

(1994) 09 GUJ CK 0025
In the Gujarat High Court

Rasikchandra Devshanker Acharya and Others	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 29-09-1994

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 1, 17(1), 2, 2(1), 2(a)
Constitution of India, 1950 — Article 132(1), 133(1)(a), 134 A, 14, 172
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17
Insurance Act, 1938 — Section 2, 2D, 33

Citation : (1995) 1 GLR 36

Hon'ble Judges : B.N. Kirpal, C.J.; R.K. Abichandani, J

Bench : Division Bench

Judgement

B.N. Kirpal, C.J.—Proclaiming their commitment to the upholding of the democratic principles and institutions in this country some public spirited citizens have filed writ petitions, which are, inter alia, being disposed of by this common judgment, challenging the validity of the Gujarat Local Authorities (Temporary Postponement of Elections) Act, 1994 (hereinafter referred to as "the Impugned Act") whereby elections which are or will become due of the Panchayats, Municipalities and the Corporations are sought to be postponed till after 4th January, 1995.

2. In the State of Gujarat, there are three types of local authorities in existence viz., Panchayats in the rural areas and Municipalities and Municipal Corporations in the urban areas. The Panchayats were originally governed by the provisions of the Gujarat Panchayats Act, 1961 but the said Act has now been replaced by the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Panchayats Act"). The Municipalities are governed by the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Municipalities Act"), whereas the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the BPMC Act") deals with the Corporations. It is not in dispute that there are only six Municipal Corporations in existence, viz., Surat, Baroda, Ahmedabad, Rajkot, Jamnagar and Bhavnagar while the number of Municipalities which have been

constituted are 62.

3. Under the provisions of the aforesaid Acts, election are required to be held regularly. The duration of each Panchayat, Municipality and Corporation is of five years and before the completion of the term, fresh election are required to be held. Without amending any provision in any of these three Acts, relating to holding of the elections, the impugned Act has been passed whereby the election process, including the preparation of the electoral rolls, has been postponed till after 4-1-1995. The petitioners contend that this Act is ultra vires the Constitution.

4. In order to appreciate the contentions regarding the validity of the impugned Act, it is necessary to have a synopsis of the events leading to the enactment of the impugned Act. Though the provisions of the three local Acts are in pari materia for the sake of convenience we may refer to the events and the respective provisions of the Acts separately.

Re: Corporations under the BPMC Act:

There are six Corporations constituted under the BPMC Act. According to Section 5 of the BPMC Act, every Corporation is a body corporate and has perpetual succession and a common seal. It is to consist of a number of Councillors who are elected at ward elections. According to Section 6(1) of the BPMC Act the normal term of office of the Councillors is of five years. In respect of four Municipal Corporations for the Cities of Ahmedabad, Baroda, Surat and Rajkot their terms expired on different dates between 6th and 12th February, 1992 while in the case of Bhavnagar Corporation its term expired on 14th June, 1992.

The State Government did not hold any election prior to the expiry of the terms of the said Corporations. It appointed Administrators u/s 7A of the BPMC Act to manage the affairs of the Corporation till the next election of the Councillors is held. These Administrators are continuing till today.

Not holding of the elections to the Corporations has given rise to litigation and passing of different enactments. The relevant particulars of the same are as follows:

(i) Special Civil Application No. 583 of 1992 was filed challenging the provisions Section 6(3) and Section 7A of the BPMC Act and a direction was sought for the holding of elections to the Municipal Corporation of Ahmedabad.

(ii) Vide judgment dated 20-2-1992, reported as *Abdulgani Abdulbhai Kureshi and Anr. v. State of Gujarat* and Anr. XXXIII(1) : 1992 (1) GLR 503 the aforesaid Special Civil Application was allowed and the State of Gujarat was directed to hold general ward elections in respect of Ahmedabad, Baroda, Surat and Rajkot Corporations on the basis of 1981 Census figures. Directions were also issued for preparation of the electoral rolls and completion of the election before December, 1992. The High Court further directed that in the meantime, the outgoing Councillors were to act as full-fledged councillors and the State Government was

restrained from resorting to Section 7A for appointing Administrators to the Corporations during the said period.

(iii) Aforesaid judgment was challenged and on 30th November, 1992, the Supreme Court dismissed the application for stay of the judgment. After the dismissal of the stay application, the Municipal Commissioner issued notification for holding elections on 27th of December, 1992.

(iv) On 6th December, 1992 the incident at Ayodhya occurred and on 10th December, 1992 the four Municipal Commissioners gave public notice informing the inhabitants of the cities about putting off of the polls by two months on account of alleged law and order situation. A notice was served by the petitioners in Special Civil Application No. 583 of 1992 to the effect that postponement of election would mean contempt of the Court's directions. Thereupon, an application was filed on 17-12-1992 by the Municipal Commissioners before the Supreme Court for extending the time to hold the elections. The Supreme Court did not accede to the prayer for postponement, but rescheduled the election programme and directed the fixing of the poll on 24th of January, 1993.

(v) After the order was passed by the Supreme Court, a Bill known as "Gujarat Local Authorities (Temporary Postponement of Elections and Extension of Term) Bill, 1993" was introduced in the Gujarat Assembly on 30th of December, 1992 and the same was passed and it became Act I of 1993 on 6th of January, 1993. By virtue of Section 3 of said Act, elections were put off till 31st of December, 1993 and the existing Corporations were to continue till then.

(vi) In December, 1992, the Constitution (Seventy-Third Amendment) Bill and Constitution (Seventy-Fourth Amendment) Bill were passed by the Lok Sabha and Rajya Sabha. After they received their assent from the President, the Seventy-Third Amendment came into force with effect from 24th of April, 1993 and the Seventy-Fourth Amendment came into effect from 1-6-1993. By the said amendments, Part IX and Part IXA were inserted in the Constitution dealing with the constitution of Panchayats and Municipalities respectively.

(vii) In the meantime, Section 3(a) of the aforesaid Act I of 1993 was challenged in Special Civil Application No. 3236 of 1993. During the course of hearing Notification dated 13th of July, 1993 was issued by the State of Gujarat fixing the date of poll for the Corporation on 24th September, 1993. Vide judgment dated 19th of July, 1993, in the case of P.N. Barot v. State of Gujarat, reported in XXXIV(2) : 1993 (2) GLR 1569, the said Notification was set aside and the State was directed to hold the elections on 12th of September, 1993.

(viii) On 17th of August, 1993, Act 16 of 1993, called "The Bombay Provincial Municipal Corporations (Gujarat Second Amendment) Act, 1993", was passed. By virtue of the said Act, a number of amendments were carried out in the BMC Act, 1949 so as to give effect to and bring the said Act in conformity with the provisions of Part IX-A of the Constitution.

(ix) Validity of various sections of the aforesaid Act 16 of 1993 was challenged in a writ petition, being Special Civil Application No. 8204 of 1993. Vide judgment dated 18th/19th/20th October, 1993, a Division Bench of this Court dismissed the said petition. As a result of the amended BPMC Act, the elections were due to be held under the statutory mandate, on or before 16th of August, 1994.

