

(1999) 08 GUJ CK 0007
In the Gujarat High Court

Case No : Special Civil Application No. 619 of 1999

Rafiqsa Chammansa Fakir

APPELLANT

Vs

J.M. Vyas or Successor

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Citation : (2000) 1 GLR 473

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Tushar Mehta, for the Appellant; P.G. Desai, Id.G.P. for Respondent Nos. 1 to 3 and 6; N.D. Nanavati and A.H. Desai, for respondent Nos. 5 and 7 to 26, for the Respondent

Judgement

1. It appears from the order sheet dated 27th January 1999 on which date the Rule was issued in this case, that the respondent no.4 was not found to be a proper and necessary party. It may be noted that Shri Jayesh Babulal Chauhan is also arrayed as respondent no.14 on his application filed along with other Councillors. Respondent no.5 was also not considered to be a necessary and property as per the order sheet dated 27th January 1999, but he was impleaded as respondent on his own application along with other members of the Municipality who are arrayed as respondents nos.2 to 26.

2. This Special Civil Application is directed against the order dated 21st January 1999 passed by the Urban Development and Urban Housing Department of the Government of Gujarat issued under the signatures of the Deputy Secretary to the State Government in the said Department whereby the Veraval Patan Joint Municipality was dissolved and the Deputy Collector, Veraval was appointed as the Administrator of the said Municipality.

3. The petitioners have come with the case that a show cause notice dated 6th January 1999 was issued by the Urban Development and Urban Housing Department under Sec.263(1) of the Gujarat Municipalities Act, 1963. It appears that this notice dated 6th January 1999 was sent to the President of the Veraval

Patan Joint Municipality by the concerned Deputy Secretary under his covering letter dated 6th January 1999. A copy of this covering letter is annexed as Annexure.A at page 50-51 and the said show cause notice is at page 52-53 along with schedule at page 54-66 of the petition. It is also the case of the present petitioners who are elected Councillors of the said Municipality, 22 in number, out of the total strength of 41, that they were also served with the copy of this notice on 8th/9th January 1999 by the Chief Officer of the Municipality. In terms of this show cause notice, the reply to the show cause was to be filed within a period of 15 days from the receipt of the same. The case of the petitioners is that the period of 15 days was to expire on 23rd January 1999. It is also the case of the petitioners that on 11th January 1999 a meeting of the General Body of the said Municipality was held to consider the aforesaid notice and according to the petitioners, it was resolved that each of the Councillors shall file the reply and it is also the case of the petitioners that on the said date, i.e. 11th January 1999, when the notice was considered, the respondent no.5 who is an elected Councillor and who is also a sitting MLA was absent and in his absence, it was unanimously resolved that the respondent no.4 Municipality would file its objections against the said show cause notice and each individual Councillor will be given an opportunity to make out his view point before the respondent no.1. It has been further alleged in para 3.4 of the petition that the respondent no.4 Municipality also unanimously resolved to oppose the said show cause notice and after the meeting held on 11th January 1999 when the respondent no.5 came to know about such a resolution having been passed in his absence, he managed to get a different resolution recorded in the Minutes Book. The petitioners were not given a copy of the resolution which was recorded after the meeting held on 11th January 1999 till January 14, 1999 and when the petitioners received the resolution on 14th January 1999, as it was differently transcribed in the Minutes Book, the petitioners were shocked to learn that the resolution which has been transcribed is to the effect that the respondent no.4 conferred all the powers upon the President of the Municipality to represent the case of the respondent Municipality before the respondent no.1. It has been further alleged that the President of the respondent no.4 Municipality who is a political supporter of respondent no.5 did not enjoy the majority support and the said vague resolution was transcribed only after the respondent no.5 realised that if the individual Councillors like the petitioners (who are in majority) make representation, his political idea of getting the respondent no.4 Municipality dissolved would not materialise. The petitioners thereupon sent a telegram to the respondent no.1 on 14th January 1999 followed by another telegram dated 16th January 1999 and an application dated 18th January 1999 which was received in the office of the Deputy Secretary, Urban Development and Urban Housing Department informing him that the President is likely to misrepresent before the respondent no.1 on the basis of the false statement recorded in the Minutes Book. The petitioners requested the respondent no.1 to desist from accepting any objections from the President of the respondent no.4 Municipality and hoped that the respondent no.1 would function independently without any political pressure. It has been

