
(1960) 11 GUJ CK 0007
In the Gujarat High Court

President. District Local Board Mehsana	APPELLANT
Vs	
Sumant Govardhanray Mehta	RESPONDENT

Date of Decision : 08-11-1960

Acts Referred:

Bombay Local Boards Act, 1923 — Section 122, 133(g), 35(2)(f), 35(f)
District Local Boards Act, 1923 — Section 119

Citation : (1961) 2 GLR 82

Hon'ble Judges : S.T. Desai, C.J;P.N. Bhagwati, J

Bench : Division Bench

Judgement

P.N. Bhagwati, J.—This petition raises some interesting questions of construction regarding certain provisions of the Bombay Local Boards Act, 1923, (hereinafter referred to by us as the "said Act".) The facts giving rise to this petition require to be stated in some detail.

2. Prior to the integration of the old Baroda State with the then Province of Bombay, the first respondent was in the service of the old Baroda State and his services had been made available on loan to the District Local Board, Mehsana. since 1945-. During the old regime, there was no post of Chief Officer in the District Local Board, Mehsana, but there was a post of Head Clerk and Accountant, and the first respondent occupied the said post. After the integration, the services of the first respondent continued to be on loan with the District Local Board, Mehsana. In 1950, separate posts of Chief Officer and Head Clerk and Accountant were created by the District Local Board and the first respondent Was posted as Chief Officer of the District Local Board. Since then, the first respondent worked as Chief Officer of the District Local Board upto 21st September 1959, when the resolution which marks the starting point of the "dispute in the present petition, was passed by the District Local Board. It may be incidentally mentioned that some time in August 1956 the first respondent was absorbed as an employee of the District Local Board and his services with the District Local Board ceased to be on loan from the State of Bombay. The first respondent thereafter became an employee of the District Local Board.

3. On 21st September 1959 a meeting of the District Local Board was held and at the said meeting a resolution was passed which materially affected the position of the first respondent in the District Local Board. The consideration of the said resolution was not on the agenda of the meeting but since it was found that a majority of the members present at the said meeting were in favour of discussing the said resolution the President who presided over the said meeting permitted discussion of the said resolution. Out of a total number of 34 members present at the said meeting 26 members voted in favour of the said resolution while six members voted against it and the said resolution was carried by a majority of the members present at the said meeting. It is an admitted position that the members who voted in favour of the said resolution did not constitute at least 2/3rds of the whole number of members of the District Local Board. The said resolution consisted of two parts the first part which was in the nature of recitals contained mostly platitudes while the second part contained the operative portion of the said resolution. One of the contentions raised before us turns on the question as to what is the true effect and nature of the said resolution and it would therefore be useful to set out the operative part of the said resolution. It is in the Gujarati language and the following is its agreed translation in English:

..It is resolved to abolish the post of the Chief Officer of the Board which appointment has been made on and since 1-4-1950 pursuant to Section 119 of the District Local Boards Act 1923

That on the abolition of the post of the Chief Officer as is determined in Section 154 of the Account Code the post of the Chief Officer and the Engineer should be amalgamated it is resolved that the Engineer should hold both the posts. Hence the post of the Engineer shall be designated as Engineer-cum-Chief Officer and the incumbent of that post will perform all (he duties of the Chief Officer and the Engineer under Rules 67 to 77 of the Rules of Business of the District Local Board.

The present Chief Officer Shri Su-Go-Mehta if he is willing to continue in the service of the Board after the abolition of the post of the Chief Officer the President is authorised to appoint him to any other suitable post according to his qualification and his rights of service. The said resolution is to be given effect to from the date of its passing.

4. Pursuant to the said resolution the District Local Board passed a Daftary Hukam and served a copy of the said Order on the first respondent in the evening of 21st September 1959. It is the case of the District Local Board that as soon as a copy of the said Daftary Hukam was served on the first respondent and the first respondent was informed about the passing of the said resolution by service of the said Daftary Hukam the said resolution was completely executed and nothing further remained to be done under the said resolution so far as the first respondent was concerned. On the next day i.e. 22 September 1959 at about 9-45 A.M. the post of Internal Auditor was offered to the first respondent by the President of the District Local Board in terms of the said resolution. The

first respondent accepted the said post of Internal Auditor under protest. There is some dispute as to whether the said post of Internal Auditor was accepted by the first respondent under protest before approaching the Collector or after approaching him. According to the District Local Board the first respondent approached the Collector after he had accepted the said post of Internal Auditor under protest while according to the first respondent he did so before accepting the same. Nothing however turns on this dispute and it is therefore not necessary for to deal with the same. One thing however is certain that the first respondent immediately approached the Collector u/s 125 of the said Act and moved the Collector to suspend the execution of the said resolution on the ground that the execution of the said resolution was unlawful. The first respondent also requested the Collector to issue an interim order suspending the execution of the said resolution and the Collector issued a stay order as desired by the first respondent. The stay order was served on the District Local Board at about 11-30 A.M. on the same day i.e. 22 but the District Local Board took the view that the said resolution had already been completely executed and nothing further remained to be done under the said resolution and that the stay order was therefore futile. The District Local Board also challenged the jurisdiction and authority of the Collector to issue the stay order u/s 125 of the said Act. The result was that the first respondent had to continue to work as Internal Auditor in the office which he had accepted under protest and he continued to get only the salary of an Internal Auditor which was very much less than that of the Chief Officer. The person who occupied the office of Engineer prior to the date of the said resolution discharged from and after 22nd September 1959 not only the functions of the Engineer but also the functions of the Chief Officer of the District Local Board.