(x) Special Civil Application No. 13010 of 1993 was filed for a direction for holding of elections to the Municipal Corporations of Ahmedabad, Baroda, Rajkot and Surat. On 22nd June, 1994 a statement was made in the Court on behalf of the State Election Commission that he shall hold election for the Ahmedabad Municipal Corporation on or before 16th of August, 1994. On the statement being made, the petition was disposed of as withdrawn.

(xi) On 30th June, 1994 a Bill was introduced in the State Assembly which was passed with an overwhelming majority with only two legislators voting against it, and the impugned Act, being Act No. 12 of 1994 was promulgated on 6th of July, 1994.

(xii) On 6th July, 1994, Gujarat Act 11 of 1994 enacted whereby Section 8 of the BPMC Act was amended. As a result of this amendment, the qualification of voters was changed. Whereas previously every person who was a citizen of India and had attained the age of 18 years on the 1st day of January of the year in question and had requisite residence, business premises or taxation Qualification was entitled to be enrolled as a voter of a ward but by virtue of the new Section 8 the list of voters was to be the same as the electoral roll of the Gujarat Legislative Assembly for the time being in force and as revised, modified, updated and published by the State Election Commission. The result of this was that apart from being a citizen of India and having attained the age of 18 years, the voter was to have his residence in the said ward. Persons who had qualified, prior to the amendment, to be voters because of the business premises or taxation qualification were no longer entitled to be on me rolls.

(xiii) The State Election Commission filed Civil Application No. 1588 of 1994 in Special Civil Application No. 13010 of 1993 for getting himself relieved of the statement whereby he had informed the Court that the elections will be held before 16th August, 1994 and in view of the amendment of the Constitution and to the BPMC Act, on 1st of August, 1994, orders were passed relieving the Commission of the aforesaid statement.

From the aforesaid narration of events it is evident that despite orders of the Court and despite an assurance having also been given, no elections till today have been held to any of the 5 Corporations whose elections are due. In fact in respect of Bhavanagar the last election was held in 1987. Elections have been avoided not only by inaction, but by passing Temporary Postponement Acts on two occasions, 1993 and now in 1994.

5. Re: Municipalities. Elections to the 62 Municipalities in Gujarat are to be held in accordance with the provisions of the Gujarat Municipalities Act, 1963. Term of

office of the elected bodies is for five years. Out of 62 Municipalities, the term of 53 Municipalities has expired and Administrators have been appointed though elections are due. Election to the Municipalities could not be held because on 6th January, 1993 the Gujarat Local Authorities (Postponement of Election and Extension of Term) Act, 1993 was passed. On 17th August, 1993, the Gujarat Municipalities (Amendment) Act, 1993 was passed for amending the principal Act in order to bring it in line with the Seventy-Fourth Constitutional Amendment. Now as a result of the impugned Act, the elections to the Municipalities have again been postponed.

6. Re: Panchayats. Elections to the various Panchayats in the State were last held in 1988 and 1989. The five year term of each Panchayat u/s 17(1) of the 1961 Act commenced when the first meetings were held after elections. The normal five-year period of some of the Panchayats expired on various dates between November, 1993 and March, 1994. As a result of Act No. 1 of 1993 terms of all Panchayats expiring between 17-1-1993 and 31-10-1993 were extended to 31-10-1993. On 17-8-1993 the State Legislature passed Act No. 16 of 1993 for amending BMC Act and Act No. 17 of 1993 for amending the Municipalities Act. These Acts 16 and 17 of 1993 came into force immediately. The third Act which was passed on the same date was the Gujarat Panchayats Act, 1993. For reasons best known to the Government only Section 1 of the new Act was brought into force. The rest of the provisions, for practical purposes, the whole Act, was brought into force vide notification dated 15-4-1994. In the meantime, a writ petition, being Special Civil Application No. 11374 of 1993 was filed by Sutrapada Gram Panchayat in this Court for a direction to hold election within the normal period of 5 years and the decision to appoint Administrator was also challenged. This petition was dismissed by a single Judge and Letters Patent Appeal No. 4567 of 1993 was filed. In this appeal the Government made a statement that it will not appoint an Administrator before the expiry of the normal period of 5 year-term and as regards the prayer for extension of the term of the Panchayat, the Division Bench permitted a fresh petition being filed to agitate that question. On 24-11-1993, Special Civil Application No. 13253 of 1993 was filed by Sutrapada Gram Panchayat seeking extension of term. Other similar writ petitions by various Gram Panchayats were also filed and all of them were dismissed by the single Judge on 25-7-1994. Letters Patent Appeals have been filed and they are also being disposed of by this Judgment.

7. Before referring to the impugned Act, it would be appropriate to refer to the provisions of Part IX and Part IX-A of the Constitution, which were inserted as a result of Seventy-Third and Seventy-Fourth Amendments of the Constitution, for the reason that the main thrust of the arguments of the Counsels on behalf of the petitioners have been that the impugned Act is in violation of the various Articles in the said two Parts.

8. The Constitution Amendment Bills were first moved in 1991 in Parliament on 10th September, 1991, with regard to the Panchayati Raj Institutions and on

11th September, 1991 with regard to Urban Local Bodies.

9. In the Statement of Objects and Reasons of the Constitution Amendment Bill regarding the Panchayati Raj Institutions, it was stated that in the light of the experience in the last forty years and in view of the shortcomings which had been observed:

...it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them....

The main features of the Amendment Bill were mentioned which, inter alia, provided for constitution of the Panchayats at the village and intermediate levels, the duration of the Panchayat and the reservation of seats, etc.

10. In the Statement of Objects and Reasons in the Constitutional Amendment Bill relating to urban local bodies it was, inter alia, stated that:

In many States local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.

2. Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

(a) the functions and taxation powers; and

(b) arrangements for revenue sharing; (ii) ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

11. The aforesaid two Bills were then referred to the Joint Committee of two Houses of Parliament in December, 1991. On receipt of the report of the Joint Committee, the Constitution Amendment Bill, as reiterated by the Joint Committee, was again moved in the Lok Sabha by the then Minister of State in the Ministry of Rural Development. While introducing the Bill, the Honourable Minister referred to effort being made by some States for providing wide-ranging delegation of powers and authority down to the District and Intermediate level. But it was noted that in the case of most of the States the record as far as Panchayati Raj Institutions were concerned was not very good.

12. A similar statement was made by the Honourable Minister for Urban Development while moving the Constitutional Amendment Bill relating to the urban local bodies. It was, inter alia, stated by the Minister in his speech:

...Having regard to the present inadequacies and with a view to restore the rightful place in political governance for urban local bodies, it is considered necessary that they should be provided a Constitutional status and necessary provisions made to - (a) ensure regular and fair conduct of elections; (b) ensure term of five years for elected urban local bodies and election within six months, in cases of supersession; (c) provide for specific representation for women and the Scheduled Castes and Tribes; (d) provide for devolution of functions and powers to municipalities; and (e) provide for constitution of State Finance Commission every five years to ensure regular devolution of resources to local bodies.