stated in para 3.5 that this application dated 18th January 1999 also bears the endorsement in token of the receipt of the same. The petitioners have come out with the case that on 18th January 1999 they had preferred a petition challenging the show cause notice and this Special Civil Application filed before this Court which was listed before the Court on 19th January 1999 was made to stand over to 21st January 1999. Mr.Mehta submits that he had appeared in that petition also on behalf of these very petitioners and on 21st January 1999, the Court wanted certain documents translated in English which were in Gujarati. When the matter came up before the Court on 21st January 1999, although no notice had been issued, the learned Asstt.Govt. Pleader had intercepted the proceedings and had submitted that in this regard some other petition had been filed and he wanted to verify the same and on that basis the matter was adjourned to 22nd January 1999. It is the further case of the petitioners that before the matter could come up before the Court on 22nd January 1999, the respondent no.1 hastened to pass the impugned order on 21st January 1999 so as to overreach the process of the Court. It has also been given out that the President of the Municipality had sent a reply dated 11th January 1999 to the aforesaid show cause notice under her signatures and subsequently on being called upon by the Department through a notice which was served upon her on 16th January 1999, she appeared for personal hearing on 19th January 1999 and also submitted a letter dated 19th January 1999 before the Deputy Secretary and thereupon the impugned order dated 21st January 1999 was passed and in pursuance of the said order, the concerned Deputy Collector took over the charge as Administrator of the said Municipality on 21st January 1999 itself at 9.30 p.m. and sent the Fax messages to the elected Councillors that the Municipality stands dissolved and therefore, no meeting of the Municipality will be held on 22nd January 1999 as the same was scheduled to be held as a specially convened meeting for the election of the President and Vice President. The petitioners have submitted that the process was hastened in order to avoid the election of the new President on 22nd January 1999 because the term of the President was over and the elections were to be held on 22nd January 1999 and the present President who is in minority could not be re-elected. In the circumstances, it has been submitted by the learned Counsel for the petitioners that the respondents have acted to overreach the process of the Court in passing the impugned order dated 21st January 1999, whereas the time limit of the notice period itself was to expire on 23rd January 1999 upto which they could file the reply and the order was passed on 21st January 1999 itself and while passing this order, the admissions and concessions as had been made in the reply dated 11th January 1999 and the President's letter dated 19th January 1999 were taken into consideration and on that basis the Department proceeded to pass the impugned order dated 21st January 1999 and thus, the petitioners who were elected in the year 1996 to the said Municipality stood deprived of enjoying their full tenure which was otherwise to expire after a period of five years, i.e. 2000. It has also been submitted that the President of the Municipality has claimed the authority to file the reply dated 11th January 1999 on the basis of the so-called resolution

no.150 dated 11th January 1999 which according to the petitioners was not transcribed as per the Minutes and it was a different resolution altogether and once the respondents authorities had been informed by repeated communications dated 14th January 1999, 16th January 1999 and 18th January 1999 that the orders may not be passed on the basis of any representation of the President and that their replies may also be considered, yet the same was passed on the basis of the reply dated 11th January 1999 followed by the President's letter dated 19th January 1999. In these circumstances, the earlier Special Civil Application No.429 of 1999 automatically became infructuous and the same was disposed of as having become infructuous and the petitioners filed the present Special Civil Application before this Court on 25th January 1999. When this Special Civil Application came up before the Court on 27th January 1999, Mr.P.G.Desai, learned Govt. Pleader appearing on behalf of the respondents nos.1, 2, 3 and 6 as Caveator and after hearing, on 27th January 1999 itself while issuing the Rule, the Court also directed the office to place this matter for final hearing in the First Board on 2nd February 1999.

