeds to business, but at which a quorum has ceased to be present at the time when the meeting proceeds to vote on any resolution put before it." (p. 697).

40. Further on it was observed as under (p. 697):

...From the force of that language, I come to the conclusion that I ought not to follow the Scottish case, but that I ought to conclude that the meeting in question, of the holders of the B ordinary shares, was one at which a valid class resolution was passed, because at the commencement of the meeting, i.e., when the meeting proceeded to business, there was a quorum as provided by Article 46 of the articles of association.

41. Mr. Gurusahani has also taken us through Crew on Conduct of Meetings and also the observations of Masodkar J. in his book on Law of Meetings in India at pp. 62 and 63 wherein the ratio of most of the decided cases and dictionary meaning of the word "meeting" has been given and it is observed that an assembly of more than one person must be treated as a meeting.

42. The last authority which is referred to is a decision of *Amin Chand v. State of Punjab* AIR [1953] P&H 403 wherein it is observed that the expression "meeting" in its individual sense means a "sitting on a particular day" and in its cumulative or collective sense means a conglomeration of meetings held in a particular session and therefore "a session".

43. Lastly he has taken us to Aiyar in his *Law Terms and Phrases*, seventh edn., p. 536, wherein the expression "meeting" is said to be synonymous with the expression "session".

44. After having taken us through all these authorities Mr. Gurusahani submits that an assembly of more than one person would constitute a meeting and that on such persons assembling together, a meeting does take place, and, however, in the event of requisite quorum being found wanting, the meeting cannot transact valid business and will therefore have to be adjourned if no quorum is there, within the specified time.

45. Mr. Gurusahani therefore vehemently submits that in the situation which had arisen, as there was admittedly a meeting of twenty-one persons including the President and that meeting could not transact any business for want of a quorum, it was obligatory on the President to adjourn the meeting as provided in Sub-section (9)(b) of Section 81.

46. We are not at all impressed with this submission of Mr. Gurusahani which is adopted by Mr. Kankaria. The first hurdle in accepting the submission of Mr. Gurusahani is that Sub-section (9)(b) of Section 81 would come in firstly, only if at any time during a meeting a presiding authority notices or if it is brought to the notice of the presiding authority that the number of Councillors present

including the presiding authority falls short of the quorum required. The next hurdle in accepting the submission of Mr. Gurusahani is that Sub-section (9)(b) of Section 81 refers to the obligation of the presiding authority to adjourn the meeting to such hour on the following or some other future day as it may reasonably fix, after waiting for not less than fifteen minutes and not more than thirty minutes.

47. The expression "during" has been defined in Oxford English Dictionary, vol. III at p. 725 as "throughout the whole continuance of, hence in the course of, in the time of". Therefore, unless there is a valid meeting to start with, Sub-section (9)(b) of Section 81 which speaks of the events occurring during the meeting is not attracted. As we have pointed out the obligation is on the presiding authority to adjourn the meeting in the circumstances mentioned in Sub-section (9)(b) of Section 81.

48. Again as we have pointed out, Rule 6 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966, where provision is made for the presiding authority in the absence of President or Vice-President, reads as under:

If at the time appointed for a meetnig, a quorum is present and the President fails to appear at the place of the meeting in time, the Vice-President, and if both the President and the Vice-President fail to appear at such place in time, a Councillor chosen by the Councillors present at the meeting, shall preside over the meeting as provided in Clause (6) of Section 81:

49. Therefore having regard to the provisions of Sub-section (6) of Section 81, which provide for a councillor being chosen to preside over a meeting in the absence of a President and a Vice-President, read with Rule 6 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966 which provide for such councillor being chosen as a presiding authority only after a quorum is present and when the President and the Vice-President are absent it would appear that to start with, in the absence of a quorum for the meeting no such councillor could be chosen as a presiding authority. What is however argued by Mr. Gurusahani is that in the instant case, the President was himself present and twenty other councillors were also present and, therefore, notwithstanding the fact that there was no quorum for transacting the valid business, the President was bound to adjourn the meeting under Sub-section (9)(b) of Section 81. It is not possible to agree with this submission of Mr. Gurusahani.

50. The obligation to adjourn the meeting is on the presiding authority. That presiding authority as we have endeavoured to point out by reference to Sub-section (6) of Section 81 and Rule 6 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966, has got to be chosen at the time appointed for the meeting and if a quorum is present and the President and the Vice-President are absent. It would, therefore, appear that in such a situation in the absence of a quorum it is not at all permissible for the council to choose one of the councillors to act as a presiding authority.

51. Sub-section (9)(b) of Section 81, does not use the expression "President" but it uses the words "Presiding authority". Since the presiding authority may be either the President, or the Vice-President or a Councillors chosen by the councillors present at the meeting to preside over the meeting as provided in Sub-section (6) of Section 81 read with Rule 6 of the Maharashtra Municipalities (Conduct of Business) Rules, 1966, it would follow that Sub-section (9)(b) cannot be interpreted so as to mean that the expression "presiding authority" occurring therein would mean only the President. Since the presiding authority could as well be a councillors and such a councillors could not be chosen unless there is a quorum at the time appointed for a meeting to use the language of Rule 6 of the Maharashtra Municipalities (Conduct of Business) Rules, it would follow that there could not be a presiding authority unless there is a quorum. In other words Sub-section (9)(b) of Section 81 would only come into force when a valid meeting has in fact commenced with the requisite quorum being present at the time appointed for a meeting and the presiding authority who in a given case may be a President or a Vice-President or a Councillor chosen by the councillors in the circumstances mentioned therein, would be obliged to adjourn the meeting. It would therefore appear that since it is not disputed that there was no quorum for the meeting which was scheduled to be held, Sub-section (9)(b) of Section 81 was not at all attracted and, therefore, it would appear that the submission on behalf of the respondents that the President ought to have adjourned the meeting in the circumstances of the case cannot be accepted.

53. That leads us to the alternative submission made by the respondents and that alternative submission is that having regard to the fact that by reason of there being no quorum for the meeting which was convened an emergency was created inasmuch as the democratic process could not be gone through and, therefore, argues Mr. Gurusahani for the State that Sub-section (4)(b) of Section 81 was attracted and arguing in that strain he submits that the President ought to have called for a special meeting of the council on the very next day i.e. on the 28th inasmuch as according to him unlike the provisions of Sub-section (4)(a) of Section 81, where there is a mention of three clear days notice, the requirements of Sub-section (4)(b) of Section 81 are that only one day's notice may be served upon the councillors and posted up at the municipal office. Although we have set out these provisions in the earlier stage, the provisions of Section 81(4)(a) and (b) may be set out once again for ready reference:

81. (4)(a) Seven clear days" notice of an ordinary meeting, and three clear days notice of a special meeting, specifying the date, hour and place at which such meeting is to be held and the business to be transacted thereat shall be served upon the Councillors, and posted up at the municipal office. The notice shall include any motion or proposition of which a Councillor shall have given written notice, not less than ten clear days previous to the meeting, of his intention to bring forward thereat and in the case of a special meeting, any motion or proposition mentioned in any written request made for such meeting;

(b) notwithstanding anything contained in Sub-clause (a) in an emergency, for reasons to be recorded in writing, the President may call a special meeting of the Council with only one day's notice served upon the Councillors and posted up at the municipal office.