The Constitution Amendment Bill which is before you for your consideration constitutes but the first stage of a process. Once these Bills are enacted, we must carry this process forward by ensuring appropriate amendments to State legislations and thereafter ensuring effective executive implementation

The said Amendment Bills were passed by both the Houses of Parliament and the Seventy-Third Amendment came into force from 24th April, 1993 while Seventy-Fourth Amendment came into force from 1st June, 1993.

13. By Seventy-Third Amendment, Part IX of the Constitution was inserted relating to Panchayats. The Articles so inserted are Article 243 to Article 243-O. Article 243 relates to definitions; Article 243-A related to Gram Sabha; Article 243-B relates to constitution of Panchayats; Article 243-C provides for composition of Panchayats; Article 243-D relates to reservation of seats; Article 243-E relates to duration of Panchayats; Article 243-F provides for disqualifications for membership; Article 243-G relates to powers, authority and responsibilities of Panchayats; Article 243-H refers to the powers to impose taxes by, and Funds of, the Panchayats; Article 243-1 provides for constitution of Finance Commission to review financial position; Article 243-J relates to Audit of accounts of Panchayats; Article 243-K relates to Elections of the Panchayats; Article 243-L relates to application of Part IX to Union Territories; Article 243-M enumerates the area to which Part IX is not to apply; Article 243-N provides for continuation of existing laws and Panchayats; and Article 243-O provides for bar to interference by Courts in an electoral matters.

14. The provisions in Part IX-A of the Constitution, relating to the Municipalities, are similar, if not identical, to the provisions of Part IX. Article 243-P contains definitions; Article 243-Q relates to constitution of Municipalities; Article 243-R provides for composition of Municipalities; Article 243-S provides for constitution and composition of Wards Committees, etc.; Article 243-T provides for reservation of seats; Article 243-U states the duration of Municipalities, etc.; Article 243-V provides for disqualification for membership; Article 243-W relates to powers, authority and responsibilities of Municipalities, etc.; Article 243-X provides for power to impose taxes by, and funds of, the Municipalities; Article 243-Y relates to the Finance Commission; Article 243-Z provides for audit of accounts of Municipalities; Article 243-ZA relates to election to the Municipalities;

Article 243-ZB provides for application of Part IX-A to Union Territories; Article 243-ZC mentions the areas to which Part IX-A is not to apply; Article 243-ZD provides for Committee for district planning; Article 243-ZE provides for Committee for Metropolitan planning; Article 243-ZF relates to continuation of existing laws and Municipalities; and Article 243-ZG contains a bar to interference by Courts in electoral matter.

15. Briefly stated, the said Parts IX and IX-A which provide for composition, duration, disqualification for membership, election, power of Parliament to make provision with respect to election and bar of interference by Court in an electoral matter are on the lines similar to the Article relating to the Houses of Parliament and the State Legislative Assembly. As a result of the aforesaid provisions, democratic institutions are intended to exist at all levels in the country right from the village to the Parliament.

16. According to the parties elections to the local bodies, whose terms of office had already expired, were required to be held on or before 16th of August, 1994. In fact, as late as 22nd of June, 1994, a statement was made on behalf of the State Election Commission in Court in Special Civil Application No. 13010 of 1993 that the election would be held on or before 16th of August, 1994.

17. The impugned Act was passed providing for "temporary postponement of elections of local authorities" and received the assent of the Governor on 6th July, 1994 and was published on the same day. The Act was passed nearly unanimously, in as much as members of the two main parties in the State Legislative Assembly, viz., the Congress Party as well as the B.J.P. voted in favour of the Bill and the said Bill was opposed by only two members.

18. In the Preamble of the Bill, containing the reasons for postponement, it is stated as under:

...WHEREAS in the wake of widespread rain in the State of Gujarat, it is difficult to hold election of local authorities during the monsoon season;

AND WHEREAS the Election Commission of India has decided and directed to revise the electoral rolls intensively of all the constituencies of the State of Gujarat with reference to 1st January, 1995 as the qualifying date and also fixed the 4th January, 1995 as the date for final publication of electoral rolls;

AND WHEREAS electoral rolls for Assembly constituencies would be the list of voters for the purpose of election of local authorities;

AND WHEREAS it is likely that large section of public would be covered by intensive revision of electoral rolls; and they may not be deprived of their right of franchise in the ensuing elections of local authorities;

AND WHEREAS for the reasons stated above, it is considered necessary to provide for temporary postponement of the elections of local authorities and to provide for other connected matters....

The said Act consists of five sections and the only two sections which are relevant are Section 2 and Section 3 which read as follows:

2. In this Act, unless the context otherwise requires-

election, means and includes entire election process commencing from the preparation of list of voters and all stages culminating into election of a councillor or, as the case may be, a member of the local authority and it is always deemed to have meant and included entire election process;

(b) "local authority" means a panchayat, a municipality and a Municipal Corporation constituted under the relevant Act;

(c) "relevant Act", in relation to,-

(i) a panchayat, means the Gujarat Panchayats Act, 1993,

(ii) a municipality, means the Gujarat Municipalities Act, 1963,

(iii) a Corporation, means the Bombay Provincial Municipal Corporations Act, 1949.

3. Notwithstanding anything contained in the relevant Act or the rules or bye-laws or order made thereunder or in any judgment, decree or order of any Court or authority, during the period from the date of commencement of this Act and upto and inclusive of the 4th January, 1995, no general election of the councillors of any Corporation or of any municipality or of members of any panchayat and no election to fill up any casual vacancy of any such councillor or member shall be held; and the election shall be started thereafter of such local authority of which duration has already expired before the commencement of this Act or is due to expire before 1st May, 1995 or formed for such area which are declared as transitional or smaller urban area and shall be completed before the 1st May, 1995 in accordance with the provisions of the relevant Act and the rules made thereunder.

19. Section 2(a) gives a special meaning to the word "election". According to the definition in the impugned Act, the word "election" is to include the entire election process commencing from the preparation of the list of voters and culminating with the election of a councillor or a member of the local authority. De hors this Act, the Supreme Court has in a number of cases Starting with N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, held that the word "election" means the entire process of election starting from the issuance of the notification by the President for holding an election. The preparation of the electoral rolls, under the Representation of the People Act, 1950, is not a part of the election process. In the present case, however, the ambit of the word "election" has been enlarged so as to include the preparation of the list of voters as well. Therefore, when Section 3 directs that no general election to the Corporation or the Municipality is to be held till 4th of January, 1995 and that the election shall be started after that date, the effect of this is

that not only the actual polling but even the preparation of the electoral rolls stand postponed till after 4th January, 1995. In other words, the entire election process commencing from the preparation of the list of voters and all stages culminating into election of a councillor or a member of the local authority can commence only after 4th January, 1995 and is required to be completed before the 1st May, 1995.