4. In response to the Rule issued by this Court, an affidavit-in-reply dated 1st February 1999 has been filed under the signatures of one Shri J.M.Vyas, who appears to be the officer under whose signatures the impugned order dated 21st January 1999 had been issued. During the course of arguments, Mr.P.G.Desai for respondents nos. 1 to 3 and 6 has also produced a copy of the reply dated 11th January 1999 and a xerox copy of the letter dated 19th January 1999 which was submitted by the President of the Municipality before the concerned Deputy Secretary and the same are taken on record. In the affidavit-in-reply dated 1st February 1999, it has been stated that the written reply was received by the deponent of this affidavit on 12th January 1999 which is dated 11th January 1999 and as per this reply, the same was given as per the resolution no.150 passed by the General Board. The deponent has further stated in para 8 that he insisted upon the General Board for the resolution and by Fax, the said resolution was sent in which it was mentioned that the authority is given to the President to represent the Municipality before him. It has been further stated in para 9 of this affidavit that the President of the Municipality appeared before him on 19th January 1999 and submitted a letter on the same date. He has further stated that he not only considered this letter but also the written reply given by the Municipality chargewise and found that substantially they accepted the charges and accordingly after considering the written reply, the order was passed. It has been stated that the President had been given the authority by the General Board to submit the reply and to appear before him. It has also been stated that the notice was issued to the President and a copy was served on the Vice President and the Chief Officer and no independent notice was given to each and every member of the Municipality and the show cause notice is issued as per the practice and procedure of the Government. It has been then stated that he has decided the matter on merits and after considering all the aspects.

19th August 1999.

5. Learned Govt.Pleader Mr.Desai has submitted that it is not at all a case of overreaching the process of the Court inasmuch as there was no interim order in the Special Civil Application No.429 of 1999 although the Government had intervened the proceedings in the aforesaid Special Civil Application and the matter was adjourned on 19th January 1999 to 21st January 1999 and again to 22nd January 1999. While referring to the reply dated 11th January 1999 filed by the Municipality and the subsequent letter dated 19th January 1999 which was tendered by the President of the Municipality, it has been submitted that an opinion was formed that the Municipality was not capable of discharging its duties as mentioned in the schedule attached to the show cause notice and therefore, the Municipality is dissolved and the Administrator was appointed. A reference was made to the impugned order dated 21st January 1999 itself. It was submitted that the Municipality had mostly accepted the given reasons attached with the show cause notice and it was found that the Municipality had failed to discharge its primary duties and there were no sufficient or moral reasons to continue the present Board which had failed to discharge its primary duties and therefore, keeping in mind the interest of public, the order was passed. Mr.N.D.Nanavati appearing on behalf of the other respondents has supported passing of the impugned order and it was also submitted on the basis of Article 243(U) of the Constitution of India that every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. A pointed reference was made to Article 243(U)(3) by Mr.Nanavati and it was submitted that once a Municipality is dissolved before the term of five years and election to constitute a Municipality shall be completed before the expiration of the period of six months from the date of its dissolution. He has submitted that in the instant case, the Municipality was dissolved on 21st January 1999 and therefore, the election to constitute the Municipality should have been held prior to the expiration of the period of six months from the date of its dissolution, i.e. prior to 21st July 1999. It is admitted by all the parties that so far, no elections have been held and therefore, it is apparent that the mandate under Article 243(U)(3) of the constitution has already been flouted. Mr.Nanavati has submitted that in the facts of this case when even the period within which the elections were to be held again to constitute the Municipality after its dissolution as expired, there is no question of now giving any relief to the petitioners in the instant case. According to him, the normal tenure of the Municipality as prescribed under the statute and also under Article 243(U)(1) of the Constitution of India may not have completed, but the fact remains that such tenure was intercepted by the order of dissolution of the Municipality passed u/s 263(1) of the Gujarat Municipalities Act and merely because the elections have not been held within the time prescribed under Article 243(U)(1)(b) there is no question of now even examining the validity of the order of dissolution of the Municipality. However, in the facts of this case, it is not in dispute that the first meeting of the Municipality in the instant case was held on 16th January 1999 and therefore, in normal course, the five year term would have expired on 15th January 2000.

