

(1978) 01 GUJ CK 0006
In the Gujarat High Court

Rameshchandra Ramanbhai Patel and Another	APPELLANT
Vs	
Collector and Others	RESPONDENT

Date of Decision : 31-01-1978

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 7, 7, 7(1), 7(1), 7(2)
Gujarat Municipalities Election Rules, 1964 — Rule 7
Gujarat Panchayats Act, 1961 — Section 20(4)

Citation : (1979) 1 GLR 191

Hon'ble Judges : B.J. Devan, C.J;P.D. Desai, J

Bench : Division Bench

Judgement

P.D. Desai, J.—The town of Anand is a municipal borough within the meaning of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act"). It has a municipality which is a body corporate consisting of elected councillors. The last general election of councillors of the municipal borough was held sometime in 1972. At that time, on the basis of the population of the municipal borough, which was found to be 59069 at the census held in 1971, the number of councillors to be elected was fixed at 35. Out of the total number of seats of councillors determined as aforesaid, three seats were reserved for women and two seats were reserved for scheduled castes. For the purposes of the election, the municipal borough was divided into wards and the number of members to be elected from each ward was duly determined. This was done by the State Government by an order made on June 1, 1972. Accordingly, the municipal borough was divided into 12 wards and 35 seats including reserved seats were allocated between those wards. Since the term of the councillors elected at the said general election was to come to an end on January 14, 1978, it was necessary to hold a fresh general election. For the Said purposes, after taking certain preliminary steps, the Collector of Kheda issued a notice dated November 16, 1977 in exercise of the powers conferred by Rule 7 of the Gujarat Municipalities Election Rules, 1964 (hereinafter referred to as "the Rules") fixing various stages of election. Accordingly, the election programme was to be as

under:

Delivery of Scrutiny of Recording Counting Nomination nomination of votes: of votes.	Papers:	papers:

Between 3rd and From January On February : From February 8, 7th January,: 9, 1978 till 5, 1978. 1978 till completion. 1978. completion.

The total number of seats, the number of wards and the number of members to be elected from each ward for the purpose of the ensuing municipal election, according to the said notice, were to be the same as determined for the purposes of the general municipal election held in 1972. A copy of the said notice is annexed to the petition at Annexure "A" collectively.

2. The petitioners who are residents of the municipal borough and are registered voters have filed the present petition praying for appropriate writ, directions or orders, inter alia, commanding the Collector of Kheda (first respondent), the Mamlatdar of Anand (second respondent), the Anand Municipality (third respondent) and the State of Gujarat (fourth respondent): -(1) to treat the notice, Annexure "A" collectively, as illegal, unconstitutional, without jurisdiction, null and void and of no effect whatsoever; (2) not to proceed with the election calendar; (3) to revise the wards and to fix the number of seats in each ward in proportion to the voters in each ward; and (4) to revise the electoral roll and to make it upto date. The petition was filed on January 2, 1978. It came up for preliminary hearing on January 5, 1978 before a single Judge of this Court who ordered notice to issue to the first respondent returnable on January 9, 1978. On the returnable date, besides the first and third respondents, respondents Nos. 5 to 11, who are residents of the municipal borough and entitled to vote and contest at the ensuing election and have, in fact, filed their nominations appeared before the Court and in pursuance of their application, they were joined as party respondents. On the same day, the learned single Judge issued Rule nisi and made an ad interim order restraining the concerned authorities from proceeding further with the municipal election as per the election programme notified in the impugned notice. The learned single Judge also referred the petition for final hearing to a Division Bench presumably having regard to the important questions of law involved. The ad interim relief granted by the learned single Judge was modified by this Division Bench on January 11, 1978 and only actual polling was stayed and the ad interim injunction was vacated so far as it related to the earlier stages. The petition was also directed to be placed for hearing on January 16, 1978. The hearing of the petition could be taken up only on and from January 17, 1978. At the conclusion of the hearing, we reserved our judgment which is now being pronounced today.

3. Though the Various steps taken by the concerned authorities for the purpose of holding the ensuing municipal election are challenged on behalf of the petitioners on numerous grounds set out in the petition, the challenge was confined at the hearing only to the following two grounds:

1. For the purposes of the ensuing municipal election, no rational principle has been followed in the matter of allocation of seats amongst various wards in as much as seats have been distributed on the basis neither of the existing population nor number of voters in each wards, with the result that the provisions of Section 7 of the Act read with Article 14 of the Constitution have been violated vitiating the entire process of election.

2. The issuance of an order u/s 7(1) of the Act by the State Government dividing the municipal borough into wards and determining the number of wards and the number of members to be elected from each ward is a condition precedent to the holding of a general municipal election and since such order has not been issued in the instant case, the whole election process is vitiated and it is not competent for the concerned authorities to hold the ensuing municipal election as per the election programme notified under the impugned notice issued by the first respondent.

4. It might be stated at the outset that both the points were seriously canvassed on behalf of the petitioners and contested on behalf of the, respondents at the hearing of the petition. However, in our opinion, since the petition is capable of being disposed of on the second ground raised on behalf of the petitioners, we do not propose to express any opinion on the validity of the first ground of challenge.

5. Before proceeding to deal with the merits of the rival contentions, it would be convenient to dispose of a preliminary objection raised on behalf of the respondents. It was strenuously contended on their behalf that the present petition was liable to be thrown out on the ground of delay and laches inasmuch as the petitioners, before invoking the writ jurisdiction of this Court, waited for a period of nearly one month and sixteen days after the impugned notice at Annexure "A" collectively was issued by the first respondent, or, at any rate, for a period of one month and nine days after the said notice was duly published in the municipal borough on November 23, 1977. When the term of the municipality was about to expire and the election process had already commenced, urged the respondents, it was not proper on the part of the petitioners to have waited for such a long time and to have approached this Court in its writ jurisdiction belatedly seeking an extra-ordinary relief halting the entire election process and preventing due constitution of the new municipality. In a matter relating to election, in circumstances abovementioned, the petitioners were not entitled to any relief, much less to the reliefs sought on account of their own conduct.

6. In our opinion, for the reasons which follow, there is no substance in this preliminary objection and it deserves to be rejected.

7. Now, it cannot be gainsaid that the petitioners must be presumed to have knowledge of the fact that the ensuing municipal election would be held on the basis of the division of wards and allocation of seats amongst each of such wards on the same lines as at the time of the immediately preceding municipal general

election of 1972, on and with effect from November 23, 1977, that being the date on which the notice, annexure "A" issued by the first respondent, was duly published in the municipal borough. The petitioners could, therefore, have moved this Court for appropriate relief soon thereafter. The question, however, is whether failure on their part to take prompt action in that behalf is liable to visit them with the penalty of dismissal of this petition on the ground of delay and laches. In this connection, a few of the relevant considerations require to be borne in mind. First, the rule which says that the Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. Secondly, a municipal election is not a matter which relates to the enforcement of the personal or individual rights of a citizen. It is a matter of public concern. That such an election should be validly and fairly held in due compliance with the statutory requirement is a matter in which the public at large have a vital interest. Thirdly, a municipal election is not a matter of momentary importance having only a transitory effect. A municipality duly constituted after a general election functions for a period of five years and the legal constitution of the municipal government, therefore, is a matter which vitally concerns the residents of a municipal borough. Fourthly, when the defect in the process of election brought to the notice of the Court goes to the root and vitiates the entire election process, as in the present case, the Court cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of delay or laches. Fifthly, on the facts and in the circumstances of the present case, there is no such delay as would defeat the petition on a sound and proper exercise of discretion. The municipality itself felt the necessity of fresh delimitation of wards. It ultimately dropped the proposal without taking the matter before the general board. The petitioners, one of whom addressed communications to the first respondent as well as to the Municipal President, complaining about the existing division of wards, might have felt that their grievance in that behalf might still be rectified, having regard to the material placed by them before the concerned authorities. It is true that once the notice relating to election programme was issued, there was little scope for fresh delimitation of wards or allocation of seats. However, having regard to the view expressed by the municipality itself in this regard and its inability to take suitable action in the matter only on account of shortage of time and in view of the fact that the letter addressed by the first petitioner to the first respondent in this behalf was not replied, it could not be said that the petitioners were not wholly justified in waiting for some time in the hope, howsoever slender, that their grievances might still be redressed by the competent authority without their being required to move the Court. Sixthly, the petitioners have in any case approached the Court before the election process as notified had commenced and at a point of time when the date of poll was nearly one month and three days away. Seventhly, at the stage of the issuance of Rule nisi the respondents were duly heard. No objection appears to have been raised by them to the