5. The application of the first respondent u/s 125 of the said Act was thereafter heard by the Collector and the Collector by an order dated 29th October 1959 held that the net effect of the said resolution was reduction of the first respondent from the post of Chief Officer to the post of Internal Auditor and that since by reason of Rule 4A of the Rules made by the Government of Bombay in exercise of its powers under Clause (g) of Section 133 of the said Act no Chief Officer could be reduced suspended or otherwise punished save by the votes of atleast two-thirds of the whole number of members of the District Local Board the said resolution which was passed by a mere majority of the members present at the meeting held on 21st September 1959 was illegal and invalid and required to be set aside. The Collector accordingly set aside the said resolution as illegal and directed that the first respondent shall be deemed to be in continuous employment of the District Local Board and shall be entitled to hold the office of Chief Officer of the District Local Board. It is against this order of the Collector that the present petition is directed and the District Local Board and its President have challenged the validity of the said order on this petition.

6. The Order of the Collector has been attacked by Mr. M.P. Amin Learned Counsel for the petitioners mainly on three grounds. The first contention of Mr.

M.P. Amin is that on a true construction of Section 125 of the said Act the Collector has power to suspend the execution of a resolution of the District Local Board only if the resolution is not completely executed and something remains to be done under the said resolution but that if the resolution is completely executed and nothing further remains to be done under the resolution the Collector has no power to act under the said section. The argument is that once the resolution is carried out before the Collector moves in the matter the Collector has no power u/s 125 to undo what has been done under the resolution. Emphasis has been laid on the word suspend and it has been contended that the Collector can suspend that which is about to be done or is being done but he cannot suspend that which has already been done. According to Mr. Amin the language of Section 125 clearly shows that the Collector can intervene only if the resolution is about to be executed or is being executed but if the resolution is completely executed there remains no execution of the resolution which can be suspended and the Collector cannot in that event act under the said section. It has been argued by Mr. Amin that in the present case the execution of the resolution dated 21st September 1959 was already completed before the Collector was approached by the first respondent and that the Collector had therefore no power to make any order u/s 125 and that the said order is therefore illegal and liable to be set aside. The second argument of Mr. M.P. Amin is in the alternative and he has contended that all that the District Local Board did by passing the said resolution was to abolish the separate post of Chief Officer and to amalgamate the posts of Chief Officer and Engineer into one post and that the said resolution cannot be said to amount to removal from office or dismissal or reduction or suspension or punishment of the first respondent as Chief Officer so as to attract the applicability of Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 133 of the said Act. Mr. M.P. Amin has lastly argued that even if the effect of the said resolution is such as to attract the applicability of Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 133 of the said Act the said rule is ultra vires the provisions of the said Act inasmuch as it provides that no Chief Officer Engineer Health Officer or Accountant shall be removed from office or dismissed or reduced or suspended or otherwise punished save by the votes of at least two-thirds of the whole number of members of the District Local Board and is therefore inconsistent with Section 35(2)(f) of the said Act which provides that all questions shall be decided by a majority of vote of the members present at any meeting. According to Mr. M.P. Amin the said resolution could be validly passed by a bare majority of members of the District Local Board present at the said meeting and there was nothing illegal or unlawful about the said resolution. It has on the other hand been argued by the learned Advocate General who appears on behalf of the Collector and the State who are respondents 2 and 3 before us that the Collector was entitled to act and rightly acted u/s 125 inasmuch as the execution of the said resolution was unlawful. According to the learned Advocate General the net effect of the said resolution was that the first respondent was removed from the office of Chief Officer and that the said

resolution was therefore required to be carried by votes of at least two thirds of the whole number of members of the District Local Board as provided by Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 133 of the said Act and could not be passed by a bare majority of the members of the District Local Board passed at the said meeting. The said resolution was therefore illegal invalid and inoperative and the first respondent continued to be the Chief Officer of the District Local Board and the execution of the said resolution by excluding the first respondent from the office of Chief Officer and getting the functions of the Chief Officer discharged by the Engineer was unlawful and justified interference of the Collector u/s 125. Mr. S.N. Patel who appears for the first respondent has supported these arguments of the learned Advocate General.

7. Before we proceed to examine the arguments which have been urged before us it is necessary to set out at this stage the relevant sections of the said Act and the relevant rules made by the Government of Bombay under the provisions of the said Act.

8. The following are the relevant sections of the said Act which have a bearing on the determination of the questions raised before us:

Chapter III-Conduct of Business of Local Boards.

35 (1) A local board shall meet together not less than once in every three months and shall from time to time make regulations consistent with this Act and with any rules or orders made by the State Government in this behalf under Clause (c) of Section 133 with respect to the place day hour notice management and adjournment of such meetings and generally with respect to the transaction of business as it thinks fit subject to the provisions of the following Sub-sections.

(2) (a) The president shall fix the dates for the quarterly meetings hereinbefore prescribed and may whenever he thinks fit and shall upon the written request of not less than one-fourth of the members and for a date within twenty-one days from the receipt of such request call a special meeting...

(f) All questions shall be decided by a majority of votes of the members present the president vice-president or chairman as the case may be having a second or casting vote in all cases of equality of votes..