6. I have considered the submissions as have been made by the learned Counsel for both the sides. So far the question with regard to overreaching the process of the Court in the facts of this case is concerned, there is no denial of the fact that the petitioners herein had approached this Court by filing Special Civil Application on 18th January 1999 and the matter was on Board on 19th January 1999 which was adjourned to 21st January 1999 and again to 22nd January 1999. It has not been contended in the facts of the present case on behalf of the contesting respondents including the Government that the respondents were not aware with regard to the pendency of the petition. On the contrary, it is the case of the petitioners that the matter was listed on the Board on 19th January 1999, and 21st January 1999 and it was argued and the same was to come up before the Court on 22nd January 1999 since the learned Asstt.Govt. Pleader who was present in the Court had informed the Court that some other matter in this regard had been filed and he had to verify the same and therefore, the matter was adjourned to 22nd January 1999. In this regard, the averments made by the petitioners in para 2.2 at page 10-11 may be quoted as under:

"2.2 In spite of being fully aware about the said fact, and in spite of the fact that the period of 15 days which was given for submitting the replies was to be over after 23rd January 1999, the present petitioners apprehended that under the political pressure of Bharatiya Janta Party (BJP), the respondent no.1 would pass an order of dissolution of the Municipality on the basis of reply which would be filed by the President only and therefore the petitioners approached this Hon''ble Court by way of filing Special Civil Application No.429/99 challenging the said show cause notice. As narrated in detail hereunder, the said petition was filed on 18th January 1999 and was notified before this Hon''ble Court (Coram: S.K.Keshote, J.) on 19th January 1999. On that day the matter was adjourned to 21st January 1999 so as to enable the petitioner to file translations of Annexures. When the matter was heard on 21st January 1999, the President of the Municipality appeared through his learned Counsel though no caveat was filed. The learned Assistant Government Pleader, when the matter was being argued, mentioned that as per his impression some other matter pertaining to the very same subject matter is also filed. The matter was kept at 2.45 p.m. on 21st January 1999 and since the papers of those matters, which according to the learned Assistant Government Pleader involved the similar facts, were not traced, the matter was kept on 22nd January 1999."

7. No parawise reply to the petition has been filed and even in the affidavit-in-reply dated 1st February 1999 as was filed by Shri J.M.Vyas, Deputy Secretary in the Urban Development and Urban Housing Department, the averments of the petition have not been controverted. Even on behalf of the President of the Municipality who had entered appearance through her learned Counsel without filing any caveat as has been specifically mentioned in para 2.2 by the petitioner, these averments have not been controverted. In this view of the matter, there is no reason to disbelieve the averments made by the petitioner and it cannot be said that the Government was not aware about the pendency and the

proceedings in Spl.C.A. No.429/99 and the fact that the matter was to come up before the Court on 22nd January 1999.

8. I have also called for the file of Special Civil Application No.429 of 1999. From the record of this Special Civil Application No.429 of 1999, it is clear that the petition was filed on 18th January 1999 and there is also a slip dated 18th January 1999 therein which shows that the matter was permitted to be circulated on 19th January 1999 by Honourable Mr.C.K.Thakkar and Mr.M.C.Patel, JJ. The file cover also shows the date of 19th January 1999, 21st January 1999, 22nd January 1999 and 27th January 1999. There is also the English translation of the covering letter dated 6th January 1999 and the show cause notice dated 6th January 1999 to lend strength to the submission of Mr.Mehta that the matter was adjourned for English translation of these documents. I was even inclined to call for the computerised Boards of these dates particularly 19th January 1999, 21st January 1999 and 22nd January 1999, but Mr.Nanavati appearing for respondent no.5 and the other co-respondents have very candidly stated that there is no dispute about the fact that the matter was on the Board of the aforesaid dates and that he was also present on these dates so as to watch the proceedings on behalf of the respondent no.5, namely, Shri Chunilal Kanjibhai Gohel, MLA and therefore, I do not find it necessary to call for the particulars of the relevant dates for the purpose of verifying these facts.

