(2002) 08 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No''s. 5732, 5734 and 6713 of 2002

Ratnabhai Kajabhai Patel APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 164, 164(4), 226, 31(2), 324
Gujarat Agricultural Produce Markets Act, 1963 — Section 11, 11(1), 11(2), 11(3), 11(4)
Police Act, 1861 — Section 7

Citation : (2004) 24 GLH 731

Hon'ble Judges : N.G. Nandi, J;H.K. Rathod, J

Bench : Division Bench

Advocate : P.K. Jani and B.S. Patel in Special Civil application Nos. 5732 and 6713 of 2002, for the Appellant; A.D. Oza, Govt Pleader for Respondent No. 1-2 in Special Civil Application No. 5732 and 6713 of 2002 and K.S. Jhaveri, in Special Civil Application No. 5732 and 6713 of 2002, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. P.K. Jani for the petitioners in Special Civil Application No. 5732 of 2002 and 5734 of 2002 and Mr. B.S. Patel for the petitioner in Special Civil Application No. 6713 of 2002. Heard learned Government Pleader Mr. A.D. Oza and learned advocate Mr. K.S. Jhaveri for the respondents No. 1, 2 and respondent NO.3 respectively in these three petitions.

2. It is important to note the observations made by the apex court in paragraph 179 of the decision in case of Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , which is reproduced as under:

"Democracy is a part of the basic structure of our Constitution and rule of law and free and fair elections are the basic features of democracy. One of the postulates of free and fair elections is the provision for resolution of election disputes as also the adjudication of disputes relating to the subsequent disqualifications by an independent authority. "

In case of Kanhiya Lal Omar Vs. R.K. Trivedi and Others, , the apex court has made the following observations at page 628:

"The word ''elections'' in Article 324 is used in a wide sense so as to include the entire process of election which consists of several stages and it embarrasses many steps, some of which may have an important bearing on the resolution of the process. India is a country which consists of millions of voters. Although they are quite conscious of their duties, ..., unfortunately, large percentage of them are still illiterate. "

In group of these three petitions, common challenge has been made by each of the petitioners before this Court. Therefore, all the three petitions are heard and they are disposed of by this common judgment.

3. The facts of Special Civil Application No. 5732 of 2002 are as under in brief :

The petitioner is the permanent resident of village Saral, Taluka Dhanera, District Banaskantha. Village Saral is in the market area of the Agricultural Produce Market Committee, Dhanera. The petitioner is an agriculturist and also the chairman of Saral Dudh Utpadak Sahakari Mandali Ltd. at village Saral, Taluka Dhanera, District Banaskantha. The petitioner is also a Vice Chairman of the Saral Seva Sahakari Mandali Ltd. which is a village Cooperative Society dispensing agricultural credit to its members and, therefore, the members of the Managing Committee of Saral Seva Sahakari Mandali Ltd. are the voters in the elections of the Agricultural Produce Market Committee, Dhanera. ["APMC" for short]. The petitioner was also a member of the Managing Committee of Saral Seva Sahakari Mandali Ltd. when the elections of the APMC Dhanera took place. Therefore, the petitioner is having right to vote in the elections of the APMC, Dhanera which took place before about six years. According to the petitioner, he is a qualified person to stand as a candidate in the elections of the APMC, Dhanera from the agricultural constituency. The elections of the APMC Dhanera took place in the year 1998. According to the petitioner, he was not a member of the APMC, Dhanera but he had exercised right of vote in the said elections. On 19th August, 2000, the State Government exercised the powers u/s 52 read with section 5 of the Gujarat Agriculture Market Produce Committees Act, 1963 ["the APMC Act" for short] and divided the area of the APMC Dhanera into two Market Committees namely APMC Dhanera and the APMC Panthawada. Entire Taluka of Dhanera was declared to be the Market Area of the APMC, Dhanera and the APMC Panthawada consists of the entire area of Dantiwada. In view of the notification dated 19th August, 2000, nominated committee came to be constituted by the State Government for the APMC Dhanera as well as the APMC, Panthawada, Taluka Dantiwada, District Banaskantha. By virtue of the said notification dated 19th August, 2000, the State Government has constituted the committees by nominating persons into two market committees for a period of not more than two years from the date of the order. Date of the order being 19th