Chapter X-Control

124 (1) The Commissioner Collector or any Government officer authorised by general or special order of State Government may

(a) enter on and inspect any immovable property occupied by any local board or any institution under its control and management or any work in progress under it or under its direction or cause such immovable property institution or work to be entered upon and inspected by any other person authorized by him in this behalf in writing; and

(b) call for any extract from the proceedings of any local board or any committee appointed by such board and call for or inspect any book or document in the possession of or under the control of a local board

(2) The Director of Local Authorities or the Collector may

(a) call for any return statement account or report which he may think fit to require a local board to furnish and

(b) require a local board to take into its consideration any objection which appears to him to exist to the doing of anything which is to be done by such board or any information furnished by him which appears to him to necessitate the doing of a certain thing by such board and to make a written reply to him within a reasonable time stating its reasons for not desisting from doing or for not doing such thing.

125 (1) If in the opinion of the Collector the execution of any order or resolution of a local board or the doing of anything which is about to be done or is being done by or on behalf of a local board is causing or is likely to cause injury or annoyance to the public 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 a Collector makes any order under Sub-section (1) he shall forthwith forward to the Commissioner and to the local board affected thereby a copy of the order with a statement of the reasons for making it and it shall be in the discretion of the Commissioner to rescind the order or direct that it continues in force with or without modification permanently or for such period as he thinks fit

(3) The Commissioner shall forthwith submit to the State Government a report of every case occurring under this section, and the State Government may revise or modify any order made therein and make in respect thereof any other order which the Commissioner could have made. Chapter XI-Rules.

133 The State Government may by notification in the official Gazette from time to time make rules or orders consistent with this Act.

(c) prescribing such general conditions as shall seem fit as to the manner in which the business of local boards shall be conducted:

(f) prescribing for the purpose of Sections 83 84 and Sub-section (1) of Section 86 the form in which the accounts of local boards shall be kept and the forms in which their abstracts of account and budget estimates shall be prepared and regulating the audit of local board accounts;

(g) regulating for the purposes of Sections 120 and 122 and Clause (ee) of and proviso (R) to Section 123 the appointment control punishment and dismissal of the officers and servants of local boards and the extent of contributions to the pensions and leave allowances of Government Officers employed by local boards.

(h) generally further guidance of local boards and Government Officers in all

matters connected with the administration of this Act and not therein specially provided for;

Provided that rules made under this section shall be made after previous publication.

9. So far as the rules made under the provisions of the said Act are concerned there are two sets of rules which are relevant for the purpose of the present petition the first set of rules is called the Bombay Local Boards Account Code 1935 and has been made by the Government of Bombay in exercise of its powers under Clauses (c)(f) and (h) of Section 133 of the said Act while the second set of rules has been made by the Government of Bombay in exercise of its power under Clause (g) of Section 133 of the said Act for regulating inter alia the appointment control punishment and dismissal of officers and servants of Local Boards. Rules 3 4 and 4A of the second set of rules are in the following terms:

3. Officers or servants to be heard before punishment: No officer or servant of a local board shall be removed from office reduced punished or dismissed without reasonable opportunity being given him of being heard in his defence. Any written defence tendered by such officer or servant shall be recorded.

4. Order of punishment: Every order of removal from office reduction punishment or dismissal or confirming a dismissal shall be in writing and shall specify the charge or charges brought the defence and the reasons for the orders.

4A (1) No Chief Officer Engineer Health Officer or Accountant shall be removed from office or dismissed save by the votes of atleast two-thirds of the whole number of the members of the local board and with the previous sanction of Government.

(2) No Chief Officer Engineer Health Officer or Accountant shall be reduced suspended or otherwise punished save by the votes of atleast two-thirds of the whole number of the members of the local board and with the previous sanction of the Commissioner.

(3) Notwithstanding anything contained in Sub-rules (1) and (2) the Commissioner may on the recommendation of a local board supported by a resolution passed by a majority of the members present at a special general meeting called for the purpose (which meeting shall be a quorum meeting) suspend any such officer and cause an inquiry to be made by such person and in such manner as he may direct into the charges made against such officer. In the inquiry so held such officer shall be given a reasonable opportunity of answering the charges made against him. On the completion of the said inquiry the result thereof shall be forthwith reported to the Commissioner.

(4) On the receipt of a report under Sub-rule (3) the Commissioner if he is of opinion

(a) that such officer should be removed from office or dismissed the

Commissioner shall without any delay forward the said report to Government with his own recommendation thereon Government may thereupon pass such order as they deem fit: or

(b) that there are not sufficient grounds for the removal from office or dismissal of such officer the Commissioner may notwithstanding anything contained in Sub-rule (2) direct such officer to be reinstated reduced suspended or otherwise punished.

10. The first argument of Mr. M.P. Amin turns upon the construction of Section 125. What on a true interpretation is the ambit and scope of the power of the Collector u/s 125? Is the power of the Collector limited in the sense that it can be exercised only if something remains to be done under the resolution and can operate only on what remains to be done or is it wide enough to entitle the Collector to annul the operation or effect of a resolution even when nothing by way of positive act remains to be done under the resolution? In our opinion the power of the Collector is not so narrow or limited as Mr. M.P. Amin would have it.