admission of the petition on the ground of delay. On behalf of the first respondent no affidavit was filed objecting to the admission of the petition on the ground of delay and it was not pointed out to us at the hearing that any such objection was orally taken. On behalf of the third respondent, its Chief Officer filed an affidavit but he too did not oppose the admission of the petition on the ground of delay. As regards the newly added respondents, it appears that some of them filed affidavits opposing the admission of the petition on the ground of delay. In response to a pointed question put by the Court at the hearing of this petition, however, the Counsel who appeared on their behalf expressly stated that though he opposed the grant of interim relief on the ground of delay, he did not oppose the admission of the petition on such ground. Under the circumstances, the respondents must be deemed to have waived their objection, if any, to the entertainment of the petition on the ground of delay or, in any case, such objection must be taken to have been overruled by the learned single Judge who admitted the petition. Lastly, a consideration which weighs with us considerably is that the petition has already been admitted. The process of election as per the election calendar issued by the first respondent was halted for a few days by the ad interim relief issued by this Court on January 9, 1978 which came to be subsequently modified on January 11, 1978. The date on which the ad interim relief was issued was in fact the date liked for the scrutiny of nomination papers. Under these circumstances, when we find that on merits the petitioners are entitled to succeed, it would not be fair and proper exercise of discretion to throw out the petition on the ground of delay and laches. In our opinion, for the foregoing reasons, we are not inclined to refuse relief to the petitioners in the exercise of our writ jurisdiction on the ground of delay and laches, even granting that there is some delay in the preferment of this petition.

8. That takes us to the main point in dispute between the parties. In order to appreciate the merit of the controversy, it would be necessary to refer at the very outset to the relevant statutory provisions.

9. Section 2 of the Act is the definition clause. Sub-section (4) of the said section defines "Councillor" to mean a member of the municipality in a municipal borough. Sub-section (13) defines "Municipal Borough" to mean a local area declared as or deemed to be a municipal borough u/s 4 of the Act. Sub-section (14) defines "Municipality" to mean a municipality constituted or deemed to be constituted for a municipal borough. Sub-section (20) defines "population" to mean, in relation to a municipal borough, the population thereof as ascertained at the last preceding census.

10. Section 4 which occurs under the heading "Municipal Boroughs" in Chapter II, which is entitled "Municipal Borough and Constitution of Municipalities" deals with declaration of municipal boroughs and alteration of their limits. Sub Section (1) of the said section, in substance, provides that the State Government may, by notification in the Official Gazette, with effect from a date to be specified therein, declare any local area to be a municipal borough or, in the case of an

existing municipal borough, it may, after consulting the municipality (if already constituted), alter in the same manner the extent and limits of any municipal borough. Sub-section (2) provides for the procedure to be followed before taking action under Sub-section (1). Sub-section (3) provides that each of the local areas which, immediately before the date of the coming into force of the Act, constituted a municipal borough or municipal district under relevant earlier municipal law shall, on and from the said date, be deemed to be a municipal borough constituted under the Act. Be it noted at this stage that the town of Anand was a municipal borough under the Bombay Municipal Boroughs Act, 1925 and that, therefore, upon the coming into force of the present Act, it must be deemed to be a municipal borough constituted under the Act by virtue of Sub-section (3) of Section 4.

11. We must next refer to Section 5 and 6 which occur in the same Chapter but under a different heading, namely, "Constitution of Municipalities." Section 5 provides that in every municipal borough there shall be a municipality, and every such municipality shall be a body corporate by the name of "the...Municipality" and shall have perpetual succession and a common seal, and may sue and be sued in its corporate name through its chief officer. Section 6 has some bearing and Sub-sections (1) and (2) thereof may be fully set out:

(1) Every municipality shall consist of elected councillors. (2) The number of such councillors shall be-

(a) 25, if the population of the municipal borough does not exceed 50000,

(b) 35, if the population of the municipal borough exceeds 50000 but does not exceed 100000,

(c) 40, if the population of the municipal borough exceeds 100000 but does not exceed 200000, and

(d) 51, if the population of the municipal borough exceeds 20000,

Sub-sections (3) and (4) of the said section make provision for reservation of seats for women and Scheduled Castes and Scheduled Tribes. Sub-section (5) provides that subject to the provisions of the Act, an election shall be held in accordance with the rules made by the State Government in that behalf. Sub-section (6) provides that the names of all councillors elected to any municipality at a general election held in accordance with the provisions of Sub-section (5) shall be notified in the Official Gazette and upon the issue of such notification, the Municipality shall be deemed to be duly constituted, notwithstanding any vacancy due to failure to elect the full number of councillors which might be elected u/s 6. Sub-section (7) provides for the publication of the names of elected councillors within the prescribed period. There is an explanation to the section which defines the expressions "Scheduled Castes" and "Scheduled Tribes." Two material facts which emerge out of the foregoing provisions might be noted : first, that the municipality must consist of elected councillors and that

the number of such councillors has to be determined, having regard to the population of the municipal borough as ascertained at the last preceding census and, secondly that the municipality is deemed to be duly constituted upon the issue of a notification in the Official Gazette declaring the names of all councillors elected at the general election.

12. Then comes a group of sections under the heading "Election of Councillors." Sections 7 to 15 contained under this heading deal with the process of election of a municipal government as the term is understood in its widest sense. They provide for the demarcation of wards and the allocation of seats amongst each ward to determination of election disputes. In between, they cover all the various matters connected with election such as the list of voters, qualification and disqualification of voters and councillors and the term of the municipality. The first in the group is Section 7 the interpretation of which is directly involved in this petition and it must, therefore, be set out verbatim:

(1) For the purpose of election of councillors each municipal borough shall be divided into wards and the number of wards and the number of members to be elected from each ward shall be such as the State Government may, after consultation with the municipality (if already constituted), by order determine.

(2) At any time before the date for entertaining the nominations of candidates for a general election is notified, it shall be lawful for the State Government in consultation with the municipality (if already constituted) to alter for reasons to be recorded in writing the limits of any ward or, as the case may be, the number of councillors to be elected from any ward determined by it under Sub-section (1).

Section 8 provides for the term of office of councillors after general election and accordingly, an elected or nominated councillor is to hold office for a period of five years commencing on and from the date of the first general meeting of the municipality to be held after the election. The State Government has been empowered, under Sub-section (1) thereof, however, to extend the said term from time to time by an order notified in the Official Gazette subject to certain conditions. Section 9 deals with the list of voters. Section 10 makes provision with regard to the qualification to vote and be elected. Section 11 prescribes general disqualifications for becoming a councillor and other allied matters. Section 12 lays down general disqualifications of voters for the purpose of voting at any municipal election. Section 13 regulates the right to vote at the election. Section 14 deals with determination of the validity of election. Section 15 provides for disqualification for voting in case of corrupt practice. With the remaining sections comprised in Chapter II or in other Chapters of the Act we are not considered in this petition and we need not, therefore, notice them.

13. A reference may be made at this stage to the relevant Rules relating to the municipal election. Once the preliminary stages in the process of election, namely, the determination of the number of councillors to be elected and the

division of wards and allocation of seats in each ward are gone through, the next stage commences by the Collector fixing the date, hours and place or places for the various stages of election, namely, nomination of candidates, scrutiny of nominations, recording of votes and counting of votes, under Rule 7. The said Rule requires the Collector to publish a written notice of such election not later than six weeks before the last date for the nomination of candidates. The next material date is the date of publication of list of voters under Rule 4 which must take place atleast thirty days before the date fixed for the nomination of candidates for every general election. We are not concerned with the remaining Rules governing the municipal election.

14. Going back now to Section 7, it must have been noticed that it consists of two sub-sections. Sub-section (1) opens with the words "For the purpose of the election of councillors" and goes on to provide that each municipal borough, for the said purpose, shall be divided into wards and further, that the number of wards and the number of members to be elected from each ward shall be such as the State Government may, after consultation with the municipality (if already constituted), by order determine. Sub-section (2) confers upon this State Government the power to alter the limits of any ward or, as the case may be, the number of councillors to be elected from any ward determined by it under Sub-section (1). The exercise of such power, however, is subject to three conditions; first, the alteration, if any must be made "at any time before the date for entertain the nominations of candidates for a general election is notified"; secondly, it must be made after consultation with the municipality, if already constituted, and, thirdly, the reasons therefore must be recorded in writing. It is this section which is at the centre of controversy between the parties and the interpretation of which must be the subject matter of our decision. Three alternative constructions have been suggested on behalf of the parties appearing before us and to this we shall now advert.