9. In such cases when the petitioners approach the Court against a threatened injury and ask for ad-interim order, depending upon the facts of each case, the Court considering the question of granting ex-parte ad-interim relief and in a given case, the Court may also like to hear the other side and therefore, the ex-parte orders may not be passed. True it is that in the instant case, no ad-interim order has been passed by the Court against the show cause notice dated 6th January 1999, but when the fact was known to the respondent Government that the matter was to come up before the Court on 22nd January 1999, the passing of the impugned order on 21st January 1999 itself could wait till the matter was considered by the Court on the next date. The petitioners in this case had approached the Court at the earliest possible opportunity and merely because the matter was adjourned for translation of some papers on 19th January 1999 and again on 21st January 1999 and on 22nd January 1999, the State Government which is supposed to be a virtuous litigant should not have hastened up the process of passing the impugned order when it was known that the matter was to come up before the Court on the next date. Even if it is taken to be a case of an attempt to overreach the process of the Court and even if it is found that the respondent Government hastened to pass the order and the order had been passed in haste without even bringing the latest developments before the Court including the letter written by the President on 19th January 1999 etc.; for such reasons alone, in the facts and circumstances of this case, the impugned order as has been passed may not be set aside because the plea though technical is certainly available to the respondent Government in the instant case that the Court had not issued any notice to the State Government nor any such

notice had been served nor any interim order had been passed as such. However, the matter does not end here and the impugned order is to be examined on more than one grounds as have been raised in the instant case. The passing of the resolution no.150 dated 11th January 1999 authorising the President to represent on behalf of the Councillors has been disputed by the petitioner in para 2.1 and 3.4 of the petition and the averments have also not been controverted either by the President or the respondent no.5 or the other four respondents who are the Councillors of the Municipality, as no reply to the petition as such has been filed and by any of these Councillors including the President and the only affidavit-in-reply against the petitioners' averments is the affidavit filed by Mr.J.M.Vyas, Deputy Secretary in the Urban Development and the Urban Housing Department. The averments with regard to the telegram dated 14th January 1999 and 16th January 1999 and the letter dated 18th January 1999 have also not been controverted.

10. In such matters when the very passing of the resolution no.150 on 11th January 1999 in terms of which it was relied upon by the President and the other respondents supporting the President, it is not possible for this Court to decide this controversy as to whether any such resolution in these terms was passed or not and such matters may need a videography so as to verify as to in what manner the proceedings were held and what was the actual resolution passed at that time. However, the fact remains that the present petitioners had sent the telegram dated 14th January 1999, 16th January 1999 and the letter dated 18th January 1999 informing the concerned Deputy Secretary that anything represented by the President is not to be taken as their case and it has also been stated that the copy of the Minutes of the said Special General Meeting had never been given at the relevant time and that the present Governing Body was in minority and therefore the resolution no.150 of the said meeting was concocted as if all powers were given to the President. It is further mentioned in this letter dated 18th January 1999 that the election of the President and the Vice President of the Municipality was scheduled to be held on 15th January 1999 and at the said meeting as per the pre-design of the ruling group which was minority, the meeting was not permitted to be started and the Deputy Collector left the meeting and therefore, the petitioners did not get any reasonable opportunity to file objection/reply to the show cause notice. It has been further mentioned that it was necessary for them to send the copy after inspecting the records of the Municipality and the report of the District Collector and the Director of Municipalities to be supplied by the Deputy Collector and that it was for the concerned Deputy Collector to show that the petitioners get the above facts and hence this application was filed. It was also mentioned that the petitioners' group had 22 members and they would succeed in the election for the President and the Vice President and since the group belonging to the Member of Legislative Assembly was in minority, the proceedings for dissolution of the Municipality were initiated bringing political pressure on the Deputy Secretary himself through the Ministers. It has also been mentioned that once again a