11. At first blush the argument of Mr. M.P. Amin founded on undue emphasis on the word suspend may appear to be somewhat attractive but on closer examination we find that it is not only repugnant to the object of the legislature in enacting the said section but it is also defective in ignoring a number of relevant and material considerations which in our judgment must weigh with the Court on this question of interpretation of a section which is obviously intended to confer controlling powers on the Collector and other Officers of the State Government over District Local Boards so that the District Local Boards do not transgress the limits set by the requirements of law and public interest. The language of Section 125 does not present any difficulty in interpretation if we approach it bearing in mind certain well-established principles of construction. Of course where the language of an enactment is plain and clear upon its face and of itself susceptible of only one meaning then ordinarily that meaning would have to be given by the Court. In such a case the task of interpretation can hardly be said to arise. But language at best is an imperfect medium of expression and a variety of significations may often lie in a word or expression. It has therefore been said that the words of a statute must be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language nor in its popular use as in the subject or in the occasion on which they are used and the object to be attained. It is not because the words of a statute read in one sense will cover the case that that is the right sense Grammatically they may cover it but whenever a statute is to be construed it must be construed not according to the mere ordinary general meaning of the words but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used. Language is rarely so free from ambiguity as to be incapable of being used in more sense than one and to adhere strictly to its literal and primary literal in all

cases would be to miss its real meaning in many. The words must therefore be construed having regard to the subject and the occasion and the object of the enactment. It is also an established rule of construction that provisions such as this ought to be construed fairly and ought to be construed so as reasonably to effect the object which the legislature may be presumed to have had in view. If the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation the Court should avoid the construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that the legislature would legislate only for the purpose of bringing about an effective result. That construction should be adopted by the Court which would suppress the mischief and advance the remedy and add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*. The construction which Mr. M.P. Amin asks us to put on the language of the section is a narrow and constricted one and does not accord with these well-known principles of construction.

12. Section 125 occurs in the chapter headed Control. That Chapter starts with Section 124 which deals as the marginal note indicates with powers of inspection and supervision. Under Clause (1) of Section 124 the Commissioner Collector or any Government Officer authorized by the State Government has the power to enter on and inspect any immovable property occupied by any District Local Board or any institution under its control and management or any work in progress under it or under its direction or cause such immovable property institution or work to be entered upon and inspected by any other person authorized by him in that behalf. The power under the said Clause also extends to calling for any extract from the proceedings of any District Local Board or any committee appointed by such Board and calling for or inspecting any book or document in the possession of or under the control of a District Local Board. By Clause (2) of Section 124 power is conferred on the Director of Local Authorities or the Collector to call for any return statement account or report which he may think fit to require a District Local Board to furnish as also to require a Local Board to take into its consideration any objection which appears to him to exist to the doing of anything which is about to be done by such board or any information furnished by him which appears to him to necessitate the doing of a certain thing by such board and to make a written reply to him within a reasonable time stating its reasons for not desisting from doing or for not doing such thing Section 124 thus provides a machinery by which the appropriate officers of the State Government can keep themselves informed as to what is happening in any District Local Board and supervise the affairs of such District Local Board. The appropriate officers of the State Government can call for every possible information from the District Local Board and probe completely into the affairs of the District Local Board under this section. Then comes Section 125 which provides what action the Collector can take if he finds as a result of information gathered by him u/s 124 or otherwise that the execution of any

order or resolution of a District Local Board or the doing of anything which is about to be done or is being done by or on behalf of a District Local Board is-causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful. This section provides that in this event the Collector can suspend the execution of the order or resolution or prohibit the doing of the thing which is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful. This power of the Collector is clearly a power to set at naught any order or resolution of the District Local Board the performance or carrying out of which is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful.

13. After the Collector makes an order suspending the execution of any order or resolution of the District Local Board or prohibiting the doing of anything the Collector has to forward forthwith to the Commissioner and to the District Local Board a copy of the order with a statement of the reasons for making it and it is then for the Commissioner to rescind the order or to direct that it shall continue in force with or without modification permanently or for such period as he thinks fit. The Commissioner in his turn has again to forward to the State Government a report of every case occurring under this section and the State Government may revise or modify any order of the Commissioner and make any other order which the Commissioner could have made. It will thus be seen that the State Government has the widest powers of control over District Local Boards. District Local Boards are institutions of Local Self-Government and it is the responsibility of the State Government to see that these institutions which must function in furtherance of public interest do not act in a manner which would cause injury or annoyance to the public or lead to a breach of the peace or which would be unlawful. The State Government is responsible for the proper functioning of all institutions of Local Self-Government and it is therefore but natural that in any legislation relating to institutions of Local Self-Government the State Government should reserve itself the widest powers of control which can be effectively used when occasion demands. District Local Boards are no doubt autonomous within the framework of the said Act but that autonomy is subject to the overall control of the State Government. The exact shape and colour of this control may vary with the institutions but it is at all stages and is of the widest amplitude as appears clearly from the sections occurring under the chapter headed Control. It is in the context of this background that we must interpret the provisions of Section 125.

14. The foundation for the exercise of the Collectors power u/s 125 in relation to any order or resolution of the District Local Board is that the Collector should be of the opinion that the execution of such order or resolution is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful. If the Collector is of that opinion he may by order in writing suspend the execution of such order or resolution. The section thus divides itself into two parts the first part provides the condition which affords the foundation for the