15. The petitioners urged that it would be necessary on the part of the State Government, as a condition precedent to the holding of every general election of councillors of a municipal borough, to divide the municipal borough into wards and to determine the number of wards and the number of members to be elected from each ward in consultation with the municipality (if already constituted) by an order made under Sub-section (1) and duly published. Such determination, however, is not necessarily final, for, under Sub-section (2), the State Government has the authority, at any time before the date for entertaining the nominations of candidates for such election is duly notified by the Collector under Rule 7, to alter, for reasons to be recorded in writing, (a) the limits of any ward or (b) the number of councillors to be elected from any ward, as determined by it under Sub-section (1). The mainstay of the submission was that every election is a fresh event, that it is the duty of the competent authority to ensure that it is held fairly, properly and bona fide, that this can be done only if the entire process of election commencing from delimitation of wards and allocation of seats therein is gone through every time, because then only will the rule of "One

nun-one vote" operate evenly at every general election and that there is nothing either in the general law relating to election or in the scheme of the Act or the context and collocation of the section under consideration which goes, either expressly or impliedly, against such requirement. On a conjoint reading of Sub-sections (1) and (2), contended the petitioners, the duty to delimit wards and allocate seats in each of such wards at every general election, bearing in mind the change in the number of voters or the population of each ward, could be clearly spelt out, with the power coupled with duty superadded even to alter such determination in case of necessity before the date for entertaining the nominations of candidates is notified by the Collector, subject to the condition of prior consultation with the municipality and recording of reasons. Such a construction, according to the petitioners, was not only the only construction possible but it would also advance the purpose and object of the enactment by ensuring fair election and being the section under consideration in line with the provisions other statutes in *pari materia* dealing with election to other local authorities.

16. The State Government urged that the duty to divide the municipal borough into wards and to determine the number of wards and the number of members to be elected from each ward cast upon it under Sub-section (1) is to be performed once and for all at the time of the holding of the first general election of the councillors of the Municipality under the Act and that thereafter it was not required, either expressly or by necessary implication, to perform such duty at every general election. In case it became necessary to alter the limits of any ward or, as the case may be, the number of councillors to be elected from any ward determined once and for all under Sub-section (1), it had ample power under Sub-section (2) make such alteration, for reasons to be recorded in writing, in consultation with the municipality (if already constituted) at any time before the Collector notified under Rule 7 the date for entertaining this nominations of candidates for the general election. In support of this construction, it was strenuously contended on behalf of the State Government that an intolerable burden would be placed upon it if it were required to act under Sub-section (1) at the time of every general election of a municipality, especially when it had the necessary corrective power under Sub-section (2) to ensure fair election by alteration of limits of wards or fresh allocation of seats amongst such wards, in case such step was warranted by the circumstances or demanded by the occasion. It was also urged that since the State Government has all throughout acted under the belief that it had to exercise its power under Sub-section (1) once and for all at the time of the first general election, it has not acted there under at the time of the subsequent elections of different municipalities and that if the view canvassed on behalf of the petitioners were to be accepted, it might result in a serious crisis possibly invalidating all those elections and holding up the ensuing election not only of the Anand municipality but also of two other municipalities, namely, Petlad and Bombay, the general elections of which are due to take place on February 5, 1978.

17. Respondents Nos. 5 to 8 urged the need to adopt a construction which stood midway between the extreme posture adopted by the petitioners on the one hand and the State Government on the other. They urged that the power under Sub-section (1) to delimit wards and allocate seats in each ward must be exercised by the State Government at the first general election after every new census and that for the mid-census general election, if any, the State Government was under no duty to initiate any action under Sub-section (1). Any corrective measure in the direction of delimitation of wards and allocation of seats required to be taken in the case of mid-census general election could be taken under Sub-section (2) and in that manner the fairness of such mid-census election could well be ensured. In support of this construction, the said respondents heavily relied upon the fact that even assuming that "one man-one vote" requirement of fair election is present in the case of municipal general election and that, therefore, each ward must be so constituted and the number of seats therein must be so allocated that the representation of each ward in the municipality was proportionate, as nearly as possible, to its population, the necessity to freshly delimit wards and reallocate seats in each ward would arise only at the first general election to be held after the census in as much as it is only then that the change, if any, in population wardwise would become authentically known. The said respondents urged that Sections 6 and 7 must be read as a part of a single scheme and both in the matter of the determination of the number of seats and the delimitation of wards and the allocation of seats in each ward, the population to be taken into account must be the population as ascertained at the last preceding census. In the mid-census election, therefore, any actual change in the population could not be allowed to be reflected in the constitution of wards or allocation of seats and only marginal changes in that behalf might have to be made under special circumstances in order to ensure fair election, which power the State Government already had under Sub-section (2).

18. Now, before directly coming to grips with the problem of construction, it would be convenient to refer to and resolve a rather crucial controversy between the parties on a matter which has some bearing on the question of construction. There appears to be a broad agreement between the parties that one man-one vote rule applies even to the election of municipal bodies. Indeed, having regard to the well-settled legal position to which we shall presently refer, there was no alternative for the parties but to broadly agree on this aspect. The controversy, however, centred round two points which relate to the content of the one man-one vote rule. The petitioners contended, as against the vehement contest of the concerned respondents, firstly, that for the purpose of the applicability of the said rule, what was required to be taken into account was, the voter population and not the inhabitant population of each ward and, secondly, that even if the inhabitant population as required to be taken into account, its strength must be ascertained on the available data at or about the time of election and not on the basis of the data supplied by the preceding census.

19. The one man-one vote rule which, in substance, means that as nearly as is

practicable, one man's vote in an election is to be worth as much as another's and that, therefore, when members of an elected body are chosen from separate constituencies, each constituency must be established on a basis which will ensure, as far as practicable, that equal number of people can vote for proportionately equal number of representatives, has been established beyond doubt and enforced in the United States of America in which Courts have intervened to ensure that elections to a public body are not vitiated by wrongful denial, debasement or dilution of the said rule. The leading decisions on the point are *Wesberry v. Sanders* (1964) 376 U.S. 1 and *Reynolds v. Sims* (1964) 377 U.S. 533. In the former decision, a Georgia statute which had glaring discrepancies among the populations in that State's congressional districts was struck down. In the latter decision, state laws, which had apportioned state legislatures in a way that again showed glaring discrepancies in the number of people who lived in different legislative districts, were held to be unconstitutional. In *Avery v. Midland County* (1968) 390 US 474, this principle was extended and applied to the election of Texas County Commissioners and it was held that a qualified voter in a local election also had a right to have his vote counted with substantially the same weight as any other voter in case where the elected officials exercised "general governmental powers over the entire geographic area served by the body." Finally, in *Hadley v. Junior College District* (1970) 25 LEnd 45 : AIR 1971 U.S.S.C. 3, the same principle was applied to the election of trustees who were to be elected from eight separate school districts which combined to form the Junior College District of Metropolitan Kansas City. It would thus appear that in the United States of America the one man-one vote rule, which has been spelt out of the Fourteenth Amendment of the Constitution, has been consistently recognised, adhered to and progressively applied to election of officials who are elected by popular vote.

20. Nearer home, our own Courts have also recognised the one man-one vote rule, drawing inspiration from the American decisions and basing themselves upon the provisions of Article 14 and the democratic form which the Constitution has adopted for the various organs of executive Government, We shall refer herein only to two decisions, both of this Court, wherein the said Rule has been recognized. In Special Civil Application No. 456 of 1971 decided on 26/27/28th July 1971, Bhagwati C.J. speaking for a Division Bench consisting of himself and one of us (myself), made the following observations:

If the mode of election is adopted, there can be no doubt that the number of additional members to be elected from the included area must be proportionate to the population of such area. It is an elementary requirement of the principle underlying representation by elective process that each voter should have an effective vote and his vote should be worth as much as another's. This principle has been judicially recognised by the United States Supreme Court in several decisions commencing from *Wesberry v. Sanders* 376 U.S. 1 : 11 L.Ed. 81 and there is no reason why it should not be accepted as a valid principle by our Courts. It is in fact a concomitant of the equality clause which forms the bed-

rock of the great principle of rule of law enshrined in our Constitution. Even apart from the high policy of constitutional law, it is difficult to see how a really representative body can be constituted by elective process unless every vote is given the same weight as any other. This requirement of the elective process necessarily involves acceptance of the principle that representation must be proportional to the strength of the electorate subject, of course, to any reservations which may have to be made in order to protect the interests of the weaker sections of the community....The number of additional councillors to be elected to represent the included area would, therefore, have to be fixed having regard to this principle: it would have to be proportionate to the strength of voters in such area.