August, 2000 for the committee as nominated by the State Government vide its notification dated 19th August, 2000, it seized to have its authority on and with effect from 18th August, 2002. According to the petitioner, since the term of the members of the market committee will come to an end before 18th August, 2002, before that time, elections in accordance with the provisions of the Gujarat Agricultural Produce Market Commttees Act, and the Rules framed thereunder are required to be held by the respondents. According to the petitioner, as per the statutory mandate contained under the provisions of the Act, it is required to be seen that the elections are required to be held but instead of complying with the mandatory requirements of law, the petitioner has come to know from the reliable sources that the State Government is likely to extend the term of the APMC in violation of the mandate of the law. It is also the case of the petitioner that the petitioner has come to know that a representation has been made to the State Government through Hon''ble Minister Shri Harjivan Patel who is the Minister from the Legislative Assembly Seat of Dhanera Constituency.According to the petitioner, present nominated members who are supporters of the party in power or active members of the party in power have impressed upon and persuaded to the Hon''ble Minister Shri Harjivan Patel to see that the term of the Market Committee is extended for a period of one year and because of the pressure of the supporters and the nominated members, the petitioner is apprehending that the Hon''ble Minister Shri Harjivan Patel has persuaded the Hon''ble Minister for cooperation under whose jurisdiction the subject in question is falling to extend the term of the the Market Committee and, therefore, present petition has been filed by the petitioner with a prayer to direct the respondents to start the election process for holding elections of the APMC, Dhanera and to appoint the administrator after the statutory period of two years of the nominated committee comes to an end and not to extend the term of the committee beyond the period from 18th August, 2002. Alongwith the petition, certain documents have been produced by the petitioner for justifying that he is an agriculturist and Chairman of the Mandali.The petitioner has also produced notification dated 19th August, 2000 whereunder the State Government has exercised the powers u/s 52 read with section 5 of the Act and because of the bifurcation of one market area in two market areas, one as Dhanera and the another as Panthawada. In the said notification, name of the Committee Members are mentioned in respect of Dhanera and Panthawada.

Respondents No.1 and 2 have filed affidavit in reply made by one S.A. Shaikh, Deputy Secretary, Agriculture and Cooperation Department, Sachivalaya, Gandhinagar on 5th July, 2002. Against that, affidavit in rejoinder has been filed by the petitioner on 11th July, 2002, alongwith the order passed by this court in Special Civil Application No. 5573 of 2002; 2339 of 2002 and 11130 of 2001 dated 24th July, 2002. On behalf of respondent No.3, affidavit in reply has been filed by one Shri Bhagwanbhai H. Patel. Alongwith the said affidavit in reply, respondent No.3 has produced notification dated 26th June, 2002, 15th July,2002 and 24th July, 2002.

4. In Special Civil Application No. 5734 of 2002, the petitioner has made similar challenge in respect of the APMC, Panthawada wherein under the same notification dated 19th August, 2000, the Market Committee has been nominated by the State Government in exercise of the powers u/s 54 of the Act. In this petition also, the petitioner has submitted that he is an agriculturist and is also the chairman of Daniyawada Juth Telibiya Sahakari Mandali Ltd. at village Daniyawada, Taluka Dantiwada, District Banaskantha. The petitioner is also the member of the Managing Committee of the Daniyawada Dudh Utpadak Sahakari Mandali Ltd. The petitioner is a voter in the election of the APMC, Panthawada. The petitioner exercised the right of vote in the election of the APMC, Dhanera which took place before about six years.The petitioner is an agriculturist and, therefore, is a qualified person to stand as a candidate in the election of the APMC, Panthawada from the Agriculturists'' Constituency. Rest of the facts stated in this petition are similar to the facts stated in special civil application no. 5732 of 2002. In this petition also, the petitioner has made a similar challenge with similar and same prayer on the basis of similar averments as made in special civil application no. 5732 of 2002 and, therefore, we are not repeating in detail the challenge made by the petitioner in this petition. Similarly, the petitioner has produced relevant record to show that he is an agriculturist and Chairman of the Mandali. In this petition, the petitioner has also produced on record the notification dated 19th August, 2000. Affidavit in reply has been filed by respondent No.1 and 2 on 5th July, 2002 and rejoinder thereto has been filed by the petitioner on 11th July, 2002 and copy of the order of this court dated 24th July, 2002 referred to hereinabove has also been produced by the petitioner. Respondent No.3 has filed affidavit in reply which is on record. Alongwith the affidavit in reply, respondent No.3 has produced two notifications dated 26th July, 2002 and 15th July, 2002. This petition was admitted by this court by issuing rule thereon by order dated 1st August, 2002.