53. Now it would appear that the general or normal rule about the convening of meetings is laid down in Sub-section (4)(a) of Section 81, according to which seven clear days' notice of an ordinary meeting and three clear days' notice of a special meeting has to be served upon the councillors and posted up at the municipal office.

54. Sub-section (4)(b) of Section 81, however, provides that notwithstanding anything contained in Clause (a), in an emergency, for reasons to be recorded in writing, the President may call a special meeting of the Council with only one day's notice. It is significant to note that having laid down the normal rule or general rule about the notice to be issued in case of an ordinary meeting and a special meeting in Sub-section (4)(a) of Section 81, the Legislature went on to provide in Sub-section (4)(b) of Section 81 that notwithstanding the provisions in Sub-section (4)(a), in an emergency, those rules may be departed from and the President may avail of the provisions mentioned in Sub-section (4)(b) of Section 81. In other words, Sub-section (4)(a) deals with the general or normal rule of practice or procedure, Sub-section (4)(b) deals with the case of exception to that general rule or practice or procedure. As we read it and we have no doubt in our mind that the provisions of Sub-section (4)(b) of Section 81 are not in addition to the provisions of Sub-section (4)(a), but in a given case they are to be availed of as an alternative to the provisions of Sub-section (4)(a) and not in addition to Sub-section (4)(b). In other words the provisions in Sub-section (4)(b) may be availed of as against the provisions in Sub-section (4)(a) if there is an emergency and the President complies with the provisions therein. Undoubtedly in the instant case, the President had complied with the provisions of Sub-section (4)(a) of Section 81 inasmuch as he had given more than three clear days' notice of the special general meeting to be held on the 27th when he issued the notice on January 20, 1977. Therefore, there was not only no obligation on him to again issue a notice under Sub-section (4)(b) of Section 81 but in the view we are taking he could not have availed of that provision having once availed of the provisions of Sub-section (4)(a) to Section 81. It would, therefore, appear that on the facts of this case, the provisions of Section 81 (4)(b) were not at all attracted. We are, therefore, unable to agree with the submission of the learned Counsel for the respondents that on the facts and circumstances of this case either the provisions of Sub-section (9)(b) of Section 81 or the provisions of Sub-section (4)(b) of Section 81 were attracted. We have no doubt in our mind that none of these provisions are applicable to the admitted facts of this case.

55. We may also mention here that not only the provisions of Sections 81 (4)(b) and 81 (9)(b) are not attracted, but what is more, there is no provision under which the President was obliged to or even could have called for a second

meeting by reason of the fact that the first meeting proved to be infructuous inasmuch as there was no quorum for carrying on or transacting the business.

56. In the view we are taking of the applicability of Sub-section (4)(b) of Section 81, it would appear that when the Collector repelled the argument of want of jurisdiction to entertain the matter under the purported exercise of his powers u/s 308 of the Act, by observing that inasmuch as the President had not in the circumstances of the case resorted to the provisions of Sub-section (4)(b) of Section 81 of the Act, his action was unlawful is clearly an error on the face of the record which calls for no elaborate argument. Similarly in the view we have taken about the applicability of Sub-section (9)(b) of Section 81, the observation of the Minister that presumably the provisions of Section 81(9)(b) were applicable to meetings which could not be commenced for want of a quorum, is also in our opinion, an error apparent on the face of the record to find which no elaborate arguments are required.

57. As far as we could find out having once called for a meeting as required by Sub-section (4)(a) of Section 81, read with Rule 3 of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966, which require a special meeting of the council to be convened for the purpose of electing members of the subjects committees on a date not later than one week before the expiry of the term of the members of the subjects committees, and also read with Sub-section (2) of Section 63, when the meeting could not proceed to transact the business of electing the members, there is no provision under which the President could call a second meeting for the purpose. The only provision under which the President is obliged to call a second meeting for the purpose is to be found in Rule 6 of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966. That rule reads as under:

6. Procedure for election.-(1) If the number of validly nominated candidates who have not withdrawn their candidature is equal to or less than the number of persons to be elected, the presiding authority shall forthwith declare all such candidates to be duly elected, and the remaining persons may be elected at any subsequent meeting.

(2) If the number of validly nominated candidates who have not withdrawn their candidature is more than the number of vacancies to be filled, the Councillors present at the meeting shall proceed to elect the candidates in the manner hereinafter prescribed.

58. It would, therefore, appear that it is only if the contingency contemplated by Rule 6 of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966, arises requiring the elections to be held for filling in the vacancies which arises as a result of the scrutiny that the President could have called a second meeting for the election. Nobody could dispute that such a contingency had not at all arisen in this case. After all that contingency will only arise when a meeting with quorum is held and when a scrutiny of the nominations at the

commencement of the meeting is made by the presiding authority Under Rule 5 and a contingency mentioned in Rule 6 just pointed out, arises. In fact this rule is not relied upon by the respondents. What they have relied upon are only the provisions of Section 81 (4)(b) and Section 81 (9)(b) of the Act, but as we have pointed out none of those provisions has been attracted.

59. The next question then arises is as to whether the provisions of Sub-section (3B)(i) of Section 63 were attracted. Those provisions are as under:

(3B)(i) If the Council fails to fill up by election any vacancy of a member or members of any of the Subjects Committees or if there is failure to elect a member at the fresh election, such vacancy or vacancies may, notwithstanding anything contained in this Chapter, be filled by nomination, of a Councillor or Councillors, as the case may be, by the President.

60. Now as we have pointed out the President did comply with the provisions of Section 63(2)(b) and Rule 3 of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966 and the provisions of Section 81(4)(a), inasmuch as on January 20, 1977 in respect of the vacancies which were due to occur as from February 4, 1977, he did issue notice of the special general meeting to be held on January 27, 1977 for the purpose of filling those vacancies. As there was no quorum the meeting could not transact the business for which it was convened, and as we have pointed out since neither the provisions of Section 81(9)(b) or 81 (4)(b) of the Act were attracted the council, to use the language of Sub-section (3B)(i) of Section 63, clearly failed to fill up by election the vacancies of the members of the subjects committees.