20. On behalf of the petitioners, four main contentions have been urged for challenging the validity of the impugned Act. It was submitted that the impugned Act is ultra vires Part IX and Part IX-A of the Constitution. The second submission was that the impugned Act is, in particular, in conflict with the provisions of Article 243-K and Article 243-ZA which deal with the superintendence, direction and control of the preparation of the electoral rolls and the conduct of election to the Panchayats and the Municipalities by the State Election Commission. The third submission was that the impugned Act is arbitrary and is violative of the provisions of Article 14 of the Constitution. It was lastly submitted that the enactment of the impugned Act has resulted in the violation of the provisions of Article 21 of the Constitution in as much as the right to vote is a fundamental right which can be culled out from the interaction of Article 14, Article 19(I)(a) and Article 21 of the Constitution.

21. On behalf of the respondents, it was contended that Part IX and Part IX-A of the Constitution do not prescribe any time frame for the elections to the existing local bodies and that the only time frame which is prescribed is for passing an Act in conformity with the said provisions. It was further submitted that the State Legislature could make a law regarding the date, timing of an election or prohibiting election during a particular period and such law cannot be challenged and the State Election Commission has only to conduct the election in accordance with law. While submitting that an Act of State Legislature cannot be struck down on the ground of its being arbitrary, it was submitted that in actual fact, the impugned Act was neither arbitrary nor violative of Article 14 of the Constitution. It was also contended that right to vote is not a fundamental right and, therefore, the submissions based on Article 21 of the Constitution were not valid.

22. As the provisions of Part IX and Part IX-A of the Constitution are in pari materia for the sake of convenience, while considering the contentions raised by the learned Counsels for the parties, reference will be made to the provisions of Part IX-A of the Constitution dealing with the Municipalities.

23. The provisions of Part IX-A, as well as Part IX, of the Constitution were enacted so that local authorities could be placed on permanent Constitutional basis. The said provisions ensure that these bodies are to consist of persons elected by people directly and representation to all sections of the people, with special reference to Scheduled Castes, Scheduled Tribes and women has been provided by the said provisions. These local bodies are meant to be the agencies for socio-economic development at the grassroot levels. There is a clear

provision that these local bodies will have a fixed duration of five years (Article 243-E and Article 243-U), will have regular elections before the expiry of the term (Article 243-E and Article 243-U(3)), and an independent election authority, viz., the State Election Commission, was to be the person who had the superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections. Another important provision in these Parts of the Constitution is to put the local authorities on sound financial basis.

24. The Articles contained in Part IX and Part IX-A of the Constitution represent the aforesaid scheme and they must be considered in its totality. The first question which arises is whether the impugned Act fits into this scheme. Before answering this question, it would be proper to bear in mind the following observations of Bradley, J., in *Boyd, v. United States* (1884) 116 US 616, at page 635:

...Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of Courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon....

The aforesaid observations were approved by the Supreme Court in *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . In that case, the Supreme Court was examining the Constitutional validity of the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance, 1950 which was challenged on the ground that it offended the provisions of Articles 14, 19 and 31(2) of the Constitution. In relation to this, it was observed by the Supreme Court at page 123 as follows:

...In order to decide these issues it is necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done; the Court, when such questions arise, is not over-persuaded by the mere appearance of the legislation. In relation to constitutional prohibitions binding a legislature it is clear that the legislature cannot disobey the prohibitions merely by employing indirect method of achieving exactly the same result. Therefore, in all such cases the Court has to look behind the names, forms and appearances to discover the true character and nature of the legislation....

Keeping the aforesaid observations in mind, on examining the provisions of the impugned Act, it appears that there is a clear attempt to have a stealthy encroachment on the provisions of Part IX and IX-A of the Constitution.

25. Being conscious of the fact that it cannot expressly disobey the Constitutional provisions, the Legislature, in the present case, has employed an indirect method

of achieving exactly the same result. Whereas the provisions of Parts IX and IX-A were incorporated in the Constitution so as to put Local Authorities on a firmer footing and to ensure regular and timely conduct of elections and also to provide for representation to the weaker sections of society, the impugned Act seeks to nullify, at present partially, the same. Article 243-B and Article 243-Q clearly state that there shall be constituted Panchayats and Municipalities. This is clearly a mandate of the Seventy-third and Seventy-fourth Amendments of the Constitution. But, instead of constituting the said local bodies by holding elections in the manner contemplated by the said Part, what the impugned Act does is just the opposite. The very basis or the direction to constitute the local body is sought to be frustrated by postponing the elections.

26. It was represented that this is only a temporary measure. It is not unknown that such temporary measures have a nasty habit of becoming permanent. The track record of the Government has been such that whenever there has been a requirement to hold elections to the local bodies in the last about 5 years, then for one reason or another, whether by administrative act or by passing a law, the elections have been postponed. Only a year earlier a similar law, being Act 1 of 1993, for postponing such elections had been passed. The impugned Act is the second similar attempt being made, within one year, to postpone the elections once again. Postponing the elections, when due, has the effect of preventing the elections being held at the proper time. Article 243-B and Article 243-Q state that local bodies should be constituted, but the impugned Act has the effect of preventing the early constitution of the same.

27. Even if the said Part IX and Part IX-A of the Constitution do not contain a time limit within which the elections are to be held for constituting the local bodies under the said provisions, as has been contended by the learned Counsel for the respondents, even then a statute expressly enacted to prevent the holding of elections is clearly contrary to the mandate contained in Article 243-B and Article 243-Q. If the State Legislature has the power to postpone the holding of the elections by a few months, as has been contended by the Counsel for the respondents, then it must follow that it would have power to postpone the elections for a few years as well or that such power can be exercised repeatedly, as is in fact done. Surely, the provisions of Part IX and Part IX-A of the Constitution cannot be frustrated by resorting to the subterfuge of postponing the elections.

28. The matter may be looked from another angle. Article 243-N and Article 243-ZF state that any law relating to a local body enforced before the amendment of the Constitution which is inconsistent shall stand automatically repealed after one year, if it is not amended within that time. If an inconsistent law cannot continue for a period of one year after the coming into force of the Seventy-third and Seventy-fourth Amendments, surely a new law, which is inconsistent with the provisions of the said Parts, cannot be enacted after the period of one year has elapsed. The impugned Act which states that elections to the local bodies

shall not be held when due is clearly inconsistent with the letter and spirit of Part IX and Part IX-A of the Constitution even though the Act has been given the garb of merely postponing the elections.

29. Shri Ramaswamy contended that the provisions of Part IX-A do not apply to the existing Municipalities and, therefore, there is no time limit which is prescribed for holding the first election after the amendment to the Constitution. In support of this argument, it was submitted that the word "Municipality" has been defined in Article 243-P(e) to mean an institution of self-Government constituted under Article 243-Q. The said Article 243-Q states that there shall be constituted in every State a Nagar Panchayat, a Municipal Council or a Municipal Corporation "in accordance with the provisions of this Part". The composition of the Municipalities is provided for by Article 243-R. The learned Counsel submitted that the existing Municipalities are not constituted in accordance with Part IX-A of the Constitution and Article 243-U which pertains to the duration of the Municipalities and provides for the holding of an election before the expiry of the duration would refer to only those Municipalities which were constituted after the Seventy-fourth Amendment to the Constitution.