5. Special Civil Application No. 6713 of 2002 filed by Shri Pankajbhai Shankarbhai Patel has been admitted by this court by issuing rule thereon on 23rd July, 2002 and as regards interim relief as prayed for in para 7(B) of this petition, notice has been issued to the respondents returnable on 1st August, 2002. Brief facts of this petition are to the effect that initially, there was an agricultural produce market committee for Talod and Prantij Talukas. According to the petitioner, respondent No.1, u/s 52 read with sec. 5 of the APMC Act, 1963, reconstituted the Market Committee and made division constituting two separate market committees of Talod Taluka and Prantij Taluka vide notification dated 31.3.2000. According to the petitioner, respondent No.2 declared election programme of the respondent No.3 namely market committee by order dated 2.1.2002. According to the petitioner, thereafter, under the guise of disturbance of communal riots in the State of Gujarat, respondent No.1 postponed the elections of all the specified cooperative societies and the market committees. According to the petitioner, after finalization of the voter''s list, the respondent NO.1 without any authority passed order dated 18.3.2002 extending the term of

the respondent No.3 market committee upto 30.6.2002 and that term has already expired on 30.6.2002 and therefore, the term which has expired, cannot be extended by respondent No.1. According to the petitioner, thereafter, the respondent No.1 passed another notification dated 15.7.2002 extending the term of the market committee upto 31.12.2002. Thus, it is the grievance of the petitioner in this petition that the respondent No.3 is a nominated market committee and as per the provisions of section 54(2) of the Act, respondent No.1 has power to nominate respondent No.3 market committee for a maximum period of two years which expired on 31.3.2002 and thereafter, neither the respondent no.1 has power to extend the tenure of newly constituted nominated committee nor the committee has power to stick to its chair. According to the petitioner, the respondent No.1 has exercised powers u/s 11 of the Act which is meant for elected market committee but for nominated market committee, the maximum period can be two years but inspite of these facts, the respondent No.1 has passed the impugned notification and not holding the elections and prolonging the election against the interest of the respondent No.3 market committee without authority of law and without popular mandate and hence the petitioner has filed this petition with a prayer for quashing and setting aside the notification dated 15th July, 2002 and to restrain the respondent No.3 from proceeding with the administration and for directing respondent No.2 to proceed further with the election programme. The petitioner has annexed notification dated 15.7.2002, 31.3.2000 and letter dated 2nd January, 2002 of the respondent No.2 wherein election programme has been declared and voter''s list has been finally published on 20th February, 2002 and subsequently the State Government issued two notifications dated 18th March, 2002 and 15thJuly, 2002 and by virtue of the two notifications, initially, term of the nominated market committee has been extended upto 30th June, 2002 and, thereafter, upto 31st December, 2002 which is under challenge in this petition. No reply has been filed by any of the respondents in this petition. The petitioner has also annexed notification dated 18.3.2002 and one order passed by this court in special civil application no. 4000 of 2002 dated 12th April, 2002.

6. During the course of hearing of these three petitions, respondents no.1 and 2 were directed to produce the original file before this court wherein decision has been taken by the State Government to extend the term of the nominated market committee for a period upto 31st December, 2002. In response to these directions issued by this Court, respondents no.1 and 2 have placed on record three files in respect of these three matters for perusal of this Court. We have perused these three files which have been produced by the respondents no.1 and 2 before this court.