meeting was convened on 22nd January 1999 for electing the President and the Vice President and the petitioners had been engaged in the said work and therefore, time was sought to file the reply. Thus, the correctness of the proceedings as had been recorded in the resolution no.150 dated 11th January 1999 has been seriously disputed by the petitioners and such dispute had been raised by them on 14th January 1999 itself in the first instance and the same has been set out in detail in this letter dated 18th January 1999 and the corresponding averments have also been made in the body of the petition which remain uncontroverted so far as the pleadings in this case are concerned. Besides it, it is settled law of meetings that the Minutes recorded at any meeting cannot be said to be conclusive unless the same are confirmed in the subsequent meeting of the same body and in the facts of the present case, no subsequent meeting could be held because the order with regard to the dissolution of the Municipality had been passed on 22nd January 1999 itself.

11. In the matter of requirement of the notice before dissolution, there is clear provision under Article 243(U)(1) proviso thereunder that the Municipality shall be given a reasonable opportunity of being heard before its dissolution. Apart from this constitutional requirement, under proviso to Article 243(U)(1), Section 263(1) of the Gujarat Municipalities Act itself provides the requirement of opportunity to render explanation. Now the question arises as to whether such opportunity required to be given to the Municipality shall include an opportunity to be given to each of the elected Councillors constituting the Municipality. The word "Municipality" itself has been defined in Section 2(14) of the Gujarat Municipalities Act, 1963 which is as under:

"2(14) "Municipality" means a municipality constituted or deemed to be constituted for a municipal borough."

Section 6(1) of the said Act provides that every Municipality shall consist of elected Councillors. In view of this provision, the requirement of giving the opportunity to the Municipality may or may not include the opportunity to be given to each of the elected Councillors, but it cannot be said that the elected Councillors are not interested parties in the matter of dissolution of the Municipality to which they have been elected. Therefore, irrespective of the notice or opportunity to be given by the Government under the Act before passing any order of dissolution or not when the elected Councillors themselves have approached that they may be heard before passing any order on the basis of the show cause notice for dissolution, it cannot be said that they are not required to be heard at all and that they are not the interested parties. It was in the case of S.L. Kapoor Vs. Jagmohan and Others, wherein the Supreme Court has categorically observed that the status, office and the rights and responsibilities and the expectation of the Committee to serve its full term of office certainly creates sufficient interest in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession

is passed. It has been further observed in para 24 of this judgment that when the Court is concerned not with a case of actual injustice but with the appearance of injustice, or possible injustice, the principle of requirement is that justice is to be done would still be applicable and it has been further observed that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. Thus, this judgment recognises the concept of legitimate expectation with any elected member or body to complete its full tenure and the interest of the body and its elected members in case such body is sought to be superseded or dissolved and it also proceeds that in such cases, the principles of natural justice have been violated, the reasonable opportunity has to be given and the actual adverse order must proceed with an action inspired notice. In the case of Mohanlal v. R.M.Desai, reported in 9 GLR 991, the matter came up before the Court in which the Court was concerned with the case of supersession of a Panchayat and it was considered that the Sarpanch's reply to the notice without putting it to the representative whether the reply of the Sarpanch can be considered as the reply of the Panchayat, the Court held that the reply given by the petitioner Sarpanch without putting the show cause notice before the Panchayat in its general meeting is without authority of law and was not a reply of the Panchayat rendering the explanation of the Panchayat in respect of various charges mentioned in the show cause notice. Under the circumstances, the respondent was entitled not to take it to be an explanation of the Panchayat and proceed to decide the question of superseding the Panchayat on that basis. Para 11 of this judgment shows that it was conceded before the Court that the duty cast on the authority under Sec.297 of the Panchayat Act to give show cause notice is to give notice to the Panchayat and therefore meant to reach the individual members also to give them the opportunity to render explanations, but an argument was raised that when the notice sent to the Sarpanch who is the executive head, the intent and purpose of the provision is carried into effect. The Court observed that it was true but the condition precedent under Sec.279 is not merely giving of the notice but it also necessarily implies the condition of taking into consideration the explanation that may be rendered by the Panchayat and the question that then arises is, is is the intention of the Legislature to vest this right of rendering that explanation to persuade the authority from taking action that may put an end to the very existence of the Panchayat and also the right of the individual members, in the Sarpanch alone under Sec.47. The Court found that if the explanation given by the Sarpanch is to be considered, the Sarpanch would become the sole authority to take the decision and render the explanation without even putting it before the Panchayat in its general meeting or bringing in any manner the fact of the notice to the knowledge of the members of the Panchayat and if such a right is the executive power solely vested under Sec.47 of the Act in the Sarpanch, then in a given