30. The contention of the learned Counsel would seem to indicate that the Parliament was oblivious of the existence of the existing Municipalities. This is clearly not so. In order to bring out the true import and effect it become necessary, at times, to read different sections of the statute or Article of the Constitution together. While interpreting Article 243-P and Article 243-Q the provisions of Article 243-ZF cannot be overlooked. None of the Articles in Part IX-A states that the existing Municipalities or local bodies, which are in existence, shall cease. Article 243-ZF recognises existing laws relating to Municipalities which may be in force in the States. The said laws are not repealed. What Article 243-ZF provides is that to the extent the said laws are inconsistent with the provisions of Part IX-A they shall continue to be in force until they are amended or repealed or until the expiration of one year from the commencement of the Seventy-fourth Amendment. If there is no inconsistency between the existing laws and any of the provisions of Part IX-A then, it would follow, that the said laws would continue to remain in force. It is only the inconsistent provisions which shall stand deleted after the prescribed period. The rest of the provisions of the law relating in Municipalities, to the extent that they are not inconsistent would continue. The proviso to Article 243-ZF expressly provides for the continuation of the Municipalities whose duration has not expired under the existing laws.

31. Reading Article 243-Q together with Article 243-ZF it would follow that if there is no existing law or a Municipality in an urban area, then the same has to be constituted. If the Municipality exists then the same shall continue until the duration of its term under the existing law, unless the same is dissolved by a Resolution to that effect passed by the Legislative Assembly and in the meantime the State Legislature would be required to amend the law to bring it in line with

the provisions of Part IX-A of the Constitution and thereafter, on the expiry of the term of the existing Municipality, fresh elections will be held and the composition shall be in the manner provided by Part IX-A of the Constitution.

32. If the contention of Shri Ramaswamy, viz., that Part IX-A does not apply to the Municipalities, is accepted, the effect would be that no other Article of the said Part IX-A would also apply notwithstanding the fact that the existing Municipalities are required to complete the duration of their term. Article 243-ZA requires that the superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections shall vest in the State Election Commission. Any provision in the existing law which may be contrary to this would come to an end one year after the coming into force of the Seventy-fourth Amendment. If a vacancy arises, after one year but during the duration of the existing Municipality, then which is the Authority which can hold a by-election for filling up the vacancy? If the contention of Shri Ramaswamy is correct and Part IX-A was not to apply to the existing Municipalities then such a by-election could not be held. Surely this was not contemplated. The by-election will have to be conducted by the State Election Commission in accordance with the provisions of any law made in conformity with Article 243-ZA of the Constitution. Furthermore, Article 243-X enables the Legislature of the State to authorise the imposition of taxes and to provide for funds of the Municipalities. If the submission of Shri Ramaswamy is accepted then any law so made will not be in respect of the existing Municipalities because, as contended by him, Part IX-A does not apply to existing Municipalities. Similarly, the restricted meaning sought to be assigned to the word "Municipality" would also not empower the Finance Commission to review the financial position of the Municipality as contemplated by Article 243-Y of the Constitution. Nor would the provisions of Article 243-Z relating to audit of accounts of Municipalities be applicable.

33. Article 243 and Article 243-P which contain the definitions, open with the identical words "...In this Part, unless the context otherwise requires...." The implication of this is that depending upon the context, the restricted meaning as contained in the definition need not always be applied. A similar clause came up for interpretation before the Supreme Court in the case of *The Vanguard Fire and General Insurance Co. v. Ms. Fraser and Ross and Anr.* AIR 1980 SC 971. The question arose whether the word "insurer" in Section 2D and Section 33 of the Insurance Act, 1938 included the person who had closed his business. It has been contended that the word "insurer" had been defined to mean a person who had been carrying on the business of insurance and, therefore, a person who had closed his business would not fall within the said definition. While rejecting this argument, the Supreme Court, at page 974, observed as follows:

...But Section 2 begins with the words "In this Act, unless there is anything repugnant in the subject or context" and then come the various definition clauses of which (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition

clauses which created them and it may be that even where the definition is exhaustive in as much as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore, in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the Court has not only to look at the words but also look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances....

34. Again, in *Smt. Pushpa Devi and others Vs. Milkhi Ram (Dead) by his L.Rs.*, , a similar contention came up for consideration while dealing with the definition of the word "tenant" in the East Punjab Urban Rent Restriction Act, 1949. In that case, a person claiming to be a tenant had deposited the arrears of rent on the first date of hearing, in order to avoid eviction, and the question arose whether the benefit of the provision which entitled a tenant not to be evicted because of default in payment of agreed rent if on the first date of hearing the rent is deposited, can be extended to a person who, though may not, admittedly, be a tenant, but may be a person claiming to be a tenant. Dealing with the contention that on literal construction, the word "tenant" as defined in the Act must carry the same meaning as given to it, it was observed by the Supreme Court as follows:

...It is true when a word has been defined in the interpretation clause, *prima facie* that definition governs wherever that word is used in the body of the Statute unless the context requires otherwise. "The context" as pointed out in the book *Cross-Statutory Interpretation* (2nd ed. 43) "is both internal and external". The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involves determining the meaning from ordinary linguistic usage (including any special technical meanings) from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles.

18. The opening sentence in the definition of the section states "unless there is anything repugnant in the subject or context". In view of this qualification, the Court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the Legislature....

35. In N.K. Jain and others Vs. C.K. Shah and others, the appellants had been granted exemption u/s 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as it had already created a Trust for managing the provident fund contribution of its employees. As a result of this, the provisions of the Employees' Provident Fund Scheme, 1952 framed u/s 5 of the Act did not apply. It was alleged that the management had failed to pay the contributions to the Provident Fund Trust and thereby committed various offences punishable under the said Scheme. It had, however, been contended that the penal provisions of the Employees' Provident Fund Scheme, 1952 did not apply because the establishment had been exempted u/s 17 of the Act because the word "Scheme" had been defined in Section 2(1) of the Act to mean "The Employees' Provident Fund Scheme framed u/s 5". The opening words of Section 2 were "...unless the context otherwise requires..." and then was followed by various terms which were defined, including the term "Scheme". It was contended on behalf of the respondents that the word "Scheme" occurring in Section 6 should be given a wider interpretation and it should not be narrowly construed to mean a scheme framed u/s 5 of the Act. After referring to the decisions in Knightsbridge Estate Trust Ltd. v. Byrne, 1940 (2) All ER 401, National Building Construction Corporation Vs. Pritam Singh Gill and Others, , Commissioner of Expenditure Tax, Gujarat, Ahmedabad Vs. Darshan Surendra Parekh, , Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta, , the Supreme Court in N.K. Jain's case observed:

...The above passages throw a flood of light on the scope of the interpretation of those opening words of Section 2 and it is clear that they must be examined in the light of the context, the title, the Preamble and all the other enacting parts of the statute. Due weight ought to be given to the words "unless the context otherwise requires". The subject-matter and the context in which a particular word is used are of great importance and it is axiomatic that the object underlying the Act must always be kept in view in construing the context in which a particular word is used....