Be it noted that these observations were made while considering the question whether the discretion conferred upon the State Government u/s 452-A(1)(i) in the matter relating to fixation of number of additional members to be appointed or elected from an area newly added within the limits of a city to which the Bombay Provincial Municipal Corporations Act, 1949 applied, was unguided and uncontrolled. It was in that context that the one man-one vote rule was invoked and it was found that the discretion vested in the State Government could not be said to be uncontrolled and unguided and that the number of additional councillors to represent the newly included area was required to be fixed by the State Government bearing in mind the aforesaid rule.

21. In *Harji Chaku v. Mamlatdar Lalpur* 15 G.L.R. 64, the Division Bench of this Court consisting of J.B. Mehta and S.H. Sheth, JJ. was concerned with the division of wards and distribution of seats at an election to a gram panchayat governed by the provisions of the Gujarat Panchayats Act, 1961 and one of the questions was whether the recognized principle of one person-one vote was violated by giving almost double weightage to the voters of one constituency, as compared to the voters of another constituency, thus denying equal treatment to all voters. J.B. Mehta, J. who spoke for the Division Bench referred to the abovementioned decision of Bhagwati, C.J. in Special Civil Application No. 465 of 1971 (*Vaikunthbhai Bhupalbhai Shastri v. State of Gujarat*) and observed that having regard to the settled principle indicated in the said decision, which must be followed in any elective process, as far as possible, any deviation there from would not be justified as per the constitutional provision unless rationally justified. Reference was made to the decisions of the American Supreme Court in *Reynolds v. Sims* case (supra) and *Hadley v. Junior College District* case (supra) in order to emphasize that even the United States some deviations from the equal population principle were held to be constitutionally permissible in principle so long as the divergences were based on legitimate considerations incidental to the effectuation of a rational State policy. The possibility that viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions was accepted even in that country where it was found that there was nothing in the Constitution to prevent experimentation. Having regard to these

decisions, the Division Bench then proceeded to take into account various factors such as geographical situation, historical facts, inherent dissimilarities in the village which constituted election constituencies, etc. and observed that Article 14 did not embrace the wide due process guarantee of the American Fourteenth Amendment Equal Protection Clause. Therefore, so far as Article 14 was concerned, historical background of inherent dissimilarities would surely be the relevant factor. If deviation from the one man-one vote rule has got to be made for the purpose of giving effective representation to a smaller component village unit, when such unit is joined with another larger unit and the deviation is justified so as to ensure co-operation between these unequal units, such deviation would really make effective the constitutional guarantee of equal voting power, as otherwise voice of such small components would not be likely to be felt in the larger whole. Broadly on the basis of this reasoning the deviation from the rule was justified in the facts and circumstances of the said case.

22. These two decisions of our Court show beyond doubt that the one man-one vote rule attracted to the elective process in our country as well and that it has its play in election of local Government bodies. The decisions also show that any deviation from the said rule must be justified on rational grounds, even if it is assumed that the rule is not founded on an abstract mathematical or algebraic formula. Our Constitution itself permits such a deviation in the case of representation to weaker sections. Harji's case (*supra*) illustrates as to what would constitute a justice able cause for deviation from such rule. As to what extent a departure from the said rule could be permitted must in the ultimate analysis depend upon the facts and circumstances of each case. We do not wish to express, in the present case, an opinion on these matters and say as to what factors could be legitimately taken into account for the purpose of justifying the dilution of the said rule in a given case, since that question does not directly arise before us.

23. Apart from the one man-one vote rule receiving recognition at the hands of Courts, so far as our country is concerned, the principle has been enshrined even in the Constitution in the matter of election to the Parliament and State Legislatures. Article 81(1) having provided for the composition of the House of the People by not more than five hundred and twenty-five members chosen by direct election from territorial constituencies in the States and not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide, proceeds to lay down in Article 81(2) that each State shall be allotted a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States and that each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State. Similar provision is to be found in Article 170 in relation to composition of the Legislative Assemblies and the principle governing the division of each State into territorial constituencies. The

Constitution, of course, recognizes the deviation from the aforesaid principle in Articles 330 to 333 and provides for reservation of seats for Scheduled Castes and Scheduled Tribes and representation to the Anglo-Indian community in the Union and State Legislatures. But apart from this, the basic scheme of the Constitution with regard to election to the union and State Legislatures is to accept the concept of one man-one vote, in our own State, two legislatures, which are in primateria, also make similar provision, one by express enactment and the other by necessary implication. Sub-sections (1) to (4) of Section 20 of the Gujarat Panchayats Act, 1961, which provide for electoral divisions for the purposes of elections of members to a gram, nagar, taluka and district panchayats, as the case may be, in terms provide that the divisions shall be made in such manner that as far as practicable, the population of all wards or, as the case may be, all territorial constituencies is the same and one member is elected from each ward or constituency, as the case may be. So far as the Bombay Provincial Municipal Corporations Act, 1949 is concerned, the Division Bench of this Court, in its decision in Special Civil Application No. 46 of 1971 (supra) read the same principle into Section 452-A(1) by process of interpretation.

24. It would thus appear that the principle, which must be taken to have been established beyond doubt or debate, so far as this country is concerned, is that whenever the statute requires selection of persons to be made by popular election to perform governmental functions, whether at the Union or State or local level, each vote must have an equal value and that when members of such elected bodies are chosen from separate constituencies, each constituency must be established on a basis which will ensure, as far as practicable, that equal number of constituents can vote for proportionately equal number of representatives. The rule is so deeply entrenched in our election jurisprudence that any deviation therefrom would require strict justification on rational or permissible grounds and any wrongful dilution thereof must be jealously guarded against.

25. Against this background, let us consider whether the one man-one vote rule operates with reference to the inhabitant population or voter population. In other words, the question for consideration is whether the underlying concept of this rule is related to the number of voters or to the number of constituents. If the contention of the petitioners is accepted, the representation of each ward in the municipal government would be, as nearly as possible, equal on the basis of registered voters and not on the basis of population. We are of the opinion, however, for the reasons which follow, that on this contention the petitioners must fail.

26. The municipal government and for that matter any other local Government performs important public functions within the area under its jurisdiction. The municipality performs important governmental functions which have sufficient impact throughout the municipal borough and on the inhabitant population of

such borough. The decisive factor for the constitution of such municipal government must, therefore, be the will of the people, more so when the process of election is the mode laid down for its composition. It is true that not each and every soul inhabiting the borough is entitled to vote and that having regard to the qualifications and disqualifications prescribed in the Act, some out of those souls alone would be eligible to be entered into the voters' list and qualified for voting. When such qualified voters vote, however, their votes speak for and on behalf of the population of the ward in which they reside and their votes are the expression of the will of such population. The inhabitant population and not the voter population must, therefore, be the determinative factor. That apart, the number of voters in a ward would depend upon numerous variable factors. It may be a matter of accident, circumstances or design that one ward may have a larger number of voters in proportion to the population than the other. Take, for example, the case of a ward the inhabitant population of which consists largely of persons who, on account of the nature of duties which they are required to perform, are compelled to live away from their families. A large number of persons residing in such ward would be qualified voters and the proportion of qualified voters to the population would, therefore, be on a much higher side by sheer accident. Similarly, in wards where the population consists of relatively backward class people, economically or otherwise, the population may be large, having regard to lack of family planning or such other factors. The proportion which the number of qualified voters bears to the population of such ward may compare unfavourably with a ward in which more fortunate segments of population reside. This is the sheer result of circumstances. But apart from the imbalance resulting from such accidents or circumstances, still greater objection in the linking of one man-one vote rule to the voting population would arise from the political device known as the "gerrymander." A voters' list could always be so manipulated by those with means and in power as to secure unfair advantage by disproportionate representation at the election. This would not happen if the inhabitant population ascertained from authentic data is made the foundation of the one man-one vote rule. It appears to us, therefore, that the petitioners' contention in this behalf must fail.