exercise of the Collectors power while the second part indicates the nature of the order which the Collector may make if the condition is satisfied. Is there anything in the language of the section which must compel the court to hold that an order or resolution which has been carried out and under which nothing further remains to be done is outside the scope and purview of the section? If the language is doubtful we must lean in favour of that construction which would have the effect of including such order or resolution within the scope and purview of the section since that would advance the manifest purpose and object of the legislature and add force and life to the cure and remedy provided by the legislature for keeping the District Local Boards within the limits prescribed by the requirements of law and public interest. If we adopt the other construction which would have the effect of excluding such order or resolution from the scope and purview of the section the control of the State Government over the activities of the District Local Boards would to that extent be prejudicially affected and in many cases would be liable to be set at naught by the District Local Boards carrying out and completing all that is required to be done under such order or resolution before the Collector could come to know about it. The effectiveness of the remedy would in that event become dependent on the witness with which the Collector is able to act and in this matter the Collector would always be at a disadvantage because very often he may not know about an order or resolution before it is carried out and completed. The construction contended for by Mr. M.P. Amin is a narrow one which would fail to achieve the manifest purpose and object of the section namely to confer control of the widest amplitude on the State Government which is responsible for the proper functioning of the District Local Boards and if that construction is adopted it would permit the District Local Boards to reduce the section to futility by acting more swiftly than the Collector. The section being a remedial section must be read broadly so as reasonably to effect the object of the legislature and not in a narrow or doctrinaire manner. The effect of a provision of law like this cannot be made to depend on thin niceties of time. On an examination of the section we find that it is by reference to the effect which the execution of any order or resolution is causing or is likely to cause that the order or resolution is brought within the scope and purview of the section. If the actual or likely effect of the execution of any order or resolution is injury or annoyance to the public or a breach of the peace the Collector can move and exercise his power under the section. An order or resolution may have been carried out and nothing further may remain to be done under the order or resolution yet if the Collector finds that the operation of the order or resolution is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace the Collector can act under the section. The words is causing or is likely to cause have reference to the effect flowing from the execution of an order or resolution and do not support the argument that an order or resolution in order to fall within the scope and purview of the section must be such that something remains to be done under it which is being done or about to be done. What the Collector has to see is whether at the time when he is asked to take action the effect which the section

seeks to prevent is existing or is likely to arise as a result of the execution of any order or resolution irrespective of the fact whether the order or resolution has been carried out or whether anything further by way of any positive act remains to be done under the order or resolution. If the words the execution of any order or resolution is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace are applicable to an order or resolution which has been carried out and under which nothing further remains to be done the words the execution of any order or resolutions..unlawful must also equally apply to such an order or resolution. Even if the Collector finds that all that is required to be done under an order or resolution has been carried out and nothing further by way of any positive act remains to be done under the order or resolution the Collector can act under the section and annul the operation or effect of the order or resolution provided he is satisfied that what has been done by or under the resolution is unlawful. The use of the word suspend does not in any way militate against this construction which we are inclined to put upon the section.

15. No doubt it is for the Court to interpret the word in a statute. But in so doing the Court may assist itself in the discharge of its duty by any literary help it can find including reference to well-known and authoritative dictionaries. Reference to dictionaries affords either by definition or illustration some guide to the use of a word in a statute. When we turn to the Short Oxford Dictionary we find that one of the meanings of the word suspend is temporarily annul. If we have regard to the subject matter of the section the context in which the word suspend is used and the object which is intended to be attained it is clear that the legislature has used the word suspend in the sense of annul. Power is conferred on the Collector to suspend the execution of any order or resolution. The Collector can in the exercise of this power annul the execution of the order or resolution. The annulment may be temporary or permanent. When the Collector annuls the execution of the order or resolution the Collector sets at naught what has been done by or under the order or resolution. The order or resolution loses all its operation and efficacy during the period of the annulment. The word execution is not a term of art: in its plain and natural connotation it means performance or carrying out. When the condition specified in the section is satisfied the Collector can annul or set at naught the performance or carrying out of the subject matter of the order or resolution so that the order or resolution would cease to have any efficacy or operation during the period for which the order is made. If the suspension is permanent the order or resolution would be completely set at naught and would become a dead letter for all purposes and for all time to come if however the suspension is temporary for any particular period the order or resolution would be deprived of its efficacy and operation only for that period and after the expiration of that period the order or resolution would revive in full force and vigour and would have operation and effect which were temporarily suspended. There may be cases where it may not be possible to annul or set at naught what has been carried out or performed by or under the order or resolution. But this is not one of those cases. Here the services of the

first respondent were purported to be terminated by the resolution passed at the meeting of the District Local Board held on 21st September 1959. If the said resolution amounts to removal of the first respondent from the office of Chief Officer as the learned Advocate General contends and Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 133 is not ultra vires the said resolution would be illegal and inoperative and would not have the effect of removing the first respondent from the office of Chief Officer of the District Local Board. In that event the execution of the said resolution would be unlawful. But it has been argued by Mr. M.P. Amin that inasmuch as by its very terms the said resolution was effective from the date when it was passed and was completely carried out by service of the said Daftary Hukam on the first respondent in the evening of 21st September 1959 nothing further remained to be done under the said resolution which could be suspended by the Collector and the Collector was therefore not entitled to pass any order under the section. On the construction of the section adopted by us this argument of Mr. M.P. Amin must fail. Once it was found that the execution of the said resolution was unlawful the Collector was entitled to annul or set at naught what had been done by or under the said resolution. The Collector could wipe out the operation or effect of the said resolution and render the said resolution futile and devoid of any effect. It must be remembered that this power the Collector exercises in public interest so as to keep the District Local Board within the limits of the law. There is also another aspect of the matter which the argument advanced by Mr. M.P. Amin in effect asks us to ignore. The execution of the said resolution involved the exclusion of the first respondent from the office of Chief Officer and getting the functions of Chief Officer discharged by the Engineer and since that was a continuing process the Collector could in any event arrest the further continuance of that process and direct that the first respondent shall be deemed to be in the employment of the District Local Board as Chief Officer and shall be entitled to hold the office of Chief Officer of the District Local Board. The operation or effect of the said resolution was a continuing operation or effect and the Collector could certainly suspend that operation or effect of the said resolution. There is therefore no substance in the argument of Mr. M.P. Amin that in the present case the Collector had no power to make any order under the section.