case, he may capriciously decide not to render any explanation and the members may not come to know about it at all. The fact that the Sarpanch in his discretion may in practice consult or put the matter before the Panchayat before replying to such a show cause notice, cannot be the criteria to determine the question. It was further observed that the Legislature has never intended to make the Sarpanch the sole repository of the right to take the decision so vital to the very existence of the Panchayat as a corporate body and the interest of the individual members to continue to enjoy their right as the elected representatives of the people. Of course, in the instant case, the plea has been taken by the contesting respondents that the notice as had been given had been put before the General Body on 11th January 1999 and therefore, in the present case, it cannot be said that the President of the Municipality had never put the notice before the General Body and had taken the decision by herself to file the reply and it has been pleaded that the President in the facts of this case had the authority of the whole House on the basis of the resolution no.150 dated 11th January 1999 and therefore, on this factual aspect, the case may be distinguishable, but so far as the right of individual elected member is concerned, and his legitimate expectation in the continuance of the elected body and for enjoyment of its full term for which he has been elected remains in tact more particularly when the correctness of the Minutes as recorded itself is disputed and when such basic facts are in dispute and the petitioners had already approached the concerned Deputy Secretary with more than one communications as have been referred to hereinabove, the order should not have been passed without considering the explanation and affording reasonable opportunity to the concerned members of the Municipality through their representations and more so when they had held out the entire background, the factual position with regard to the proceedings dated 11th January 1999, had asked for the copies of the documents and it was their case that on the basis of the representation of the President, the matters may not be decided and their representations may also be considered. In the instant case, not only that the concerned Deputy Secretary considered the reply dated 11th January 1999 which had been sent under the signatures of the President on the strength of the so-called Minutes and the resolution no.150, the Deputy Secretary had also called upon the President for the personal hearing. Even if it is taken that this personal hearing was a part and parcel of reasonable opportunity, the contents of the letter dated 19th January 1999 which was submitted in the course of personal hearing of the President before Deputy Secretary shows that she had conceded to all the allegations and it is on the basis of the contents of the letter dated 11th January 1999 read with this written letter by the President, the author of the impugned order has categorically mentioned that the charges had almost been accepted in the replies. It is, therefore, clear that the President herself no more remained interested in continuance of the elected body of the Municipality as such and the passing of the order dated 21st January 1999 shows that merely because the President had lost interest in continuance of this body, she conceded to the charges and invited the dissolution and it is in this context that the observations which were made in

the case of Mohanlal (supra) that the Sarpanch in a given case may capriciously decide not to render any explanation and that the members will not come to know about it at all are very apt. In the present case, the President of the Municipality has gone a step further, after giving the explanation - She has submitted a written letter as if the opportunity of personal hearing was a stage-managed one for the purpose of conceding to the charges and thus, the President has acted in a manner so as to bring to an end to the elected body through her own writing by conceding to the charges and whereas these charges are not at all conceded by the petitioners who are agitating against the impugned order right from the day one from the show cause notice issued for the dissolution of the Municipality along with the order for appointment of the Administrator. The practice so as to bring about an end to the elected body at a particular point of time because the President of the body is no more interested, cannot be allowed to be encouraged and the same cannot be used to the prejudice of the other elected members of such body who are vitally interested parties in such cases.