Applying the aforesaid principles to the present case the word "Municipality" must mean every Municipality constituted under a law, whether before or after the incorporations of Part IX and Part IX-A of the Constitution. As already observed, the Constitution has been amended in this respect so as to provide for a fixed duration for the local bodies and elections at regular times. Those provisions have been brought into operation with effect from 1st June, 1993. One year period of grace has been given to amend existing laws to bring them in conformity with these provisions. If, therefore, any law allows a local body to continue for a period of more than 5 years that provisions would be regarded as inconsistent and will have to be amended. These amended provisions were meant to apply to every Municipality which was in existence as on 1st of June, 1993. That is clearly evident from the Preamble, Object and the language of the Seventy-third and Seventy-Fourth Amendments.

36. Article 243-U provides for the duration of the Municipalities. According to sub-Article (1) every Municipality shall continue for five years from the date it was first appointed unless it is dissolved under any law for the time being in force. Sub-article (2) states that there shall be no amendment of any law for the time being in force which has the effect of causing the dissolution of the Municipality which is functioning immediately before the amendment till the expiration of its duration specified in Sub-article (1). By making reference to "law for the time being in force" in Sub-article (1) and Sub-article (2) of Article 243-U, it is clear that Article 243-U was intended to apply even to those Municipalities, which were in existence at the time of the Seventy-third and Seventy-fourth Amendments. Sub-article (2) specifically provides that no law shall be amended to effect the dissolution of a Municipality which is functioning immediately before the amendment of the Constitution. If the contention of Shri Ramaswamy is accepted and the word "Municipality" is to mean Municipality constituted after the amendment in the Constitution, then that would be clearly contrary to Sub-article (2) of Article 243-U.

37. If a restricted meaning is to be given to the word "Municipality" and Article 243-U was not to apply to the existing Municipality, then another anomalous situation can arise. Proviso to Article 243-ZF gives the Legislative Assembly of a State the power to dissolve a Municipality before the completion of its term. If Article 243-U (3) does not apply, the result would be that it would not be obligatory, after such dissolution of an existing Municipality, to hold fresh elections. Such interpretation would clearly be contrary to the letter, spirit and intent of Article 243-U. The word "Municipality" in Article 243-U can, under no circumstances, be given the restricted meaning. The only meaning which can be given to the word "Municipality" is that it means a Municipality which is established under any law for the time being in force.

38. The provisions of the impugned Act are clearly in conflict with Article 243-U of the Constitution. Even with regard to Municipalities whose duration has not expired the impugned Act has prohibited the holding of elections. For example, the duration of the Municipality at Anand is due to expire on 22nd of October, 1994. By virtue of Sub-article (3) of Article 243-U, an election to constitute a Municipality has to be completed before 22nd of October, 1994. The impugned Act, however, has prohibited the holding of the election during the term of the Municipality. The impugned Act is, therefore, clearly in conflict with the express provisions of Article 243-U.

39. It was contended on behalf of the respondents that a Division Bench of this Court has already held that the elections can be postponed beyond a period of one year from the date of the Seventy-third and Seventy-fourth Amendments coming into operation. Our attention was invited, in this connection, to the decision in *Shri Gaurangbhai Sutyahmar Pandya v. State of Gujarat and Ors.* in Special Civil Application No. 8204 of 1993 and connected matters, dated 18th, 19th and 20th October, 1993. In that case, a question arose with regard to the

Constitutional validity of Section 6C which was inserted in the Bombay Provincial Municipal Corporations Act, 1949 by Gujarat Act 16 of 1993 with effect from 17th of August, 1993. Section 6B, which was incorporated by the said amendment, provided for constituting a Corporation before the expiry of its duration specified in Section 6(1) or before the expiry of six months from the date of its dissolution. This provision was similar to Article 243-U. Section 6C, however, provided that notwithstanding anything contained in Section 6B where the duration of a Corporation had already expired before the commencement of the amending Act or was due to expire within one year of the said Act, then the election to constitute such Corporation was to be held in accordance with Section 6B and completed within one year from the said date. Sub-section (2) of Section 6C stated that where the duration of the existing Corporation expired after one year from the said date, i.e., after one year from 17th August, 1993, then the election to constitute such a Corporation was to be completed before the expiry of its duration. The submission which was made was that the one year period prescribed by the Seventy-fourth Amendment would end on 1st June, 1994, but as a result of Section 6C, the period would stand extended to 17th August, 1994. In our opinion, the said decision can be of little assistance to the respondents in the present case. Firstly, we are not here concerned with the vires of Section 6C of the BPMC Act. Secondly, it was held in that decision that Section 6C, on its correct interpretation, had not made any provision which could be said to be inconsistent with the relevant provisions of the Constitution. In fact, the Court itself observed that:

...Instead of construing the provision made in Article 243-U(1) as directory only so that, anomalous situation as contended by Mr. Vakil may not arise, we think it correct and more proper to hold Article 243-U (1) is mandatory and the provision for appointment of an Administrator cannot be regarded as inconsistent with the basic features of self-Government....

The said decision reaffirms that Article 243-U is mandatory but, in the facts and circumstances of that case, the Court came to the conclusion that Section 6C did not violate Article 243-U. It is further to be borne in mind that inconsistent laws relating to local bodies could continue upto 31st of May, 1994 by virtue of Article 243-N and Article 243-ZF. Therefore, as on that day Section 6C could be enacted. In other words, Section 6C was introduced in the BPMC Act at the time when inconsistent law could exist. But, in the present case, the impugned Act has been passed after the grace period of one year as provided by Article 243-N and Article 243-ZF has expired on 31st May, 1994. The impugned Act enacted on 6th of July, 1994 is clearly inconsistent with the said provisions of the Constitution.

40. It had been contended that in order to hold that the impugned Act is ultra vires, provisions of Part IX and Part IX-A of the Constitution must apply proprio vigore. It was submitted by Mr. S.B. Vakil that the Articles of Part IX and Part IX-A dealing with the composition and duration of the local bodies do not apply proprio vigore.

41. It is difficult to agree with this submission. Part IX and Part IX-A provide as to what can and what cannot be done. Just as any law which is enacted which denies to any person equality before law or equal protection of laws would be held to be ultra vires Article 14 of the Constitution, similarly a law which is enacted, and is in conflict with the provisions of Part IX and Part IX-A of the Constitution, will also have to be struck down. Just as a law may have to be examined in the light of the provisions of Part III of the Constitution, similarly the impugned statute has to be examined in the light of the provisions of Part IX and Part IX-A of the Constitution. The various Articles of Part IX and Part IX-A and Article 243-E, and Article 243-U in particular, do apply proprio vigore and the impugned Act is clearly in conflict with the said provision. As a result of the impugned Act elections are not to be held within the time prescribed by Article 243-E and Article 243-U and non-elected bodies headed by Administrators appointed by the State Government, instead of elected representatives of the people, will continue to run these Local Authorities. An Act, which leads to such a result, is clearly ultra vires Part IX and Part IX-A of the Constitution.