16. To turn to the second head of Mr. M.P. Amin's argument it is difficult to see how it can be said that the said resolution passed at the meeting of the District Local Board held on 21st September 1959 did not amount to removal of the first respondent from the office of Chief Officer. According to Mr. M.P. Amin all that was done by the said resolution was to abolish the separate post of Chief Officer and to amalgamate the posts of Chief Officer and Engineer and to appoint the Engineer to that amalgamated post. It has been argued by Mr. M.P. Amin that when the services of an employee are terminated by reason of abolition of the post he cannot be said to be removed from the post nor can he be said to be reduced in an alternative inferior position if one is offered to him. This argument suffers

from the defect of over-simplification and we cannot accept the same. We are unable to subscribe to the bald proposition that in every case where the services of an employee are terminated by reason of abolition of the post the employee can never be said to be removed from that office nor can offering him an alternative inferior position ever be said to amount to his reduction. Reliance was placed in this connection on a decision of the Supreme Court of India in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . In that case while dealing with the protection granted to public servants under Article 311 of the Constitution S.R. Das C.J. observed as follows:

The position may therefore be summarised as follows: In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until under the rules he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct negligence inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of this tenure and his tenure cannot be put to an end during that period unless he is by way of punishment dismissed or removed from the service.

17. These observations of the learned Chief Justice are entitled to the greatest weight but we do not find in them any support for the proposition that when the services of an employee are terminated by reason of abolition of the post that employee can never be said to be removed from that office nor can he be said to be reduced if after abolition of the post he is offered an inferior position. In that case the Court was not concerned with the question as to whether the termination of the services of an employee by reason of abolition of the post amounted to removal of the employee from that office or offering him an inferior position consequent upon the abolition of the post amounted to his reduction. The Court was only considering the question as to who are the public servants entitled to the protection of Article 311 and it was in that context that these observations were made by the learned Chief Justice. We fail to see how any observations made by the learned Chief Justice in a wholly different context and for a wholly different purpose can be relied upon in support of the proposition that termination of the services of an employee by reason of the abolition of post can never be said to constitute his removal from office and offering him an inferior position consequent upon the abolition of the post can never be said to amount to his reduction. In every case the Court must see what is the net overall effect of the action taken by the employer. In the present case on a careful consideration of the said resolution we find that by the said resolution the first respondent was removed from the office of Chief Officer and reduced to the position of Internal Auditor. The learned Advocate General has drawn our attention to various provision of the Bombay Local Boards Account Code 1935

which clearly show that there are certain functions under the said Code which have to be performed by the Chief Officer. It appears from these provisions that every District Local Board must have a Chief Officer to discharge these functions. There may not be a separate post of a Chief Officer the posts of Chief Officer and Engineer may be combined but there must be some officer who is designated as Chief Officer and who discharges the functions of Chief Officer under the said Code and other provisions of the said Act and the Rules made under the said Act. The net overall effect of the said resolution was that instead of the first respondent the Engineer would be designated as Chief Officer and would discharge the functions of Chief Officer which until 21st September 1959 were being discharged by the first respondent. We find it impossible to accept the contention that this does not amount to removal of the first respondent from the office of Chief Officer. Not only was the first respondent removed from the office of Chief Officer but he was also reduced inasmuch as the said resolution provided that he should be offered an alternative inferior position which would carry lower emoluments. Prior to 21st September 1959 the first respondent was the Chief Officer while as a result of the said resolution the first respondent became an Internal Auditor which is an office inferior to that of Chief Officer and if this is not reduction of the first respondent it is difficult to see what reduction can be. We are therefore of the opinion that the net overall effect of the said resolution was that by the said resolution the first respondent was removed from the office of Chief Office and was reduced to the rank of Internal Auditor and Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 133 of the said Act was therefore required to be complied with by the District Local Board in passing the said resolution. We are fortified in this opinion by a decision of a Division Bench of the Bombay High Court in *The Municipal Borough of Dhulia Vs. Ramchandra Bapuji Kale*, That was a case of Dhulia Municipality governed by the Bombay Municipal Boroughs Act 1925.

18. In that Municipality the posts of Chief Officer and Engineer were combined and the plaintiff occupied the combined post. By a resolution the Municipality separated the posts of Chief Officer and Engineer and gave the plaintiff the choice of accepting either of the two posts The plaintiff however refused to accept either of the two posts contending that the effect of the resolution of the Municipality was to remove him from-the office held by him and 10 reduce him to an interior position and that the resolution not having been passed by at least two thirds of the whole number of Councillors as required by Section 33(2) of the Bombay Municipal Boroughs Act 1925 was illegal and the plaintiff was therefore entitled to claim damages for wrongful termination of his services The argument advanced on behalf of the Municipality was that as the combined office held by the plaintiff was abolished he was not removed from office nor reduced within the meaning of Section 33 of the Bombay Municipal Boroughs Act 1925 This argument was however negatived by the Court and the Court held that-

The effect of the Municipal resolution undoubtedly was that he was removed from the office held by him and relegated to an inferior position that is to say if he had

accepted the offer of one or other of the separated posts. The language of the section is wide enough to cover a case like the present where the removal or reduction is not by way of punishment but is the result of a separation of offices formerly combined.

No doubt the position in that case was converse to the position in the present case but that cannot affect the principle which must apply and govern the decision of the present case. The argument of Mr. M.P. Amin that the said resolution did not amount to removal of the first respondent from the office of Chief Officer or his reduction to inferior rank and that the applicability of Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 33 of the said Act was not attracted must therefore fail.