27. In this view which -we are taking we are supported not only by judicial decisions but also by statutory provisions. The American decisions to which we have referred earlier have largely proceeded upon the principle that the concept of one man-one vote is linked with the number of people living in different legislative districts. In American Jurisprudence, 2nd Edition, Vol.25 in the Chapter relating to "Election" it has been observed at pages 705 and 706 as under:

Population is the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.... State constitutions commonly require that representative districts shall be equal, as nearly as possible, in population. And the equal protection clause of the Fourteenth Amendment requires that the seats in both houses of a bicameral state

legislature be apportioned on a population basis. This means that a state must make an honest and good-faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

While dealing with election to county and municipal governmental bodies, the authors of the American Jurisprudence observe at page 717 asunder:

The equal protection clause of the Fourteenth Amendment forbids substantial disparities in population among voting districts or units for the election of municipal bodies, and requires substantial equality in population among voting districts or units in political sub-divisions, such as cities, counties, or parishes.

At page 712 in the same Treatise, it has been pointed out that there is some conflict in the judicial decisions in the United States as to whether inhabitant population constitutes the foundation for the one man-one vote rule to the exclusion of citizen or voter population. At page 713, it has been observed:

Although it has been urged that the concept of "one person-one vote" implicitly means that the validity of an apportionment scheme is related to voters and not constituents, apportionment schemes founded on voter population, or on the number of voters voting at the last gubernatorial election, have been rejected as unconstitutional, at least where prior apportionment statutes have been based on constituent or citizen population. However, it has been held that legislative apportionment on a registered voter basis is not invidious per se.

It would thus appear that by and large it appears to be well-settled, so far as the United States is concerned, that the one man-one vote rule is linked with population rather than with voters.

28. So far as the judicial opinion in our country is concerned, the two decisions to which we have made reference earlier also refer to the principle that representation must be proportional to the strength of the electorate in an elective process. Of course, Bhagwati, C.J.'s decision in Special Civil Application No. 465 of 1971 (*Vaikunthbhai v. State*) sometimes speaks of representation of each area being proportionate to the population of such area and sometimes of the representation being proportionate to the strength of voters in such area. But reading the passage from the learned Judge's decision extracted above as a whole, it appears to us that the terms "population" and "voters" are used interchangeably and that the real emphasis is on population rather than on voters.

29. As regards statutory provisions, the Articles of the Constitution and the statutory provisions in the enactments in *pari materia* referred to earlier also clearly link up the one man-one vote rule with the inhabitant population. These provisions do not lay any emphasis on the voter population as against the inhabitant population.

30. In our opinion, therefore, the inhabitant population must ordinarily constitute the foundation for the one man-one vote rule to the exclusion of the voter

population. This disposes of the first argument with regard to the content of the one man-one vote rule advanced on behalf of the petitioners,

31. The contention of the petitioners that even if the inhabitant population is required to be taken into account, its strength must be ascertained on the available data at or about the time of election and not on the basis of the data supplied by the last preceding census, attractive though it may sound, is not well-founded and may strike at the very root of the principle which the petitioners so arduously seek to sustain. It is true that for the purposes of mid-census election of a growing Municipal borough, the strength of population ascertained at the last preceding census may sometimes provide an illusory or, at any rate, defective data and it may, to some extent, have the effect of deviation from the strict adherence to the one man-one vote rule. Official population, that is to say, the population ascertained at the last preceding census, may, in the case of an expanding urban town to which many people from the surrounding rural areas will throng to find employment, be at considerable variance from the actual population that may be found at or about the time of the mid-census election. It would, however, be hazardous to disregard census as the determinative factor with regard to population for the simple reason, if none other, that there would ordinarily be no other authentic data available for judging the population strength. It may be that the local Government maintains some record of deaths and births or that the State Government, on the basis of the issue of ration cards, keeps track of the population strength in different areas. However, these records cannot be equated in the matter of their authenticity with census. Besides, the record of births and deaths would not reflect the shift in population. The data collected on the basis of issuance of ration cards could hardly furnish accurate material, for, the evil of ghost-cards is a known phenomenon. It is presumably for this reason that the Constitution itself has adopted in Articles 81 and 170, population as ascertained at the last preceding census of which the relevant figures have been published as the basis for election to the Parliament and State Legislatures. Similarly, the Act under consideration also defines population in more or less similar terms in Section 2(20) and it is that population which has to be taken into account for the purpose of determining the total number of councillors for each municipal borough. The allied legislation, namely, the Gujarat Panchayats Act, 1961 has in terms provided in Section 20 read with Section 2(23) that population as ascertained at the last preceding census shall be the determinative factor for the division of the gram, nagar, taluka and district panchayats, as the case may be, into single member constituencies. In the United States of America also, many State Constitutions frequently require that in the determination of the question of population for apportionment the decision is to rest on the last United States Census or on a State Census (See American Jurisprudence, 2nd Edition, Volume 25, page 712), It would thus appear that it is to protect the one man-one vote rule against any invidious debasement that the last preceding census has been taken as the correct indicia of the strength of the population and the increase or decrease of population in different localities has

been disregarded in the mid-census election in most of the statutory provisions. When this factor is appreciated in conjunction with the fact that the total number of seats at a mid-census election also ordinarily remains constant under our statutory scheme, irrespective of the inflation or deflation in the population as ascertained at the last preceding census for the area in question, much of the force in the argument that the indicia adopted is illusory is lost.

32. We are of the view, therefore, that ordinarily it is the inhabitant population as ascertained at the last preceding census which is required to be taken into account to give effect to the one man-one vote rule unless contrary intention, expressly or by necessary implication, becomes manifest in the relevant statutory scheme and provision, on account of the compulsion of special circumstances. The petitioners' contention on this aspect of the matter must also, therefore, fail.

33. Having cleared the ground to this extent, we must now proceed to the main task. We must concede straightaway that the question of construction of Section 7 is not easy of solution and that the rival interpretations suggested have each some merit or demerit. The Legislature has spoken altogether too briefly in this section, unlike similar section in the statute in part materia, namely, the Gujarat Panchayats Act, 1961 wherein it has made its intention more explicit, as we shall presently point out. We will, therefore, have to construe the section according to reason and justice, bearing in mind not only the scheme of the Act under consideration and the language chosen by the Legislature to express its intention, but also having regard to the object and purpose of the enactment, and the vital and sensitive field in which it operates.

34. Section 7, Sub-section (1), at the very outset, lays down a broad policy by providing that for the purpose of the election of councillors each municipal borough shall be divided into wards. It is true, as contended on behalf of the respondents, that the words "For the purpose of the election of councillors" do not indicate any point of time when the division has to take place and that they merely describe the state of affairs which must exist in order that the election could take place. In other words, this part of Sub-section (1) lays down the basic outline or method or modality of election. In the very nature of things, it would be impossible to hold the election to the municipality by constituting the entire borough into a single constituency and by permitting several candidates to contest for the statutorily fixed number of seats varying between 25 and 51 (according to population) from such constituency. For obvious reasons, it would result into inconvenience and hardship both to the contestants and the constituents and create problems for the authorities, besides possibly defeating the election process. The Legislature, therefore, gave a peremptory edict that the borough shall be divided into wards which shall form the constituencies for election of councillors. Unless this mandate is followed at each election, the purpose of holding the election itself will be frustrated. It is true that the Legislature has not used the words "For the purpose of every general election of

councillors" or some such or similar phrase and has, instead, chosen to use the expression "For the purpose of the election of councillors." However every election is a fresh event and delimitation of wards being the first and fundamental step, unless that requirement is complied with at each election, the process of election would not begin at all. Besides, it must be remembered that the article "the" is often used in conjunction with a noun to denote a species or class (see the Concise Oxford Dictionary, 5th edition, page 1342). When the article and noun are so used, what is represented is the class or species and not the individual member thereof. The words "the election" must mean, therefore, not the first ever general election nor the first general election after the census, as contended by the State Government and respondents Nos. 5 to 8 respectively, but every general election. This construction is not only grammatically permissible but effectuates the true intention of the Legislature and accords with reason and justice.