42. There is also considerable force in the contention of Shri Girish Patel that in so far as the impugned Act postpones the revision of the Electoral Rolls till after 4-1-1995, the same is violative of Article 243-K and Article 243-ZA of the Constitution. According to the said Articles the superintendence, direction and control of the preparation of the electoral rolls is also vested in the State Election Commission. The rolls have to be revised in accordance with law. The law has to provide as to who are entitled to vote and what will be the basis of the electoral rolls. In the instant case, the electoral rolls of the State Assemblies, for the time being in force, as updated and revised by the Election Commission are to be prepared. That is the requirement of the BPMC Act and the Panchayats Act. But the laws do not state as to when preparation of the rolls are to take place. That is the function and responsibility of the Election Commission. It is for him to lay down the programme for revision of rolls. By the impugned Act, this power of the Election Commission has been curtailed. By enlarging the definition of the word "election" to include even the preparation of the electoral rolls and by providing in Section 3 that the election process shall not start until after 4-1-1995 the Election Commission has been prohibited to revise or prepare the rolls before that date even if he wants to do so. In fact, it was contended before us on behalf of the Commission that before 4-1-1995 because of the impugned Act, the State Election Commission cannot take any step towards the conduct of the elections, including the revisions of the electoral rolls. To our mind, this clearly impinges on the Commission's power to prepare the electoral rolls and is violative of Article 243-K and Article 243-ZA.

43. Being the largest democracy in the world, it was paradoxical that there was no Constitutional sanction or protection to the democratic institutions at the grass-root level represented by Panchayats, Municipalities and Municipal Corporations. Whenever any structure is erected the foundations which bear the most weight, have to be the strongest. Democracy is also a basic structure of our

Constitution and for it to survive the democratic institutions at the grass-root level have to be permanent and strongest. Democracy must become a way of life in which the people participate in the constitution and establishment of democratic institutions. Though such institutions have been in existence in most of the States, including Gujarat, they were seldom allowed to become strong or take root. The following passage from the speech of the Minister of State in the Ministry of Rural Development while moving the Seventy-Third Amendment Bill in the Parliament, clearly brings out the state of health of existing Panchayats and the need to give Constitutional protection. It was, inter alia, said by the Minister that:

...However, barring these exceptions, in most other States, the record as far as Panchayati Raj Institutions is concerned, has not been very good. On the other hand, attempts have been made in many of the States to weaken the existing Panchayati Raj Structure by imposing other nominated bodies at the same level. Elections have been irregular and many times unnecessarily delayed or postponed. Elected bodies have been superseded or suspended without adequate justification at the whims and fancies of the Government and Government authorities. Even where these Institutions function, they came to be dominated by economically and socially privileged sections of the rural societies and were utilised to serve the class and sectoral interests of the entrenched vested interests.

It has, therefore, been felt that a Constitutional sanction is as indispensable to democracy at the grass-root level as it is to democracy at the State level or national level. Thus we intend to inscribe in the Constitution certain core elements of grass-root democracy to take them beyond the pale of changing political expediency....

(Emphasis added)

The aforesaid malady exists in Gujarat also. Five out of six Corporations have not had elections when due and are headed by bureaucrate nominated by the Government. By 31-12-1994, nearly 6175 out of total number of 13,363, village Panchayats will have Administrators instead of elected members. Similarly, the term of 53 out of 62 Municipalities has come to an end and instead of holding elections the Government have appointed Administrators. The tract record of the Government and the manner in which both the major parties in the State Legislature have combined to pass the impugned Act does give rise to the strong belief that the elected representatives at the State level, out of fear of the electorate, have so far been successful in preventing any elections being held at the grass-root level. It was precisely this situation which must have been in the mind of the Minister when he stated in the Parliament that "we intend to inscribe in the Constitution certain core elements of grass-root democracy to take them beyond the pale of changing political expediency...." (emphasis added). The prophecy or fear regarding political expediency has come true in the present instance when the arch rivals, the Congress-I and the B.J.P. have joined hands in

the State Legislature and passed the impugned Act. It is in this background, and with a view to preventing such mischief, that Part IX and Part IX-A were incorporated in the Constitution. The impugned Act, however, is clearly an attempt to make these Constitutional provisions "still bom" by postponing the elections and depriving democracy from taking root at the ground level.

44. It will be seen that the provisions of Part IX and Part IX-A do not contemplate any hiatus. The elections are required to be regularly held and the only time that an unelected body can exist is when it is superseded. Even then it is incumbent to hold the elections within six months of the supersessions. Whereas under Article 83 and Article 172 the duration of the Parliament and the State Legislatures can be extended due to the Proclamation of Emergency, in the case of Local Authorities no such contingency is contemplated by Part IX or Part IX-A of the Constitution and election schedule has to adhere to the provisions of Article 243-E and Article 243-U of the Constitution. Therefore, any attempt on the part of the Executive or the State Legislature not to hold elections cannot be permitted. The inescapable conclusion, therefore, is that Section 3 of the impugned Act is ultra vires.

45. It is not necessary to decide the other contentions which have been raised on behalf of the petitioners, viz., that the Act is arbitrary and violative of Article 14 of the Constitution and, secondly, the right to vote is a fundamental right and the Act impinges on the said right. An argument raised was that even though right to vote may not be a fundamental right, nevertheless the right to be governed by a democratic institution is the essence of Article 21. The citizens have a right to political participation and democracy, being one of the basic features of the Constitution, any threat to a democratic authority, as established by the Constitution, may involve the violation of Article 21 of the Constitution. However much attractive the arguments may be, no opinion is expressed on the same.

46. Having come to the conclusion that the impugned Act is ultra vires and is liable to be struck down, the question which arises for consideration is as to what relief can be granted at this stage.

47. Mr. Jayant Patel, appearing in the Letters Patent Appeals filed by the various Panchayats, contends that the terms of the Panchayats should be extended till fresh elections are held and this Court should direct the holding of elections in accordance with law. Counsel for the other petitioners have also prayed that appropriate directions may be issued for early conduct of the elections.

48. As far as giving an extension to the Panchayats, whose term has come to an end, is concerned, no such relief can be granted for the simple reason that apart from Section 17(1) of the Panchayats Act, 1993, even Article 243-K provides that every Panchayat shall continue for five years from the date appointed for its first meeting and no longer. The position was different when this Court in the case of *Abdulgani Abdulbhai Kureshi and Anr. v. State of Gujarat and Anr.* (supra) directed the term of office being extended because the prohibition contained in

Article 243-E and Article 243-U did not exist. A direction to grant an extension to any of the local authorities whose term has expired would be clearly contrary to the said mandatory Constitutional provisions.