7. In these three petitions, common question has been raised by the petitioners before this Court that the State Government has bifurcated the market area while exercising the powers u/s 52 read with Sec. 5 of the Act and u/s 54(2) has nominated the market committee in respect of the altered market area. The members of such new market committee nominated by the State Government

shall hold the office for a period of two years as per the order passed by the State Government u/s 54 sub clause (2) of the Act and after the expiry of the said period of the nominated market committee,the State Government has not held the elections but has extended the term of such nominated market committee upto 30th June,2002 by way of notification dated 18th March,2002 and then upto 31st December, 2002 by way of notification dated 15th July,2002. In respect of Dhanera and Panthawada Market Committee, term of such nominated market committees has been expiring on 18th August,2002. Then, by way of notification dated 26th June, 2002, the State Government has, while exercising the powers u/s 11(4)(aa) of the Act, has extended the term of the Dhanera APMC and Panthawada APMC for a period of one year with effect from 19th August, 2002. Then, the State Government has cancelled the earlier notification dated 26th June,2002 in respect of Dhanera and Panthawada APMCs and another notification has been issued by the State Government in exercise of the similar powers and reduced the extended term of the two market committees from 18th AUgust,2003 to 31st December, 2002. Therefore, in all these three petitions, the question has been raised by the petitioners as to whether the State Government has power to extend the term of nominated market committee appointed u/s 54 sub clause (2) for a further period or not.

8. In respect of the said contention, learned advocate Mr.P.K.Jani appearing for the petitioners in special civil application nos. 5732 of 2002 and 5734 of 2002 has submitted that the State Government has no such powers to extend the term of such nominated committee u/s 54 of the Act. He has also submitted that there is no provision made in section 11 read with section 54 which give powers to the State Government to extend the term beyond the period of two years of such nominated market committee. He has also submitted that section 54 sub clause (4) specifically provides that on expiry of the period of the office of the members of the market committee under sub section (3), the market committee shall be reconstituted in the manner provided in section 11 of the Act. He has also submitted that the members of such new market committee shall hold the office for such period not exceeding two years as the State Government shall by order in writing specify as per section 54(3) of the Act. He has also submitted that once the period specified in the order by the State Government while exercising the powers u/s 54(3) has expired, then, on expiry of such period, the State Government shall have to reconstitute the market committee in the manner provided in section 11 of the Act. He has also submitted that section 11 of the Act deals with the situation wherein under sub section (1), every market committee shall consists of the following members namely eight agriculturists who shall be elected by the members of the Market Committees of the Specified Societies dispensing with the agricultural credit in the market area; four members to be elected in the prescribed manner by the traders holding general licences; two representatives of the cooperative market society situated in the market area and holding general licences and one member to be nominated by the local authority within whose jurisdiction the principal market yard is situated

and two members to be nominated by the State Government. He has, thus, submitted that section 11(1) of the Act deals with the situation of the market committee and proviso to section 11 sub section (1) provides that when the market committee is constituted for the first time, all the members thereof shall be the persons nominated by the State Government and shall hold the office for a period of two years from the date of their nomination. He has also submitted that as per section 11(2)(a) of the Act, if no election is held in the case of market committee for any reason, the Director shall report the fact to the State Government and with the previous approval of the State Government, nominate the market committee, members of the respective class specified in section (1) from amongst the persons qualified to be elected as a members of the respective class. Sub clause (b) provides further that the persons so nominated shall hold office for such a period not exceeding two years as the Director may, with the approval of the State Government, determine. He has submitted that looking to section 11(2) of the Act read with sub clause (a) and (b), the Director is having power after submitting report to the State Government and with the previous approval of the State Government to nominate the market committee in case when for any reason, election is not held. Therefore, he has submitted that the market committee which has been nominated as a result of alteration or division of the area of market area u/s 54(1) of the Act by the State Government having two years'' term cannot be extended u/s 11(2)(a) and (b). he has also submitted that once the market committee has been nominated by the State Government, then, such committee cannot be renominated by the Director while exercising the powers u/s 11(2(a) of the Act. He has also submitted that in the present case, notification dated 26th June, 2002 and 24th July, 2002 both have been issued by the State Government and not by the Director, while exercising the powers u/s 11(4)(aa) the market committee which has been nominated u/s 54(2) by the State Government cannot be renominated by the State Government. According to his submission, extension of such market committee cannot be considered as reconstitution as specified u/s 54(4) of the Act. He has also submitted that there is no provision made u/s 11 or 54 which gives power to the State Government to extend the term of the nominated market committee. He has also submitted that in both the notifications dated 26th June, 2002 and 24th July, 2002, as per the reading of the notification, the State Government has exercised the powers u/s 11(4)(aa) and, therefore, he has submitted that the said section 11(4)(aa) applies to the elected market committee which is having the term of four years and the State Government, for the reasons to be recorded in writing, have power to extend the term of such market committee for a period not exceeding one year in the aggregate. In light of section 11(4)(aa) of the Act, he has submitted that the legislature has provided power of extension to the State Government in case of an elected market committee but such power is not provided in section 11 to the State Government in respect of nominated market committee. He has also submitted that even considering section 11(2(a) and (b) of the Act,there is no provision made for extension of such nominated committee beyond the period of two years. He has also submitted that such extension given by the State