61. We may also mention in this connection that on such eventuality happening under Sub-section (3B)(i) of Section 63, the President may notwithstanding anything contained in the Chapter has to fill those vacancies by nomination of the councillors. Sub-section (3B)(i) does not require that before exercising that power, the President should hold fresh elections or give one more chance or opportunity to councillors to elect the members of the subjects committees as appears to be the view of the Collector and the Government. To do so would be to read in the first part of Sub-section (3B)(i) of Section 63 a provision for a fresh election which does not exist therein.

62. In this connection we may turn with advantage to the provisions of Sections 18 and 51(4) of the Act.

63. Section 18 with the marginal note "failure to elect" reads as under:

18. (1) If at a general election or a bye-election, no Councillor is elected from any ward, a fresh election shall be held to elect a Councillor from that ward; and if there is a failure to elect a Councillor at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by nomination of a duly qualified person by the State Government.

(2) Any person nominated by the State Government under Sub-section (1) shall

be deemed to be elected at an election under this Act.

64. Section 51(4) which deals with the election of President and appointment of Vice-President, reads as under:

51. (4) If, at an election, no President is elected, a fresh election shall be held to elect a President; and if there is a failure to elect a President at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by nomination of a duly qualified person by the State Government.

65. Now if these two sections are read in juxtaposition with Sub-section (3B)(i) of Section 63, it would appear that whereas the President could proceed to nominate the Councillors for filling the vacancies of the subjects committees, immediately after the council fails to fill up by election any vacancy of a member or a member of any other subjects committees, both in the case of a councillor and the President in order that the State Government may step in to fill by nomination a vacancy of a councillor or a President, it is not enough that in an election both in the case of a councillor and the President or a by-election in the case of the councillor, no councillor or President is elected, but what is more, in both these cases before exercising that power a fresh election has to be held to elect the councillor or the President as the case may be, and it is only if there is a failure to elect a councillor at a fresh election or a failure to elect a President at the fresh election, that such¹ vacancy of a councillor or a President as the case may be could be filled by the State Government by nomination. Therefore, it would appear that once the President has taken all the steps necessary for holding an election in the prescribed manner and as prescribed by the rules and because of the rules requiring a quorum and the wording of Sections 81 (9)(b), 81(4)(b) and 63(3B)(i), there is no provision for holding a fresh meeting for the election, it would appear that a stage has been clearly reached when it must be said that under the law and the rules as they exist to-day, the council has failed to fill up by election the vacancies of members of the subjects committees. It is true that the President has also the power to nominate members under Sub-section (3B)(i) of Section 63 if there is failure to elect the member at the fresh election. But that contingency does not arise in this case inasmuch as that power is reserved for the President to meet the contingency of the vacancies arising either under Sub-section (3) of Section 63 under which a member elected to more than two subjects committees is required to resign the other such committees or Sub-section (3A) of Section 63 under which a member who is elected to more than two subjects committees, not opting to resign, the President had to pass an order in the terms of that Sub-section or in the case of a vacancy arising by any reason whatsoever as provided in Section 69. It would also cover a case where notwithstanding a subsequent election being held as required by Rule 6 of the Maharashtra Municipalities (Elections to Subjects Committees) Rules, 1966, the council fails to fill up a vacancy. But sufficient to note that once as we have pointed out, the President has followed the prescribed procedure as laid down in Section 63(2)(b), and followed the rules applicable to

meetings mentioned in Section 81 and the procedure mentioned in the rules and the meeting cannot, be held for want of a quorum, it would appear that a stage has been reached when the council must be held to have failed to fill up the vacancies.

It was submitted by the learned Counsel for the respondents that the power given to the President under Sub-section (3B)(i) of Section 63 does not extend to the filling in of all the vacancies. It was argued that in the instant case since the number of members fixed for different subjects committees was fifteen, the President may fill the vacancies from one to fourteen but he could not fill the fifteenth vacancy as that would mean that he can fill all the vacancies.

66. The next submission was that in the instant case the President had nominated the members to all the five subjects committees. That also, it is submitted, could not be done under the provisions of Section 63(3B)(i). Our attention has been drawn to the observations in Maxwell on the Interpretation of Statutes, twelfth edn., at p. 146. They are to this effect:

?The modern tendency seems to be against construing statutes so as to leave the person or body upon whom a power is conferred absolutely untrammelled in the exercise of it.

67. These observations which are aid to the construction of statutes have got to be resorted to when there is any difficulty or doubt in interpreting a statute. When the language of the statute is plain and there is no ambiguity in it, we do not see how notwithstanding the clear language of the statute, we could read any limitations on the power of the President to nominate members for filling in the vacancies of the members of the subjects committees. As far as we see there is absolutely no such limitation. If as is conceded a President could fill in as many as fourteen out of the fifteen vacancies in the committee, we fail to see why we should read a limitation on the power of the President to fill in all the fifteen vacancies. Similarly if the power is given to fill the vacancies of the subjects committees we fail to see why in a given contingency as in the instant case he could not be able to fill the vacancies in all the subjects committees. Actually we find that as we have pointed out whereas even in respect of nominations by the State Government itself, to fill the vacancy of a councillor or a President the Legislature thought that there should be a failure not at the initial attempt only but after a fresh election as well before the Government could invoke such power, the Legislature did not think it necessary to have a fresh election in addition to the original election before which the President could exercise his powers under Sub-section (3B)(i) of Section 63. It may be a case of a gap either in the rules or in the provisions of Section 81 or 63, or a policy decision arrived at after deliberate consideration. It is worthwhile to note that whereas the term of office of the councillors and the President is for five years, the term of office of the members of the subjects committees is only one year. It is also worthwhile to note that the subjects committees are required to carry on day-to-day administration in respect of essential services inasmuch as the subjects

committees are named as (i) Public Works Committee, (ii) Education Committee, (iii) Sanitation, Medical and Public Health Committee, (iv) Water Supply and Drainage Committee, and (v) Planning and Development Committee. A particular council may as well have a Transport Committee. These are very essential services. It is not unlikely that since these subjects committees deal with the day-to-day life of the people and the period of the members of the subjects committees is hardly one year, the Legislature may in its wisdom have thought that to avoid any break or suspension of these essential services, it is enough that in the event of only one chance being given to the councillors to elect the members of such committees and they failing to avail of the opportunity, the President shall immediately step in and nominate the subjects committees in the best interest of the citizens of the town and the civic services concerned. At any rate we have to interpret only from the plain language used. We are therefore unable to agree with the submission of the counsel that the President could not have the power to fill in all the vacancies of all the subjects committees and we should read some limitation to that power.

68. In this connection we may mention that the learned Counsel for the petitioner has said that while dealing with the revision petition the Government has led considerable stress on what it considered to be the spirit of the law as against the letter of the law. Mr. Gurusahani, learned senior counsel for the State has also strenuously argued before us that after all what is involved is the interpretation of a provision of a statute dealing with local self Government like a Municipal council, and in a democracy it should be seen that democratic process is given every chance to operate and it is only as a last resort that one may fall back on nominations.