35. Having thus laid down the basic outline or modality of election, the Legislature has gone on to provide that the number of wards and the number of members to be elected from each ward shall be such as the State Government may after consultation with the municipality (if already constituted), by order determine. In the very nature of things, the function of division could not have been performed by the Legislature itself in respect of all municipal boroughs at one point of time. In each municipal borough the local factors and needs, considerations of convenience and unity of interest born out of geographical and physical features, preexisting boundaries, if any, of existing wards and such or similar factors would require individualistic approach in the matter of delimiting wards. The Legislature has, therefore, left it to the State Government to determine the number of wards. The very conferment of this power on the delegate implies that it is to be exercised from time to time, that is to say, from election to election, bearing in mind all the relevant factors. It is true that no specific guideline is provided for the exercise of this power by the State Government. However, this power cannot be exercised by the State Government arbitrarily or capriciously. Having regard to the fact that this is the first step in the process of election, which is the mode provided to give representation to the population of the borough on the municipality, there is no manner of doubt that besides some of the relevant factors enumerated above, the one man-one vote rule will also have to be borne in mind by the State Government in its true perspective while delimiting the wards.

36. The Legislature has also similarly left it to the State Government to determine the number of members to be elected from each ward. The reasons why this function is also delegated to the State Government are similar to those mentioned above in connection with delimitation of wards. Besides, delimitation of wards and allocation of seats in each of such ward are matters so inextricably interconnected that both functions will necessarily have to be performed by the same authority. This function, like the function relating to delimitation of wards, will also have to be performed at the time of each election, bearing in mind all

the relevant factors, though no specific guideline is provided. The State Government must act fairly, bona fide and reasonably in performing this function, being guided in the matter by the overriding consideration of the one man-one vote rule, subject to the reservation of seats for women and Scheduled Castes and Scheduled Tribes for which specific provisions has been made. As we have stated earlier, having regard to the content of the said rule, population of each ward at the last preceding census will have to be taken into account while allocating seats amongst different wards to ensure that, as far as practicable, the various seats are distributed proportionately on the basis of the strength of inhabitants in each ward. Be it noted in this connection that on the application of this rule, the ordinary or casual increase or decrease of population in different wards will have to be disregarded in the mid-census election. There is nothing in the provisions of the Act which either expressly or by necessary implication permits the adoption of another course. In fact, Section 6, which provides for the statutory number of councillors for each borough on the basis of its population as ascertained at the last preceding census, points in the direction that the broad legislative scheme is to go by the data supplied by the last preceding census, so far as the question of determination of population is concerned. When that is the guideline adopted for fixing the total number of seats, it would be unreasonable to depart there from at the stage of allocation of seats amongst different wards.

37. We must guard against being understood as laying down, however, that under no circumstances while exercising powers under Sub-section (1) in the matter of delimitation of wards and allocation of seats amongst such wards would it be open to the State Government to take into account any obvious or apparent change or shift in population due to special Circumstances. As we have stated earlier, the compulsion of special circumstances might sometime require departure from this rule. Take, for example, a case where an area is added to or excluded from a municipal borough. In such a case Section 266 operates to take care of the interim situation until the municipality is in due course constituted by fresh election. But as and when the fresh election is held, even if such election is a mid-census election, fresh delimitation of wards and allocation of seats will have to be made, bearing in mind the increased or decreased population of the borough. Even in such a case, however, the State Government will have to be guided, as far as may be practicable, by the latest census figures of population comprised in such added or excluded area. Similarly, we might take for illustration another case where on account of some natural calamity such as earthquake, flood or epidemic, there has been substantial erosion of population in a pre-existing ward delimited on the basis of the immediately preceding census. In such a case also the State Government will have to ascertain, on the basis of such authentic data as is available to it and, if necessary, after holding such inquiry as it deems fit, the change in the strength of population in such ward and, if necessary readjust its boundaries and make reallocation of seats therein. Such exercise might be warranted also when, for example, there is an apparent shift in the population of Scheduled Castes and Scheduled Tribes from one ward

to another on account of construction of special housing colonies for them or for some such or similar reasons. In such an event, the seats, if any, reserved for the Scheduled Castes and Scheduled Tribes will have to be allocated to the ward where such migration on large scale has taken place. We have referred to these instances only by way of illustration. They are not exhaustive of various special circumstances, under which the power relating to delimitation of wards and allocation of seats amongst different wards might have to be exercised under Sub-section (1) by taking into account developments in relation to population subsequent to the last preceding census. All the same, however, we wish to re-emphasize the need to stick to the statutory guideline which has to be read into Sub-section (1) for the purpose of the determination of the question of population, the said guideline being that it is the population ascertained at the last preceding census which must be held to be determinative. It is only in exceptional circumstances, which will have to be justified on rational and permissible grounds, that any departure from the said indicia would be permissible.

38. The Legislature has also provided one safe-guard in Sub-section (1), so far as the exercise of power thereunder is concerned. The State Government has to consult the municipality, if already constituted, while performing its function thereunder. The consultation must necessarily be meaningful and effective and due weight will have to be accorded to the view of the municipality, for, being the local authority, it can speak with requisite knowledge on many relevant matters which must enter into account in delimitation of wards and allocation of seats. This provision indicates that the Legislature intended that in the exercise of this power by the State Government, the borough as such must also have some voice.

39. The importance of the fact that the determination of the number of wards and the number of members to be elected from each ward has to be made by an order duly made by the State Government cannot also be overemphasized. Such an important function which constitutes the basic step in the process of election which the State Government has to perform as a delegate of the Legislature must have the necessary authenticity and binding force which can only be imparted by an order duly made. Though the Legislature has not said in so many words, such order would require to be promulgated and published before it becomes operative. It will have to be made known in some recognizable mode so that all the inhabitants of the borough may know the formula of division of wards and distribution of seats. Such order would not, therefore, come into being by merely passing a resolution without promulgation or publication in the Gazette or by other means. The promulgation or publication of some reasonable sort is essential and implicit (See *Harla Vs. The State of Rajasthan*, This is how we view the provisions of Sub-section (1).

40. Proceeding now to the construction of Sub-section (2), it is material to note at the very outset that it is an enabling provision authorising the State Government, subject to certain conditions, to alter the limits of any ward, or, as

the case may be, the number of councillors to be elected from any ward determined by it under Sub-section (1). This subsection, therefore, is necessarily linked up with Sub-section (1) and it cannot operate independently from or in a manner unconnected with Sub-section (1). Besides, the terminology of the subsection indicates that it is intended to confer thereunder authority upon the State Government to take any corrective measure that it thinks necessary in respect of delimitation of any ward or allocation of seats in any ward after it has, in the exercise of the powers conferred upon it under Sub-section (1), once performed its function of delimitation of wards and distribution of seats amongst such wards for the purposes of an election to the municipality of a borough. That this is a power to be exercised in special circumstances after the function under Sub-section (1) is performed becomes clear from the requirement of recording of reasons as a pre-condition. The opening words of the subsection also provide some clue. They indicate the point of time before which corrective power under the subsection could be exercised at the latest, namely, "at any time before the date for entertaining the nominations of candidates for a general election is notified." As we have seen earlier, under Rule 7, it is the duty of the Collector to fix the various stages of election, including that date for the nomination of candidates, and to ensure publication of a written notice of the election calendar not less than six weeks before the last date fixed for the nomination of candidates. Therefore, reading Sub-section (2) with Rule 7, it becomes clear that the power under Sub-section (2) can be exercised up to a point of time immediately prior to the publication of notice under Rule 7. Now, how is the Collector to discharge his function under Rule 7 unless at some reasonably anterior point of time, the work relating to delimitation of wards and fixation of number of wards and allocation of seats amongst such wards in the entire borough has been completed by the State Government? The Collector will be able to perform his function under Rule 7, which also includes the fixation of place or places for the recording of votes in different wards, only if he knows fairly in advance as to in how many wards the borough has been divided and how the seats are distributed in each ward. Looking at the matter from that point of view also, it would appear that Sub-section (2) is intended to operate from the point of time immediately after the general delimitation of wards and distribution of seats have been made under Sub-section (1) and that it is intended to continue to operate till the Collector notifies under Rule 7 the date for entertaining the nominations of candidates. During this period, it provides to the State Government the opportunity to set right the mistake, if any, which might have been made in respect of any ward in the matter of its delimitation or distribution of seats made under Sub-section (1). In other words, it provides locus penitent to the State Government to make alterations, if any, by way of a corrective measure in the limits of any ward or the number of councillors to be elected from any ward, as determined by it under Sub-section (1), on any defect coming to its notice from whatever source, including general public who might have a grievance to make, having come to know about the delimitation of wards or distribution of seats, upon an order duly made and published under Sub-

section (1). In our opinion, that this is a power to be exercised during a limited period of time and under special circumstances is made clear by the three indications which are inherent in the Sub-section namely, (1) the opening words, (2) the words in which the power is conferred ("it shall be lawful...to alter...any ward") and (3) the requirement of recording of reasons in writing. It appears to us, therefore, that the State Government cannot resort to the power under Sub-section (2) unless it has first exercised its power, under Sub-section (1) at any general election and that Sub-section (2) operates in a very limited field which is narrower than that covered by Sub-section (1) and that it operates at a point of time subsequent to the point of time at which Sub-section (1) operates.