19. Lastly it has been argued by Mr. M.P. Amin that even if the said resolution amounted to removal of the first respondent from the office of Chief Officer or his reduction to inferior rank so as to attract the applicability of Rule 4A of the Rules made by the Government of Bombay under Clause (g) of Section 133 of the said Act Rule 4A is ultra vires the said Act and the said resolution was therefore validly passed by a majority of votes of the members of the District Local Board present at the said meeting held on 21st September 1959. This conclusion has been urged upon us by Mr. M.P. Amin by adopting the following process of reasoning. Section 35(2)(f) provides that all questions at any meeting of the District Local Board should be decided by a majority of votes of the members present at the meeting. All questions would include the question as to whether the Chief Officer should be removed from office or reduced and the said question should also therefore be decided by a majority of votes of the members present at the meeting. Section 122 provides that the power of punishing or dismissing any officer or servant maintained by a District Local Board shall vest in the District Local Board subject inter alia to any rule or order made by the State Government in this behalf under Clause (g) of Section 133. This rule or order which controls the power of District Local Board to punish or dismiss any officer or servant must be a rule or order which is validly made by the State Government under Clause (g) of Section 133 as the very language of Section 133 prescribes a rule or order made by the State Government in order to be valid and intra vires should not be inconsistent with the said Act. Greatest reliance has been placed on the words consistent with this Act occurring in the opening part of Section 133 and it has been argued that Rule 4A in so far as it requires votes of at least two-thirds of the whole number of members of the District Local Board for a resolution removing the Chief Officer from office or reducing him is inconsistent with Section 35(2)(f) which requires only a bare majority for such resolution and is therefore ultra vires the rule-making power of the State Government u/s 133 Rule 4A cannot therefore be relied upon by the respondents as prescribing any valid condition for exercise by the District Local Board of the power to punish or dismiss the Chief Officer and it must follow as a necessary corollary that the said resolution was validly passed by a majority of votes of members of the District Local Board present at the said meeting held on 21st

September 1959. It has on the other hand been argued by the learned Advocate General that Section 35(2)(f) is not the section with reference to which it must be decided whether Rule 4A is inconsistent and the appropriate section for testing the validity of Rule 4A is Section 122. According to him Section 122 is a special section dealing with the subject of punishment and dismissal of officers and servants and the legislature having made a special provision in regard to this subject the validity of Rule 4A which has been made by the State Government on the same subject should be tested by reference to the special provision and not any general provision like Section 35(2)(f). He has contended that there is absolutely nothing in Rule 4A which is inconsistent with Section 122 and Rule 4A cannot therefore be attacked as ultra vires the rule-making power of the State Government. If Rule 4A is valid and ultra vires the said resolution would on the view we have taken be illegal and inoperative and justify the intervention of the Collector u/s 125.

20. The crucial question for consideration therefore is whether Rule 4A is inconsistent with the said Act. The major premise on which the argument of Mr. M.P. Amin rests is that Section 35(2)(f) applies to all resolutions for punishment or dismissal of officers and servants of the District Local Board and that it is with reference to that section that we must decide whether Rule 4A is inconsistent. If this premise is correct and validity of Rule 4A has to be decided by reference to Section 35(2)(f) there is no doubt that the said rule would be inconsistent with the said Act. But in our opinion this premise cannot be accepted as correct it completely ignores the provisions of Section 122 and rests merely on the insecure foundation of Section 35. Section 35 is one of a fascicules of sections occurring in the Chapter headed Conduct of Business of Local Bodies and is a general section dealing with meetings of the District Local Board. It prescribes when meetings of the District Local Board should be held and what should be the conduct and procedure of such meetings. Clause (f) of Sub-section (2) of that section lays down how business should be conducted at the meetings of the District Local Board and provides that all questions at the meetings should be decided by a majority of votes of the members present at the meetings. If the matter had rested there would have been force in the argument of Mr. M.P. Amin that Rule 4A is inconsistent with Section 35(2)(f) and is therefore ultra vires the rule-making power of the State Government. He could have argued that the matter regarding punishment or dismissal of officers and servants of the District Local Board falls within the scope and purview of Section 35(2)(f) and since Section 35(2)(f) provides that such matter shall be decided by a majority of votes of the members present at the meetings Rule 4A which prescribes the requirement of votes of at least two-thirds of the whole number of members of the District Local Board is inconsistent with Section 35(2)(f). But we find a separate Chapter, in the said Act headed Officers and Servants of Local Bodies and special provisions enacted in that chapter relating to appointment control punishment and dismissal of officers and servants of the District Local Board. Section 119 provides that every District Local Board may appoint and pay such

officers and servants as it shall deem necessary and proper to maintain for the efficient execution of its duties under the said Act. Under that section the salaries fees and allowances to be paid to the officers and servants are to be determined by the District Local Board but the State Government is given an overriding power to fix the rates of dearness allowance. Section 120 permits delegation of the power of appointment to the President or Chief Officer of the District Local Board in certain cases. Then comes Section 122. It is this section which makes all the difference to the argument of Mr. M.P. Amin. This section deals with the subject of punishment and dismissal of officers and servants and vests the power of punishment and dismissal of officers and servants in the District Local Board but that power is subject inter alia to any rule or order made by the State Government under Clause (g) of Section 133. It may be mentioned here that power is also conferred on the District Local Board under Clause (ee) of Section 123 to frame regulations from time to time regulating the punishment and dismissal of officers and servants but these regulations must be the very terms of the section be subject to any rule or order made by the State Government under Clause (g) of Section 133.