69. As regards the argument based on the spirit of the law we may refer to the observations of Das J. speaking for the Court in *Keshavan Madhava Menon Vs. The State of Bombay*, . The relevant observations are at p. 232, and they are to this effect:

An argument founded on. what is claimed to be the spirit of the Constitution is always attractive, for it has a powerful appeal to sentiment and emotion; but a court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view.

70. We may with advantage substitute the word "Act" for the expression "Constitution" occurring in the above passage. If that is done it would appear that having regard to the plain language of the Act and the rules made thereunder to which attention is drawn, there is no scope for finding fault with the action of the President in nominating the members of the subjects committees.

71. We may, however, mention that the President had purported to nominate three members to the Standing Committee but it is conceded by Mr. Rane at the

outset of his addresses that the President has no such power and that he is not going to press that part of the petition.

72. That leads us to the consideration of the contention of Mr. Rane that the Collector had no jurisdiction to interfere with the order of the President under the powers conferred on the Collector u/s 308(7) of the Act. As against that learned Counsel for the State have submitted that the Collector had every power to act u/s 308(7) of the Act.

73. Section 308 which calls for interpretation reads as under:

308. (1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof.

(2) When the Collector makes any order under his signature, he shall forward to the Council affected thereby a copy of the order indicating therein the reasons for making it and also submit a report to the Director, along with a copy of such order

(3) Within twenty days from the receipt of such order of the Collector, the Council shall, if it so desires, forward a statement to the Director indicating therein why the order of the Collector should be rescinded, revised or modified. If no such statement is received by the Director within time, the Director shall presume that the Council has no objection if the order of the Collector is confirmed.

(4) On receipt of such report from the Collector and the Council's statement referred to in Sub-section (3), if any, the Director may rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force with or without modifications:

Provided that, the Director shall take into account the statement of a Council, if received, before such an order is made by him

74. Although no reference is made in the course of the addresses at the bar to the provisions of Section 309, we may also set out the same for ready reference:

309. (1) In case of emergency, the Collector may provide for the execution of any work, or the doing of any act, which may be executed or done by or on behalf of a Council and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public; and may direct that the reasonable expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or to do it, shall forthwith be paid by the Council.

(2) If the expense and remuneration are not so paid, the Collector may make an

order directing any person, who for the time being has custody of any moneys on behalf of the Council as its officer, treasurer, banker or otherwise, to pay such expense and remuneration from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order. Every payment made pursuant to such order shall be a sufficient discharge to such person from all liability to the Council in respect of any sum or sums so paid by him out of the moneys of the Council held or received by him.

(3) The provisions of Sub-sections (2), (3) and (4) of the last preceding section shall apply so far as may be to any order made under this section,

75. It is submitted by Mr. Rane that Section 308 (1) would apply firstly only where the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a council is involved. Mr. Rane submits that it is only the execution of any order or resolution of a council or the doing of anything by and on behalf of a council, which would give jurisdiction, to the collector, if the other requirements of the section are shown to exist. Mr. Rane submits that since the President is neither a council nor has he done anything on behalf of a council, the jurisdiction of the Collector is barred on the threshold. As against that Mr. Gurusahani has strongly urged that the President being a constituent of the council his order would be the order of the council and, therefore, he submits that this requirement of Section 308(1) is fulfilled. That is also the submission of Mr. Kankaria.

76. This submission has to be considered in the light of the other provisions of the Act. Sub-section (6) of Section 2 of the Act dealing with definition of "council" and Sub-section (7) dealing with the definition of "councillor" and Sub-section (36) dealing with the definition of "president" are as under:

2. (6) "Council" means a Municipal Council constituted or deemed to be constituted under this Act for a municipal area;

2. (7) "Councillor" means a person who is duly elected or co-opted or nominated as a member of the Council and the President shall be deemed to be an ex-officio Councillor, in addition to the total number of Councillors;

2. (36) "President" and "Vice-President" means the President and Vice-President of the council;...

77. Section 7 under the heading "Municipal Authorities and establishment of Councils" reads under:

7. The municipal authorities charged with carrying out the provisions of this Act, for each municipal area are-

(a) the Council;

(b) the President;

(c) the Standing Committee;

- (d) the Subjects Committees, if any; and
- (e) the Chief Officer.

78. Section 9(7) of the Act, reads as under:

Save as otherwise provided by this Act, every Council shall consist of a President and Councillors elected at ward elections; and shall also include Councillors co-opted by the elected Councillors in the prescribed manner, from amongst persons who are entitled to vote at the municipal election and who have special knowledge or practical experience in the field of public health, Local Self-Government, education or welfare of labour:

79. Section 58(1) dealing with the functions of President, provides as under:

58. (1) Subject to the provisions of this Act and of any rules and by-laws framed thereunder, the President of a Council shall

- (a) preside, unless prevented by reasonable cause, at all meetings of the Council and regulate the conduct of business at such meetings;
- (c) perform such executive functions or exercise such powers as are conferred upon him by or under this Act or any other law for the time being in force;
- (e) furnish to the State Government or the Director or the Collector or any other Government officer authorised by the State Government from time to time, such reports, returns or records as may be prescribed by rules or as may be called for at any time by the State Government, the Director, the Collector or such officer.

80. Section 73 provides as under:

73. (1) All Subjects Committees shall be subordinate to the Standing Committee in addition to the Council.

(2) The Standing Committee shall be subordinate to the Council.

(3) The Subjects Committees shall report all their decisions as soon as may be to the Standing Committee for information.

(4) The Standing Committee shall report as soon as may be all its decisions, including its decision on the decisions of the Subjects Committees, to the Council, for its information.

(5) If the directions of the Council to a Subjects Committee conflict with the directions of the Standing Committee to that Subjects Committee, the directions of the Council shall in all cases prevail.

81. Section 306 in chap. XXIII under the heading "Control" which provides for the powers of inspection and supervision, is to this effect:

306. The Director, the Collector, or any officer of the Government authorised by the State Government, the Director or the Collector, shall severally have power-

(a) to enter on and inspect, or cause to be entered on and inspected any immovable property occupied by or movable property belonging to any Council or any institution under its control or management or any work in progress under it or under its direction;

(b) to call for or inspect any extract from any Council's or its committee's proceedings and any book or document in the possession of or under the control of the Council or any of its committee.