41. We accordingly hold that on a true construction of Section 7, the following position emerges : For the purpose of holding a general election to a municipality, it is the statutory requirement that each municipal borough should be divided into wards. This function has to be performed by the State Government as a delegate at a point of time reasonably anterior to the date on which the general election will have to be held, having regard to the provisions of the Act. While performing this function, the State Government will have to be guided by the local factors and needs of each municipal borough, considerations of convenience and unity of interest, pre-existing boundaries, if any, of existing wards and such or similar factors. Besides, in fixing the number and limits of wards, the State Government will also have to bear in mind the one man-one vote rule. The power of delimitation will have to be exercised after meaningful and effective consultation with the municipality, if already constituted. The same consideration will also govern the question of allocation of seats amongst each ward and in apportionment of seats the State Government will have to be guided by the primary consideration, subject to the provision relating to reservation of seats, that, as far as practicable, the distribution of seats is proportionate to the strength of population in each ward. Any deviation from this principle will have to be justified on rational and permissible grounds. Even in matter of allocation of seats, the State Government will have to have meaningful and effective consultation with the municipality, if already constituted. The determination of the State Government in both these matters must be in the form of an order duly made and promulgated or published in the Gazette or by other suitable means. Even after such determination is made, it would still be lawful for the State Government to make alteration in respect of the limits of any ward or the number of councillors to be elected from any ward if, under special circumstances, it became necessary to do so. Any such step will, however, have to be taken latest before the written notice fixing the date for entertaining the nominations of candidates for the general election is published by the Collector under Rule 7. Furthermore, as a condition precedent to the exercise of such power, it will be necessary for the State Government to record in writing reasons for taking such corrective action and to consult the municipality, in an effective and meaningful manner.

42. The view which we are taking as aforesaid is not only warranted by the

scheme of the enactment and the language employed but also by the object and purpose of the enactment. Besides, the view also accords with reason and justice. Every election is a fresh event. It is an integrated process consisting of various steps which have to be taken chronologically. Unless the very first step is taken, nothing else can follow. The requirement of delimitation of constituencies and allocation of seats amongst such constituencies is a first and fundamental step in any election process. Unless such step is taken, the entire edifice of election will have been built upon without solid foundation. The question of delimitation of wards and distribution of seats therein does not depend for its resolution on static factors. It is essentially linked up with ever changing conditions and needs. Having regard to the one man-one vote rule, fresh delimitation of wards and reallocation of seats would become more or less imperative at the general election held immediately after the census. Even at the mid-census general election, however, some changes might have to be made in the limits of wards or the number of members to be elected from each ward for different reasons such as those which we have indicated earlier. In these matters, therefore, the function cannot be performed once and for all or once in a decade and at other intervening general election resort cannot be had to the special provision relating to corrective adjustments, which power has been conferred for different purpose and to meet different situations and is subject to numerous limitations. In such matters, constant vigilance is necessary and it can be ensured only by so interpreting the statute as to require the competent authority to apply its mind to these matters at every general election. The constituents, the intending candidates and the election authorities must also know with certainty well in advance of the election as to what are going to be the limits of the wards and how the seats are to be distributed amongst them. The municipality, if already constituted, must have its voice in these matters and that can be ensured only if the duty to delimit wards and to allocate seats therein is required to be performed at every general election. Besides, the electorate must also have some voice and that too can be ensured if the power of taking corrective measure is vested in the State Government which it can exercise on defects being brought to its notice by, amongst others, the population of the borough. Such corrective measure, of course, would be taken if special circumstances are shown to exist and subject to the limitations imposed. Having regard to these considerations, in our opinion, the construction which we are inclined to place upon Section 7 is preferable than that which has been suggested alternatively by the State Government and respondents Nos. 5 to 8.

43. We are also supported in the view which we are taking by the provisions contained in this behalf in the Gujarat Panchayats Act, 1961, which is a statute in pari materia dealing with the local governments at panchayat level. Be it noted that the said statute was enacted earlier in point of time than the Act under consideration. Section 20 of the said Act deals with electoral divisions. The whole of this section was substituted for the original in 1973. Prior to its substitution, Sub-sections (1), (2) and (5) of the said section read as under:

(1) For the purposes of elections of members to a gram panchayat and a nagar panchayat, each gram and nagar shall be divided into wards. The number of wards and the number of members to be elected from each ward shall be such as the competent authority may determine.

(2) At any time before the date for entertaining the nominations of candidates for a general election of a gram or nagar panchayat is notified, it shall be lawful for the competent authority to alter for reasons to be recorded in writing the limits of any ward or as the case may be, the number of members to be elected from any ward determined by it in Sub-section (1)

(5) An electoral division in respect of a panchayat determined under the foregoing provisions of this section for the purposes of the general election shall continue until the expiry of the term of panchayat.

It would be noticed that Sub-sections (1) and (2) of Section 20 are substantially similar to Sub-section (1) and (2) of Section 7 of the Act under consideration. Sub-section (5), however, of the said section is not expressly enacted in Section 7 of the Act under consideration. However, the construction which we have placed upon Sub-sections (1) and (2) of Section 7 brings it in line with the scheme of Section 20 of the other Act. As earlier stated, Section 20 was substituted for the original in 1973. We have now four different sub-sections dealing with electoral divisions for the purpose of election to gram, nagar, taluka and district panchayats. They are Sub-sections (1) to (4). They are, for the purposes of the controversy under consideration, broadly speaking similarly worded to Sub-section (1) of Section 20 (repealed) and Sub-section (1) of Section 7 of the Act under consideration. Sub-section (2) of Section 20 (repealed) has been re-enacted as Sub-section (5) with some change with regard to the competent authority who can alter the limits of any ward. Broadly speaking, for the purposes of the controversy under consideration, it can be said that Sub-section (5) of Section 20, as it now stands, is analogous to Sub-section (2) of Section 7 under consideration. Sub-section (5) of Section 20 (repealed) has become Sub-section (7) of Section 20 with some marginal changes. It would thus appear that even the substituted Section 20 of the other Act still retains the same scheme and that, therefore, the interpretation which we have placed upon Sub-sections (1) and (2) of Section 7 and the requirement which we have read into these two sub-sections by the process of construction are those which are to be expressly found enacted in Section 20 even after its substitution. The construction which we have adopted, therefore, brings the statute under consideration in line with the statute in pari materia, so far as the election process is concerned. Such a construction should normally be preferred, since it would place the entire electorate of local bodies governed by two different statutes and covering substantially a large portion of the State, in identical position.

44. It was strenuously contended on behalf of the concerned respondents that we would not be justified in reading into Sub-sections (1) and (2) of Section 7

something which the Legislature has expressly provided in the other statute and omitted to provide in Sub-sections (1) and (2) of Section 7, all the more so, when the Act under consideration was enacted after the other statute was enacted. It was urged that this was an indication that the Legislature wanted to depart from the scheme which it laid down in the other statute while enacting the Act under consideration. We are unable to agree. In the first place, although the Legislature has been brief while enacting Section 7, on a true construction thereof, in the light of the language employed, its object and purpose, the general legislative scheme, and such other factors, it is apparent that there has been no substantial departure from the basic scheme of both the Acts in the matter of the process of election, so far as the aspects under controversy are concerned. It is possible that the Legislature did not enact more elaborately Section 7, on the same line as Section (sic), because it thought that it has conveyed, in a concise form, the same thing which it had expressed in so many words in Section 20. In the next place, change in language is not always indicative of the change in intention. The alteration in language in or by a later statute may be the result of many other factors. For instance, words may be omitted in a later statute when they are mere surplusage. (See *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, Similarly, change in wordings may be because the draftsmen wanted to improve the style. As aptly stated by Lord Uthwatt, no alteration in meaning by alteration in language can result "unless (1) the requirements of the English language demand it, or (2) those requirements permit it and the sense of the section demands it" (See *Lord Howard De Walden v. I.R.C.* (1948) 2 All ER 825 (House of Lords) at page 830). We are conscious of the fact which has been stressed with considerable vehemence on behalf of the concerned respondents that even in the substituted Section 20 of the other statute, the Legislature has made elaborate provision by sticking to its old style and that, therefore, it is possible to urge that the Legislature intended to treat elections under the two different statutes on different basis. We do not think, however, that even that factor could be emphasized beyond a limit or could be made a conclusive consideration. It is possible that the Legislature while re-enacting Section 20 stuck to its basic scheme, lest it might be argued that the re-enacted provision, by departing from the pre-existing scheme, conveyed a definite intention on the part of the Legislature to forgo it.