21. These regulations also control the power of the District Local Board to punish or dismiss any officer or servant u/s 122. It will thus be seen that the scheme followed by the law-maker in this case is that instead of providing in the section itself the conditions subject to which the power to punish or dismiss any officer or servant may be exercised by the District Local Board the law-maker has left it to the State Government under Clause (g) of Section 133 to make rules or orders regulating inter alia the punishment and dismissal of officers and servants and to the District Local Board under Clause (ee) of Section 123 to frame regulations for the said purpose and provided that the power of punishing or dismissing any officer or servant which is vested in the District Local Board shall be exercised by the District Local Board subject to such rules or orders and such regulations. The rules or orders made by the State Government under Clause (g) of Section 133 and the regulations framed by the District Local Board under Clause (ee) of Section 123 are thus incorporated by reference in Section 122. It was conceded by Mr. M.P. Amin that if the provision contained in Rule 4A had been enacted in Section 122 itself such a provision being a special provision would have overridden the general provision contained in Section 35(2)(f) but argued Mr. Amin the position is different when the provision is contained not in the section but in a Rule made by the State Government under its rule-making power and incorporated in the section by reference. We find it difficult to appreciate this argument. Section 122 is a special section dealing exhaustively with the subject of punishment and dismissal of officers and servants by the District Local Board. If there is any inconsistency between the provisions made in that section and the general provisions contained in the other parts of the said Act the latter being general provisions must yield to the former which are special provisions in so far as they cover the same area. Now provisions may be made by the legislature in a section either by express enactment in the section itself or by incorporation. The

latter are as much a part of the section as the former and if the section in which they are incorporated is a special section dealing with a particular subject the rule that special provisions must prevail over the general provisions in case of conflict must apply equally to them. It would not be a correct approach to test their validity by reference to the general provisions and to incorporate only such of the provisions as are not inconsistent with the general provisions. By enacting a special section dealing with the subject of punishment and dismissal of officers and servants by a District Local Board the legislature has clearly evinced an intention that so far as this subject is concerned the provisions contained in that section shall prevail in so far as they are inconsistent with any other provisions of the said Act. It is no doubt true that the legislature could have enacted in the section itself all the conditions controlling the power of the District Local Board to punish or dismiss any officers or servants as it has done in the case of similar other statutes. In that even there would have been no scope for argument as conceded by Mr. M.P. Amin. We do not see what difference it can make in principle if the conditions controlling the exercise of the power by the District Local Board to punish or dismiss any officers or servants are not enacted in the section itself but are contained in rules made by the State Government under Clause (g) of Section 133 and regulations framed by the District Local Board under Clause (ee) of Section 123 and incorporated in the section by reference. As a result of incorporation these rules and regulations would have the same effect as if they were enacted in the section itself and they must prevail over any other general provisions of the said Act. These rules and regulations being special provisions their validity cannot be judged by reference to any general provisions such as Section 35(2)(f). Section 122 being a special section dealing with the subject of punishment and dismissal of officers and servants and the legislature having made a special provision in regard to this subject the validity of these rules and regulations which have been made on the same subject should be tested by reference to the special provisions contained in the section. If there is no inconsistency between these rules and regulations and Section 122 these rules and regulations would be incorporated in the section and they would become as much a part of the section as if they were enacted in the section itself. In that event no question of their invalidity on the ground of inconsistency with any other general provisions of the said Act would arise. Examined from this stand-point it is clear that Rule 4A is not inconsistent with the said Act. There is nothing in Rule 4A which is inconsistent with Section 122 and it is therefore validly incorporated in the section. The validity of Rule 4A cannot be tested by reference to Section 35(2)(f) since Section 35(f) enacts a general provision while Rule 4A as incorporated in Section 122 by reference enacts a special provision in regard to the subject of punishment and dismissal of officers and servants and in case of conflict the special provision must prevail over the general provision. In this view of the matter we must reject the present argument of Mr. M.P. Amin.

22. At the end of his arguments a feeble attempt was made by Mr M.P. Amin to attack the validity of Rule 4A on the ground that the State Government could not

make such a rule prescribing that no Chief Officer Engineer Health Officer or Accountant shall be removed from office or dismissed save with the previous sanction of the Government. The argument of Mr. M.P. Amin was that in the exercise of its rule-making power the State Government can make rules regulating inter alia the punishment and dismissal of officers and servants of the District Local Board but it cannot make any rule which in effect takes away the power of the District Local Board to punish or dismiss any officers or servants by prescribing that such power shall not be exercised by the District Local Board except with the previous sanction of the Government. In our opinion this argument is without any substance. Power is conferred on the State Government under Clause (g) of Section 133 to make rules or orders regulating inter alia the punishment and dismissal of officers and servants of the District Local Board and requiring that no Chief Officer Engineer Health Officer or Accountant shall be removed from office or dismissed save with the previous sanction of the Government is certainly an act of regulating the punishment and dismissal of the Chief Officer Engineer Health Officer or Accountant. The power to remove from office or dismiss the Chief Officer Engineer Health Officer or Accountant is certainly vested in the District Local Board and the District Local Board alone can exercise that power but the manner of exercise of that power is regulated by Rule 4A and Rule 4A prescribes the conditions subject to which that power can be exercised by the District Local Board. There is therefore nothing in Rule 4A which can be said to be destructive of the power of the District Local Board to punish or dismiss any officers or servants. This challenge to the validity of Rule 4A must also therefore fail.

In the result the petition fails and the rule will be discharged with costs.