82. Section 313 which deals with the power of appointment of an administrator in certain circumstances reads as under:

313. (1) If, in the opinion of the State Government,-

(a) a Council is not competent to perform duties imposed upon it by or under this Act or any other law for the time being in force, or

(b) persistently makes default in the performance of such duties, or in complying with the lawful directions and orders issued by the Collector, the Director, the State Government or any other authority empowered under law to issue such direction or orders to a Council, or

(c) exceeds or abuses its powers, or

(d) a situation has arisen in which the administration of the Council cannot be carried out in accordance with the provisions of this Act, or

(e) the financial position and the credit of the Council is seriously threatened, the State Government may, by an order published in the Official Gazette, appoint a Government officer as the Administrator of the Council for a period not exceeding three years. The order shall state the reasons for making the order.

The Administrator shall receive such remuneration from the municipal fund as the State Government may, from time to time, determine,

(2) If the term of office of an Administrator so appointed is less than three years, the State Government may extend it from time to time, subject to the limitation of the total period of three years.

83. Section 314 which deals with the powers of Administrator is to this effect:

314. (1) When an Administrator is so appointed under the last preceding section during his term of office, all the powers and functions vesting in or exercisable by the Council, the President, the Vice-President, the various committees, the Councillors and the Chief Officer under this Act or any other law for the time being in force, shall vest in and be exercisable by the Administrator, to the exclusion of their exercise and performance by the Council, the President, the Vice-President, the various committees, the Councillors and the Chief Officer.

(2) During the term of office of the Administrator, the President shall not be entitled to any honorarium, or sumptuary allowance and the Councillors to any

meeting allowance.

(3) The Chief Officer shall be subordinate to the Administrator and the Administrator shall determine which powers and duties of a Chief Officer may be exercised and performed by the Chief Officer of such Council.

84. Reliance was also placed by Mr. Gurusahani on a Division Bench decision of this Court reported in Shripatrao Mahadeorao Jadhav and Others Vs. Lonawala Municipal Council, where while interpreting the provisions of Sections 65(2) and 66 of the Act, this Court has observed that unless the context in a given situation otherwise indicates, the President is still deemed to be a councillor by force of the fiction of Section 2(17) of the Act.

85. Having regard to all these provisions including the definitions of "council", "councillor", and the description of the President in Section 58(1) as the President of a council and the provisions of Section 58(1)(e) which require the President of a council to furnish to the State Government or the Director or the Collector or any other Government officer authorised by the State Government from time to time, such reports, returns or records and the provisions of Section 306 under the heading "control" which give power of inspection and supervision of the council by the Collector, the Director or any Officer of the Government authorised by the State Government coupled with the fact that when the council is superseded u/s 313 and an administrator is appointed, the President ceases to get any honorarium or allowance even as the councillors cease to get their meeting allowance as provided in Sub-section (2) of Section 314, it is strongly urged by Mr. Gurusahani that the President being a part of the council and the ex-officio councillor and a constituent of the council, he must be deemed to be a councillor as that expression occurs both in Section 308 and Section 318 of the Act. In other words, his endeavour is to persuade us to accept his interpretation that having regard to the provisions just mentioned, the expression "council" in Sections 308 and 318 would include the President of a council. We are here concerned with the question as to whether the President referred to in Section 63(3B)(i) of the Act could be said to be a council as that expression is used in Sections 308 and 318 of the Act. It is worthwhile to remember that as appears from Section 2, the definitions given therein are to be read unless, the context otherwise requires. It is worthwhile to note that when the Act was passed in 1965, there was a provision for the election of a President and Vice-President by the Councillors from amongst the councillors, inasmuch as Section 51(1) as it then stood provided that every council shall have a President and a Vice-President, who shall be elected from amongst the Councillors, who are elected or deemed to be elected. That provision of Section 51 was substituted by Section 12 of the Maharashtra Act No. 47 of 1973. By this amendment a provision is made for the election of a President and appointment of a Vice-President. Under the amended Section 51(1) as amended by Act No. 47 of 1973, every Council shall have a President, who shall be elected by the persons whose names are included in the municipal voters' list prepared u/s 11. By Sub-section (7)(a) of

Section 51 as amended a provision is made by which a President has to appoint a Vice-President from amongst the elected councillors. It was by that very Amendment Act of 1973 that an amendment was made in Section 2(7) so as to include in the definition of a "councillor" the President who shall be deemed to be an ex-officio councillor. Again by that very amendment Section 55(1) was amended so as to provide that a President shall cease to be President, if the Council by a resolution passed by a majority of not less than two-thirds of the total number of councillors excluding the co-opted councillors at a special meeting so decides, and that the requisition for such special meeting shall be signed by not less than one-half of the total number of councillors. What is more of that very Amendment Act, 47 of 1973, Sub-section (5)(a) of Section 55 provided that on ceasing to be President under Sub-section (1), the President may within seven days from the date of his so ceasing to be President, apply in writing to the State Government for dissolution of the Council in which case that Government shall dissolve the council.

86. By Sub-section (6) of Section 55, the President was given the power to move the State Government for dissolution of the council if that is necessitated and if he is unable to carry on the functions. Again by Maharashtra Amendment Act No. 4 of 1974, Section 63 was amended so as to have the amended provisions of Sub-section (3A) and (3B)(i). By Sub-section (3A) the President was given the power to decide any of the two committees which a councillor who has been elected to more than two subjects committees shall serve and it was also provided that his decision shall be final and the resulting vacancies if any shall be filled in. It was by that very amendment that the provisions of Sub-section (3B) (i) empowering the President to fill in the vacancies of the members of the subjects committees was enacted. It is significant to note that even while giving such wide powers to the President by the Amendment Act of 1974 and even after a provision of a direct election of the President and simultaneously empowering him to appoint a Vice-president was made by the Amendment Act of 1973, no consequential amendments were made in any of the sections in chap. XXIII under the heading "control", which include Sections 306, 307, 308 and 318.

87. As we have pointed out the definitions in Section 2 have got to be adopted for the interpretation of the Act unless the context otherwise requires. It is true that normally the President shall be deemed to be an ex-officio councillor in addition to the total number of councillors as appears from the definition of "councillor" in Section 2(7) of the Act. But the question still remains as to whether on a true and correct interpretation of the provisions of Section 63(3B) (i), the President exercising his powers of nomination under the said sub-section, could be said to be a councillor as that expression is used in Sections 308 and 318. In our opinion, since the contingency of the President exercising the powers under Sub-section (3B)(i) of Section 63 arises only after the council has failed to fill up by election any vacancy of a member or members of the subjects committees, in other words, since the President steps in only on the failure of the council to fill up the vacancies, it is impossible to accept the proposition, that in

the context of Sub-section (3B)(i) of Section 63, the President could be deemed to be or equated with the council and much less any action on his part in that context could be an action for or on behalf of the council.

88. We are therefore of the view that having regard to the context in which the expression both President and Council occur in Sub-section (3B)(i) of Section 63, since the President is required to step in only to fill up a vacancy when the council has failed to do so, the President cannot be said to be a councillor for the purpose of that expression. In that view of the matter it would appear that apart from the question as to whether the other ingredients of Section 308 are to be found in the facts of this case, it would appear that the Collector has no jurisdiction to interfere with the action of the President in purported exercise of his powers u/s 308(1) of the Act.