45. The alternative construction suggested on behalf of the State Government does not appeal to us for the reasons already indicated and they need not be repeated. We will only say that it is not right to say that fresh delimitation of wards and allocation of seats in each ward at every general election will necessarily be an exercise in futility because the official population remains the same. The limits of the wards might have to be changed and seats reallocated therein not only on account of shift or change in population but also for other diverse factors. The fresh delimitation and allocation might be warranted, for instance, if it is found that public convenience demands it or that considerations

of compactness or other geographical or physical factors require it. Even for the purposes of allocating reserved seats for Scheduled Castes or Scheduled Tribes, limits of the wards might have to be changed so that proper representation to those classes could be ensured. As earlier pointed out, a statute in pad materia does, in fact, provide for fresh electoral divisions to be made at every general election to local authorities. If such a process was futile exercise, could the Legislature have provided for it? Nor are we impressed by the argument that this requirement would place an intolerable burden on the State Government. For the purpose of the general election to gram, nagar, taluka and district panchayats, electoral divisions have to be made afresh at each general election. We were told that there are 12000 gram panchayats, 92 nagar panchayats, 182 taluka panchayats and 19 district panchayats in the State of Gujarat. As against this, there are only 52 municipalities in the State. If fresh electoral divisions could be made in case of thousands of panchayats all over the State, each of such electoral division consisting of a single member constituency, it is difficult to see how fresh divisions of wards at every general election of 52 municipalities could place an intolerable burden on the State Government.

46. We are also not impressed by the argument that if the aforesaid view is taken, it might result in a serious crisis, possibly invalidating all elections to municipalities held in the recent past and holding up of the ensuing election not only of the Anand Municipality but also of two other municipalities. In the first place, we are not aware as to how many existing municipalities have been reconstituted recently without the State Government exercising its power under Sub-section (1). We are also act called upon to decide as to whether on the view which we are taking, the municipalities, if already constituted, would come to grief and their elections would be allowed to be challenged and necessarily invalidated after such lapse of time. Even if that result follows, it is open to the State Legislature to adopt a corrective measure. In the next place, considerations of inconvenience and hardship flowing out of the construction of a statute may be relevant but they are not decisive. The House of Lords observed in *Vacher & Sons v. London Society of Compositors* 1913 Appeal Cases 107 at page 130: "The argument a inconvenient is one which requires to be used with great caution." If on a true construction, Sub-section (1) requires the State Government to act thereunder at every general municipal election, there is hardly any reason to depart from such construction to relieve the supposed hardship or inconvenience. The construction which we have placed takes care of the general good of the community and it cannot be allowed to be changed by re-writing its language or putting strained construction thereon on the ground of inconvenience or hardship. In the last place, as to the ensuing elections in three municipal boroughs, the State Government will have an opportunity to act according to the law as interpreted by us by postponing the elections. Even if the terms of those municipalities have expired, the municipal governments would not suffer because the President and Vice President shall continue to carry on the current administrative duties of their office until such time as the new President

and Vice President shall have been elected and shall have taken over charge of their duties, as provided in Sub-section (4) of Section 33.

47. The other alternative construction suggested on behalf of respondents Nos. 5 to 8 has also failed to impress us for similar reasons. It appears to us, in fact, that the construction which the said respondents want us to place upon Sub-section (I) requires addition of many words. The construction, which those respondents have suggested, requires us to read into Sub-section (1) the words "For the purpose of holding the election of councillors after every census" in place "For the purpose of the election of councillors." Such addition of words is neither warranted by the subject or context nor by the object and purpose of the enactment.

48. Considerable stress was placed on behalf of the said respondents on the circumstance that the Legislature has used different words such as "the election," "a general election", "any election" and the like in different sections and different sub-sections appearing under the heading "Election of Councillors" in Chapter II of the Act. It was strenuously contended that the legitimate presumption, therefore, was that each word was used to convey a different meaning and that, therefore, the words "the election" cannot be read interchangeably with the words "a general election", more so when in the same section, two different words are used in two different sub-sections. The argument, in terms, was that when Sub-section (1) of Section 7 uses the words "For the purpose of the election of councillors", it should be understood in a different sense than that conveyed by the words "at any time before the date for entertaining the nominations of candidates for a general election is notified" used in Sub-section (2). Our attention in this connection was also invited to Sections 8, 10, 12, 13 and 14 where the Legislature has variously used the words "the election" "a general election" and "any election". We do not think that this circumstance upon which so much stress has been placed on behalf of respondents Nos. 5 to 11 can be allowed to overplay its effect. It is true that when in relation to the same subject matter different words are used in the same statute, there is a presumption that they are not used in the same sense. However, it is well-settled that much weight to the presumption arising out of the use of different words in different parts of a statute cannot be given. For instance, when dealing with a long, complicated statute containing incongruous provisions lumped together, it has been found that this rule does not operate (See *I.R.C. v. Hinchy* (1950) 1 All ER 505). Apart from this, it has been held that even otherwise the rule is subordinate to context since a less careful draftsman may use different words to convey the same meaning (See *Remands Vithaldas v. Amerchand & Co.* ILR 40 Bombay 630). The presumption upon which reliance has been placed acknowledges the virtue of an orderly and consistent use of language, which is not always the case in modern statutes which are hastily drafted and, more often than not, amended from stage to stage before their final enactment. In any case, this factor is only one element in deciding what the true import of an enactment is. In order to ascertain the true meaning, regard will have to be had to the

purpose behind the particular provision and its setting in the scheme of the statute. A construction deriving support from differing phraseology in different sections of a statute can certainly be negated on consideration that it will not lead to rational result or attainment of the object of the statute.

In our opinion, therefore, the construction which we have placed upon the two sub-sections of Section 7 is the only reasonable and proper construction, bearing in mind all the relevant factors, and the two alternative constructions suggested on behalf of the State Government and respondents Nos. 5 to 8 must be rejected.

49. Once this view is taken, there is no escape from the conclusion that the petitioners must succeed in the present petition on the second ground of their challenge. It is an admitted position that for the purposes of the ensuing election to the Anand Municipality, the State Government has not made any fresh order under Sub-section (1) delimiting the wards and determining the number of wards and the number of members to be elected from each ward. Even no alteration has been made in exercise of the power conferred by Sub-section (2) of Section 7. The State Government has proceeded on the footing that the order made by it at the time of the previous general election to the municipality held in 1972 under Sub-section (2) of Section 7 continued to remain in force even for the purposes of the ensuing general election. Apart from the fact that even the said earlier order was made under Sub-section (2) of Section 7, the fact of the matter is that for the purposes of the ensuing election, the State Government has not made any order under Sub-section (1) of Section 7 which it was bound to do, having regard to the state of law. There being noncompliance in that manner with the mandatory provision of law dealing with a vital step of the election process at its very initial stage, the entire election process is vitiated and the subsequent steps in the said process taken by the first respondent would have no effect in the eye of law.

50. In the result, the Writ Petition succeeds and is allowed. The notice dated November 16, 1977, (Annexure "A"), issued by the first respondent notifying the various stages of election is quashed and set aside. All the steps so far taken under the impugned notice are also quashed and set aside. The first and second respondents are prohibited from proceeding with the election of councillors of the municipality of the Anand Municipal Borough until the fourth respondent has, by an order made under Sub-section (1) of Section 7, duly determined the number of wards and the number of members to be elected from each ward. There will be no order as to the costs of the petition in the circumstance of the case.