12. Not only this, it is also a case in which the fact that the copies of the notice had been made available to the elected Councillors, i.e. petitioners on 8th/9th January 1999 and in terms of the show cause notice dated 6th January 1999 itself, they could file the reply by 23rd January 1999 and the order was passed even before that day, i.e. 21st January 1999 itself and even the specially convened meeting for election of the President and the Vice President which were scheduled to be held on 22nd January 1999 was avoided and the concerned authorities while passing the impugned order dated 21st January 1999 under hot haste and the Administrator had also taken charge on that day in the night at 9.30 p.m. as alleged by the petitioners clearly show that the action had been taken in a hot haste and in the facts of a given case acting with such hot haste itself raises suspicion as to why the order is passed in such a hurry and it has also been held by the Supreme Court that in a given case, the passing of an order in hot haste itself may indicate an ingredient of an uncalled bias. The promptitude in taking any action is one thing but in such a promptitude, the basic principles and the basic requirements which have to be followed cannot be lost and if such important ingredients are lost, the very purpose of the promptitude fails as it receives the colour of hot haste which is not at all warranted when the matter was against the threatened injury on the basis of the show cause notice dated 6th January 1999 which was already subjudice before this Court in Special Civil Application No.429 of 1999 which was to come up before the Court on the next date, i.e. 22nd January 1999.

13. Now remains the question with reference to Article 243(U) of the Constitution of India as has been raised by Mr.Nanavati and he has submitted that in case of the dissolution of a Municipality before its normal tenure of five years, the elections are to be held within a period of six months from the date of dissolution and therefore, there is no question of now giving any relief to the petitioners even if the impugned order dated 21st January 1999 dissolving the Municipality

and appointing the Administrator have been found to be illegal. It is a factually admitted position that the six months period had expired on 23rd July 1999 and till date no elections have been held. Thus, the requirement under Article 243(U)(3)(b) has not been complied with upto now. Moreover, the dissolution of any Municipality would mean a valid dissolution for the purpose of constituting a new Municipality through election afresh. In the present case, the petitioners had approached this Court immediately. Merely because the interim order was not passed and the Court directed that the matter itself may be placed for final hearing within a week thereafter, from 21st January 1999 to 2nd February 1999 and the matter has remained pending before the Court and it has not been possible to decide the same would not mean that the impugned order of dissolution of the Municipality has become a fate accomplished and in any case if the order of dissolution is found to be unlawful and the requirement under Article 243(U)(3)(b) has not been complied with even after the expiry of the period of six months, the relief cannot be denied to the petitioners and they cannot be deprived of enjoying their full term of five years and therefore, I do not find any substance in the argument which has been raised by Mr. Nanavati on the basis of Article 243(U) of the Constitution of India.

14. The upshot of the discussion as aforesaid is that this Special Civil Application succeeds. The impugned order dated 21st January 1999 Annexure A to the petition passed by the Urban Development and Urban Housing Department of the Government of Gujarat under the signatures of the Deputy Secretary to the State Government is hereby quashed and set aside and as a consequence thereof, the elected body of the Veraval-Patan Joint Municipality stands revived. Whereas the order dated 21st January 1999 was a composite order dissolving the Municipality and also appointing the Deputy Collector, Veraval as Administrator of the said Municipality and whereas this order has been quashed and set aside, the Deputy Collector, Veraval who had taken over charge as the Administrator on 21st January 1999, shall forthwith restore the charge back and as a consequence of it, the elections of the President and the Vice President both of the said Municipality shall be held immediately in accordance with law and it will be the duty of the concerned officers to take the appropriate steps within a period of 10 (ten) days from the date the copy of this order is produced before the concerned authorities. The Rule is made absolute accordingly. No order as to costs.