89. Mr. Gurusahani has drawn our attention to two reported cases in this connection. One of them is the decision of this Court in *Shripatrao v. Lonawala Municipality*. In that case while construing the provisions of Sections 65(2), 66 and 9 of the Act, this Court has observed that u/s 9, every council consists of (i) President, (ii) Councillors and (iii) Co-opted councillors and the President thus is one of the constituents of the council and that itself is enough to clothe him with the right to take part in the deliberation and vote at every meeting of the council and that the definition of the word "councillor" also includes President and, therefore, he is as much a councillor as other members are. But it is significant to note that it was observed that that definition would prevail, unless the context in a given situation otherwise indicates. In other words that decision supports the view we are taking that the expressions "President" and "council" occurring in Sub-section (3B)(i) of Section 63 must be read in their context and, therefore, read in that context having regard to the fact that u/s 2 the definitions given therein are to apply unless the context otherwise requires, we are of the view that that authority would be of no assistance to Mr. Gurusahani.

90. The next authority relied upon by Mr. Gurusahani is a judgment of the Supreme Court reported in *State of Rajasthan Vs. Leela Jain*, There the Court was concerned with the interpretation of the proviso to Section 4(1) of the Rajasthan City Municipal Appeals (Regulation) Act of 1950. In para. 8 the Supreme Court has observed as under (p. 1298):

The controversy between the parties rests on the meaning and effect of the expression "or a municipal authority" occurring in the proviso to Section 4, It may be mentioned that the expression "a Municipal authority" is defined in Section 2(iv) of the Act and it is common ground that on that definition the President of the Municipal Council who passed the order which was set aside by the State Government was a Municipal Authority.

91. Therefore, it would appear that it was because of the definition clause in the Rajasthan City Municipal Appeals (Regulation) Act of 1950, the Supreme Court held that the President of the Municipal council was a municipal authority, an

expression which occurs in the proviso to Section 4 of that Act. That ruling, therefore, also would not be of any assistance to Mr. Gurusahani and persuade us to hold that the expression "council" occurring in Sections 308 and 318 would be synonymous with the expression "president" or would mean the President.

92. In order that the Collector may have the power of jurisdiction to act u/s 308 of the Act, it is necessary that (1) it must be a case of the execution of any order or resolution of a council; (2) or the doing of anything which is about to be done or is being done by and on behalf of the council; (3) the execution of any such order or the doing of anything which is about to be done or is being done is in the opinion of the Collector causing or is likely to cause injury or annoyance to the public or is against public interest or to lead to a breach of the peace, or is unlawful.

93. We have already endeavoured to show how we cannot persuade ourselves to accept the submission on behalf of the respondents that the expression "council" occurring in the first part of Section 308 can be equated with the expression "president" occurring in Sub-section (3B)(i) of Section 63 of the Act. Therefore, we are of the view that the first two requisites mentioned above do not exist in this case.

94. As regards the doing of anything which is about to be done or being done on behalf of the council or the execution of any order or resolution of the council, we are of the view, that these expressions are used in respect of the duties and functions of the council and the municipal executive, in chap. III of the Act. Under the Sub-head (1) in chap. III, there is a mention of the obligatory duties and discretionary functions of the council. Sub-section (2) of Section 49 mentions the obligatory duties and functions of the council. Sub-section (5) mentions a list of functions which the Municipality might undertake in its discretion. The obligatory duties mentioned in Sub-section (2) of Section 49 are in addition to the duties imposed upon it by or under the Act or any other law for the time being in force. But by and large the obligatory duties have been enumerated in Sub-section (2) from cls. (a) to (e). We are of the view that the execution¹ of any order or resolution of a council, or the doing of anything which is about to be done or is being done by or on behalf of a council have reference to the functions of the council whether obligatory or discretionary as mentioned in Section 49 or other provisions of the Act.

95. It is worthwhile to look in this connection to the provisions of Section 309(1) of the Act, which provides inter alia that in case of emergency, the Collector may provide for the execution of any work or the doing of any act, which may be executed or done by or on behalf of a Council and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public; and may direct that the reasonable expense² of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or to do it, shall forthwith be paid by the Council. Sub-section (2) provides that if the expense and remuneration are not so paid, the Collector may make an order

directing any person, who for the time being has custody of any moneys on behalf of the Council as its officer, treasurer, banker or otherwise, to pay such expense and remuneration from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order.

96. Sub-section (3) of Section 309 reads as under:

The provisions of Sub-sections (2), (3) and (4) of the last preceding section shall apply so far as may be to any order made under this section.

97. Reading Sections 308 and 309 together since the words used in both these sections take the colour from the context in which they are used, we are of the view that execution of any order or resolution of a council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, occurring in Section 308(1) of the Act read in the light of Section 309 must be held to be the execution of any order or the doing of anything which is required to be done by the council u/s 49 "or other provisions" of the Act. We are, therefore, of the view that the act of the President nominating the members of the subjects committees in exercise of his powers under Sub-section (3B)(i) of Section 63 of the Act is not within the four corners of Section 308 of the Act.

98. As regards the last requirement of Section 308, so far as the Collector is concerned, he expressed an opinion that the act of the President complained of was not causing or is likely to cause injury or annoyance to the public nor was it against public interest or was likely to lead to a breach of the peace. Therefore, that requirement also on the showing of the Collector himself was not fulfilled in this case.

99. The Collector, however, while repelling the contention that he had no jurisdiction in interfering with the order of the President, took the view that as in the circumstances of the case the President did not take resort to call a fresh meeting by relying on the provisions of Section 81(4)(b), his action was unlawful and that is how he took the view that he has jurisdiction to entertain the grievance of respondents Nos. 4 and 5. As we have pointed out, unlike an opinion formed by the Collector on the question of breach of peace which it would be for him to decide, on the material placed before him, and which we are not entitled to disturb as we are not a Court of appeal, when he has expressed an opinion that the act of the President was unlawful, and when that opinion is apparently an error on the face of the record, it would appear that he had no jurisdiction to suspend the action taken by the President in nominating the members to the subjects committees.

100. The next question to be considered is as to whether the State Government has jurisdiction to interfere with the action which was taken by the President in exercise of his powers under Sub-section (3B)(i) of Section 63 of the Act.

101. Section 318 which deals with the revisional powers of State Government is

to this effect:

318. The State Government may, at any time, for the purpose of satisfying itself as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of, any Council or of any officer subordinate to such Council or the State Government, acting in exercise of any power conferred on it or him by or under this Act, call for and examine the record of any case pending before or disposed of by such Council or officer and may pass such order in reference thereto as it thinks fit:

Provided that, no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard:

Provided further that, no such order shall be passed in any case in which an appeal is provided and has been preferred or has been decided:

Provided also that, no such record "shall be called by the State Government after one year from the date of the passing of the order by the Council or the officer concerned.