49. Directions, however, have to be given with regard to the holding of elections. Before giving such directions, one may first examine the position, in law, with regard to the electoral rolls. The Preamble of the impugned Act has stated that the electoral rolls were going to be revised intensively. It had been contended on behalf of the respondents that the Election Commission of India has directed an intensive revision of the electoral rolls for the State Assemblies as on 1st January, 1994 and the same are to be prepared and finalised by 4th of January, 1995. This was one of the reasons why the elections were to be postponed. It is not in dispute that under all the three Acts, as they now stand, viz., the Panchayats Act, the BPMC Act and the Municipalities Act, the electoral rolls of the Gujarat Assembly prepared under the provisions of the Central Act for the time being in force for such part of the constituency subject to any amendment, deletion or addition is to be the list of voters. Merely because the electoral rolls are likely to be revised cannot mean that the elections cannot be held at this point of time. The Election Commission had revised the rolls with reference to the date of 1st of January, 1994. The Assembly rolls as on that day were taken into consideration and necessary amendments were made. In *Lakshmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.* AIR 1985 SC 1233, it has been contended that unless claims for inclusion of names and objections relating to inclusion of certain names in the electoral rolls were not disposed of, the elections should not be held. This contention was rejected by the Supreme Court by observing that the non-disposal of objections or claims for inclusion of names in the Electoral rolls could not arrest the process of election to the Legislature. The fact that the revision of the electoral rolls, either intensive or summary, was undertaken by the Election Commission did not have the effect of putting the electoral roll last published in cold storage. It was further observed that the revision of electoral rolls was a continuous process which had to go on whether there were elections or no elections. Elections could not be postponed for the reasons that certain claims and objections had still remained to be disposed of.

50. The aforesaid principles laid down by the Supreme Court clearly apply in the present case. Electoral rolls of the State Assembly as on 1st of January, 1994 are available. They have to be updated, amended or revised so as to bring them in conformity with the provisions of the Panchayats Act, 1993, the BPMC Act, and the Municipalities Act. This is an exercise which has to be undertaken by the State Election Commission.

51. In the affidavit-in-reply filed on behalf of the State Election Commission it has been stated that the electoral rolls for the five Corporations had been prepared and published, but the very basis of the preparation of the electoral rolls was changed with the amendment of Gujarat Act 11 of 1994. The original rolls not being valid any more, the Election Commission could not undertake the

exercise of preparing fresh electoral rolls because of the embargo placed by the impugned Act. In this connection, it was also submitted that the State Government had issued a draft Notification dated 5th August, 1994 for framing fresh Rules and till these Rules are finalised and published, the Election Commission cannot undertake the exercise of preparing the fresh Voters' List.

52. The conduct of election is in the hands of the State Election Commission. In the absence of Rules or any other statutory provision, the Commission has plenary powers to give any direction in respect of the conduct of election see *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , *A.C. Jose Vs. Sivan Pillai and Others*, . Merely because the State Government has delayed the preparation of the Rules should be no ground for the State Election Commission to postpone the revision of the Rolls. We have already held that the impugned Act is ultra vires with the result there is no legal impediment in the way of the State Election Commission from undertaking the exercise of revision of rolls. It was submitted by Shri S.N. Shelat, on behalf of the State Election Commission, that on the basis of the existing Assembly rolls as on 1st January, 1994 and after taking into account the amendment made in the BPMC Act, revised rolls can be finalised by 10th January, 1995. With regard to 47 Municipalities, Mr. Shelat submitted that the election could be held at once if the impugned Act was held to be ultra vires. With regard to 5 Municipalities electoral rolls can be finalised within a short time and with regard to 10 Municipalities, the work of delimitation can be done within 15 days and rolls prepared within six weeks thereafter and the election held within 35 days of the preparation of the rolls.

53. With regard to the Panchayats also, the exercise has to be undertaken for delimitation and the revision of the rolls.

54. Before concluding, it may be noticed that a contention was raised by Shri K.G. Vakharia that the Chief Minister was neither a necessary nor a proper party to the writ petition and, therefore, his name should be deleted from the array of respondents. The petitioners have joined both the Chief Minister, as the Leader of the Assembly, and the Leader of the Opposition, as parties to the writ petition. It is true that no relief is sought, expressly either against the Chief Minister or against the Leader of the Opposition, but, at the same time, no order need be passed for deleting them from the array of respondents considering the fact that, on merits, arguments were addressed at length in support of the enactment by Shri S.B. Vakil on behalf of the Leader of the Opposition. Having regard to the nature of the proceedings, it cannot be said that they are not proper parties. For the reasons aforesaid, it is held that the provisions of Section 3 of the Gujarat Local Authorities (Temporary Postponement of Elections) Act, 1994 are ultra vires Part IX and Part IX-A of the Constitution and more particularly of Articles 243-B/ 243-Q, 243-E/ 243-U and 243-K/ 243-ZA thereof and are, therefore, null and void.

55. A writ of Mandamus is issued directing the State Government to do within

one month from today, all that is necessary to enable the State Election Commission to conduct and hold the elections of the local authorities. A writ of Mandamus is also issued to the State Election Commission to prepare electoral rolls and conduct elections to the Municipal Corporations, Municipalities, and the Panchayats wherever due as per his Constitutional duties under Article 243-K and Article 243-ZA expeditiously and at the very earliest in accordance with law and in the light of this judgment by ignoring the provisions of Section 3 of the Gujarat Local Authorities (Temporary Postponement of Elections) Act, 1994, which has been declared ultra vires and null and void.

56. These writ petitions and the Letters Patent Appeals are disposed of in the above terms, with no order as to costs.

ABICHANDANI, J.

57. I respectfully agree with the erudite reasoning and conclusions of My Lord the Chief Justice.

58. The impugned Act seeks to eclipse, for a period of time, the Constitutional provisions which require existence of the elected local bodies. In the process it snatches away the power of the State Election Commission even to prepare the electoral rolls and creates a vacuum where the Constitutional requirement is to have democratically elected local bodies. Such blatant violation of the Constitutional mandate is a pointer to the need of recognizing the right to be governed by democratically elected bodies as a part of right to live with dignity which underlies Article 21 as also the need to give an appropriate recognition to the most cherished freedom of mankind which a citizen can exercise, by expressing his choice of the representatives who may govern, within the framework of valid electoral laws.

59. A prayer has been made by Shri N.D. Nanavati appearing for the State of Gujarat, for a certificate for appeal to the Supreme Court under Article 134 A of the Constitution. He submits that this is a fit case for granting the Certificate in view of the provisions of Article 132(1) and Article 133(1)(a).

60. In our opinion, neither of the two provisions is applicable. This case does not involve any substantial question of law as to the interpretation of the Constitution, nor does it involve a substantial question of law of general importance which, in our opinion, needs to be decided by the Supreme Court. The provisions of the Part IX and Part IX-A of the Constitution are clear and unambiguous and they call for no interpretative process. The prayers for the grant of the Certificate is, therefore, rejected.

Learned Counsel also made a prayer that the operation of the judgment should be stayed so as to enable the State Government to approach the Supreme Court.

61. In our opinion, the grant of a stay would clearly frustrate the operation of the judgment itself. Furthermore, having regard to the facts and in the circumstances of the case, we see no justification for granting the stay sought

for. It is also contended that because of the plague, the stay should be granted. According to the Government, as is evident from the newspapers, the Plague epidemic has been controlled. The Notification which had been issued by the government itself declaring parts of the State as "Plague threatened" has been withdrawn and, again going by the newspaper reports, the Leaders of the Government are stating that there is no cause for panic. The excuse with regard to the epidemic of Plague is not good enough, in our opinion, for granting stay, specially in view of the fact that the process of holding election is going to take some time.