102. Therefore, in order that the State Government may exercise its revisional powers under the said Section (1) it should be a case involving the legality or propriety of any order passed by any council or any officer subordinate to such council or the State Government; (2) the council or any officer subordinate to such council or the State Government must have passed the order acting in exercise of any power conferred on it or him by or under the Act; (3) or it may be a case involving regularity of the proceedings of any council acting in exercise of any power conferred on it under the Act. The first proviso provides for an opportunity being given of being heard, to the parties who are likely to be adversely affected if the order is varied or reversed. The second proviso provides that if an appeal is preferred and has been decided the State Government could not exercise its powers of varying or reversing the orders of the council or the authority acting in exercise of any power conferred on it or him. The last proviso provides for the law of limitation according to which the State Government could not call for the record one year after the date of the passing of the order by the council or the officer concerned.

103. It would therefore appear that the powers of revision of the State Government are by no means unlimited. The limit and limitation on the revisional power of the State Government is determined by the specific provisions in Section 318. In the first place the power of the State Government appears to be limited to the calling and examining of the record of any case pending before or disposed of by any council or officer acting in exercise of any power conferred on it or by it under the Act. It is in respect of such pending or disposed of cases that the State Government could pass such order in reference thereto as it thinks fit.. Even there, as we have pointed out, if an appeal is provided and has been preferred and has been decided the State. Government cannot in exercise of its powers u/s 318 interfere with that order much less could it interfere with that

order one year after the same is passed either by the council or the authority. In any event it is clear, that the revisional powers of the State Government as could be spelt out from the wording of Section 318 of the Act, appear to be limited to the calling and examining of the record of any case pending before or disposed of by such council or officer and to the passing of such order in reference thereto as it thinks fit. It is also worthwhile to note that the order passed by the council or an officer must be an order acting in exercise of any power conferred on it or on him by or under the Act. In other words it is only when the council or the officer subordinate to such council or to the State Government has jurisdiction to decide or dispose of or deal with the matter that the State Government in exercise of its revisional powers could call for and examine the record of such case pending before or disposed of by such council or officer and it may pass such order in reference thereto as it thinks fit. In other words, if the council or officer have no jurisdiction to deal with the case, the State Government could not exercise the revisional powers u/s 318, to deal with a case, having regard to the qualified expression in Section 318 that the question involved must be the legality or propriety of any order passed by any council or officer acting in exercise of any power conferred on it or him by or under this Act.

104. While dealing with the powers of the Collector to interfere with the nominations made by the President in exercise of his powers u/s 63(3B)(i), we have already dealt with the argument for the respondents that the expression "council appearing in Sections 308 and 318 would include a President or is synonymous with the President of the council, and we have expressed our inability to agree with the view. What is, however, argued by Mr. Gurusahani is that unlike the provisions of Section 308(1), in Section 318, there is a mention about the regularity of the proceedings of any council. By pointing out this distinction, which cannot be disputed, Mr. Gurusahani submits that the proceedings which were commenced by the President by calling a meeting of the subjects committees by issuing a notice on January 20, 1977 which-ultimately resulted in the President nominating the members of the subjects committees, are in effect the proceedings of the Municipal council and, therefore, the State Government would have jurisdiction to consider the regularity or the propriety of the President's action in nominating the members to the subjects committees. We are unable to agree with this interpretation of the expression proceedings as is urged by Mr. Gurusahani. We are here concerned with the propriety or legality or the validity of the act of the President nominating the members of the subjects committees on the failure of the council to fill up by election the vacancies of the members of the subjects committees under Sub-section (3B) of Section 63. It could not be said that that is a proceeding of the council. In fact as we have already held, in the context in which the expression President and council occur in Sub-section (3B) of Section 63, the President could not be equated with the council and the act of the President could not be said to be the act of the council or for and on behalf of the council.

105. It was then argued by Mr. Gurusahani that in any event the prayer in the

petition is to set aside the order of the Government which has set aside the orders of the Director who was undoubtedly a subordinate to the State Government. But then it is significant to note that the orders which could be interfered with in exercise of the powers u/s 318, are the orders of officers acting in exercise of any power conferred on him by or under the Act. Once we hold as we have done that a Collector could not interfere with the order of the President, under the purported exercise of his powers u/s 308(.1), the question of the Collector suspending the execution of that order by the President, under Sub-section (7) of Section 308 and forwarding a copy of the order to the Director along with a report; under Sub-section (2), or the Director either rescinding or revising or modifying or confirming the order of the Collector under Sub-section (4), would be without jurisdiction. These orders could not be said to have been passed in exercise of any power conferred on these officers. That being so, the State Government could not in our opinion interfere with the action of the President in exercise of the powers u/s 318. In any event, as we have pointed out, the powers of the Government appear to be limited to the calling for and examining the record of any case pending before or disposed of by the council or officer and passing any order in reference thereto as it thinks fit. Apart from the fact that the President could not be said to be a council and the, fact that there is no mention of the President in Section 318, and neither the Collector nor the Director have power to interfere with the order, it would appear that the nomination of the councillors by the President in exercise of the powers under Sub-section (3B) of Section 63, could not be said to be a case disposed of by the President and, hence, in our opinion, it could not be interfered with in exercise of the purported revisional powers u/s 318 of the Act.

106. It was strenuously argued by Mr. Gurusahani that the Maharashtra Municipalities Act, 1965 is a self contained code and orders passed u/s 318, by the State Government are final and can not be challenged in Courts except in case of mala fides or patent or transparent illegality, or violation or contravention of the provisions of the Act or rules made thereunder. He also submitted that an honest opinion formed by the State Government u/s 318 after hearing the parties cannot be questioned in High Court under Article 226 of the Constitution. He further submitted that the High Court in its extra ordinary writ jurisdiction under Article 226 cannot sit as a Court of appeal and substitute its own judgment in place of the judgment given by the State Government under its revisional powers. In any event he submitted that if two views are possible and the State Government has taken one view in its revisional jurisdiction, the High Court should not interfere with it under Article 226 of the Constitution.

107. In support of his first submission Mr. Gurusahani has drawn our attention to the observations of Chandrachud J., as he then was, in *Dagdu Vithoba Patil Vs. The State of Maharashtra*, That was a case where a petition was filed by two voters challenging certain important stages of an election to the Jalgaon Municipal Council. The grievance of the petitioners was that the delimitation of constituencies was arbitrary and that the list of voters was not kept for public

inspection for the requisite period and that three seats reserved for women were allotted to some three wards indiscriminately. The Division Bench speaking through Chandrachud J. observed as under (p. 776):

?We must, however, say that except in unusual circumstances, as for example, when there is a flagrant violation of law, or a gross abuse of the discretion conferred on the Government or its Executive Officers, or when the provisions of the Act are utilised for a purpose not duly appointed under the Act, the machinery prescribed by the Act must be adopted for the redress of grievances arising out of an alleged violation of rights conferred by the Act. As observed by the Supreme Court, the right of franchise is a statutory right and not a common law right. Therefore, it is necessary that, normally, statutory remedies must be adopted. It is in the interests of the voters as well as the candidates that the published programme of elections is strictly adhered to and the process of elections is not arrested.

108. Relying on the above observations, Mr. Gurusahani says that there is no allegation that it is a case of flagrant violation of any law or rights conferred by the Act on Government or officer and, therefore, this Court should not interfere with the order passed by the Government.

109. The next authority relied upon by Mr. Gurusahani is another Division Bench decision of this Court reported in *Shankarappa Ramappa v. Bombay State* (1955) 58 Bom. L.R. 278. That was a case where the State Government had superseded the village Panchayat of Sankeshwar for its persistent defiance of the orders of the Collector confirmed by the Government suspending the resolution of the Panchayat to maintain the language of the Daftar of the Panchayat in Kannad instead of Marathi. Initially the resolution of the Panchayat to change the language of the record from Marathi to Kannad being passed by the Panchayat by a majority, a grievance being made to the Collector by another section of the Marathi speaking people, the Collector suspended that resolution of the Panchayat as he formed an opinion that there is a likelihood of the breach of the peace. That order, however, was set aside by the Director of Local Authorities. But the Government restored the order of the Collector and though that order was communicated to the Village Panchayat, the Village Panchayat persistently disobeyed that order. It is as against that background that the Government had passed orders superseding the Panchayat. That order being challenged this Court held that since u/s 99(1) of the Bombay Village Panchayats Act, 1933, it was for the Collector to form an opinion about the likelihood of the breach of peace and since the Collector formed that opinion it is not for the Court to consider the validity of that opinion as the High Court was not sitting in appeal over the opinion formed by the Collector. This Court further held that if an order is passed by the State Government u/s 107(2) of the Bombay Village Panchayats Act, 1933, with jurisdiction and within the ambit of that section, however erroneous that order may be, the Court cannot call upon the State Government to justify that order on merits. The Court further observed that if the State Government

has formed the opinion, u/s 102(7) of the Bombay Village Panchayats Act, 1933, that a panchayat has persistently disobeyed any of the orders of the Collector or Commissioner u/s 99 of the Act, that opinion is binding upon the Court.

110. It is significant to note that in that case the Village Panchayat did have the powers to pass a resolution and the Collector also had the jurisdiction to suspend that resolution and the. Government had also unlimited powers of revising the said orders inasmuch as, unlike the phraseology of Section 318 of the Maharashtra Municipalities Act, 1965, Sub-section (2) of Section 107 of the Bombay Village Panchayats Act, 1933, was very wide as it would appear from its wording which is set out here for ready reference:

107. (2) In all matters connected with this Act, the State Government and the Commissioners and Collectors shall have and exercise the same authority and control over the Commissioners, the Collectors and their subordinates, respectively as they have and exercise over them in the general and revenue administration.

111. The last authority relied upon by Mr. Gurusahani is a latest decision of the Supreme Court in Beant Singh Vs. Union of India (UOI) and Others, . The observations relied upon by Mr. Gurusahani are to this effect (p. 389):

? It is true that the High Court does not sit as a Court of appeal to substitute its own judgment for that of the authorities which are empowered to give their decisions in such cases. Apart from jurisdictional errors, the High Court may correct errors apparent on the face of the record. An error to be apparent must, according to a rough test laid down by this Court in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, be one which does not take prolonged arguments to bring it to the surface. These propositions are quite well established.

112. By relying on these observations, Mr. Gurusahani submits that we should not interfere with the order of the Government. But since we have taken the view that the orders of the Collector and the Director and the Government in question are all without jurisdiction and since there is an error apparent on the face of the record both in the order of the Collector and the order of the Minister to which we have drawn attention to find out which no elaborate arguments are required, we are of the view that none of these authorities are of assistance to Mr. Gurusahani.

113. In this connection we may also refer to some of the authorities to which our attention is invited by Mr. Rane for the petitioner. The first case relied upon by him is reported in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, in which the Supreme Court has laid down the law about the circumstances under which a writ of certiorari can lie. The Supreme Court has observed as under in para. 21:

With regard to the character and scope of the writ of certiorari and the conditions

under which it can be issued, the following propositions may be taken as established:

(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it, (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its Undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court Issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute Its own findings in certiorari.

114. Again in para. 23, the Supreme Court has observed as under:

A writ of certiorari can be issued to correct an error of law. But it is essential that, it should be something more than a mere error; it must be one which must be manifest on the face of the record.

115. The other case relied upon by Mr. Rane is the one reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, . The relevant observations in para. 8, at p. 480, are as under:

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be

open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

117. It is in the light of these well established principles that we have approached the case and have pointed out that neither the Collector, the Director nor the State Government had jurisdiction to interfere with the nominations made by the President in exercise of his powers under Sub-section (3B) of Section 63 of the Act. We have also pointed out that the order of the Collector and the Government suffers from an error of law on the face of it to find out which no elaborate arguments are required.

118. As the first petition viz. Special Civil Application No. 1309 of 1977 has become infructuous by reason of the orders passed by the Government, no orders are called for thereon.

119. With regard to the second petition viz. Special Civil Application No. 1697 of 1977, the petition partly succeeds. In so far as nomination of the members to the subjects committees is concerned, it is not disputed before us by Mr. Rane that the President had no powers to nominate the members of the Standing Committee. That petition therefore succeeds only to the extent of the order and action of the President in nominating the members to the subjects committees.

120. In the result, Special Civil Application No, 1309 of 1977 is dismissed. Rule discharged. No order as to costs.

121. Special Civil Application No. 1697 of 1977 is partly allowed. The order of the Government dated August 8, 1977, annexed as Annexure "G" to the petition, the order of the Director dated April 18, 1977 annexed as Annexure "C" to the petition and the order of the Collector dated February 13, 1977 annexed as Annexure "B" to the petition, are quashed. The order of the President in so far as it relates only to the nominations of the members of the subjects committees is concerned, is confirmed and the rule is made absolute to that extent.

122. As this is a first case of its kind involving interpretation of the sections and rules of the Maharashtra Municipalities Act, 1965, we think that it is not necessary to award more than the prescribed costs to the petitioner, and therefore the prescribed costs shall be paid by the respondents, who shall bear their own.