Government is in arbitrary manner and is having influence of the Hon''ble Minister Shri Harjivan Patel at whose instance, the term of the market committee has been extended, initially for a period of one year by notification dated 26th June, 2002 and, thereafter, it was reduced upto 31st December, 2002. He has also submitted that as and when the term of the nominated market committee would come to an end, then,for any reason, if the election is not held, then, the State Government has to exercise the powers u/s 11(5)(a)(i)(ii). According to his submission, in such a situation, the State Government is having no option but to appoint the administrator to manage the affairs of the market committee but instead of that, the State Government has extended the term of nominated market committee upto 31st December, 2002. According to him, if the said nominated committee will continue, it will be having adverse effect on the elections. He has also submitted that the market committee which is in power can take certain steps in their favour or in favour of their supporters for getting the results of the elections in their favour. So, there will not be impartial, free and fair elections if the nominated committee will continue upto 31st December, 2002 and meanwhile elections are held. Therefore, just to avoid such a situation, in case when the term of the nominated market committee is over, then, the State Government ought to have appointed the administrator u/s 11(5 of the Act. He has also emphasized the word "reconstitute" u/s 54 of the Act. He has also submitted that by way of reconstitution, the State Government is having no power to extend the term of such nominated committee. He has also submitted that the provisions made u/s 54(4) are mandatory in nature. Similarly, provisions of section 11(5)GUJARAT AGRICULTURAL PRODUCE MARKETS ACT, 1963 of the Act are also mandatory in nature in case of nominated market committee. He has also submitted that the administrator who will be appointed by the State Government is also for a period of one year in the aggregate as may be specified in the order and such appointment of administrator is amounting to reconstitution of the market committee. For substantiating that contention, he has relied upon the provisions contained in section 11(5)(a)(ii) of the Act and has submitted that the administrator is having power to delegate any of the powers, functions and duties under clause (b) to any person for the time being employed by the market committee.Thus, in short,it is his submission that though the term of the two market committees i.e.Dhanera and Panthawada was to expire on 19th August, 2002, prior to that, on 26th June, 2002,on political influence of the Hon''ble Minister Shri Harjivanbhai Patel, notification has been issued on 26th June, 2002 extending the term of such nominated market committee for a period of one year only with a view to postpone and avoid the elections of the market committee. He has submitted that such notification issued by the State Government is having political colour. He has pointed out one letter written by the Hon''ble Minister Shri Harjivan Patel addressed to the concerned Hon''ble Minister and has submitted that the interference by the political party in power for avoiding free, fair and impartial elections of such nominated market committees would amount to exercise of the powers in arbitrary manner. He has further submitted that the notification issued by the State Government, if read as it is, then, that notification itself is bad and would amount to non application of mind because in both the notifications, the term of such nominated market committees has been extended in exercise of the powers u/s 11(4)(aa) of the Act. He has also submitted that Section applies to elected market committee and not to the nominated market committee and, therefore, according to him, the State Government has no power to extend the term of such market committee and such action on the part of the State Government is without jurisdiction and contrary to the statutory provisions u/s 11 and 54(4) of the Act and, therefore, he has submitted that the said notifications are required to be quashed and set aside by directing the State Government to appoint the Administrator under sec. 11(5) and to direct the respondents to hold elections within some reasonable period.

9. Learned advocate Mr.B.S. Patel appearing for the petitioner in special civil application no. 6713 of 2002 has submitted that he is adopting the arguments advanced by the learned advocate Mr.P.k.Jani. However, he has submitted that the term of the market committee nominated u/s 54(2) of the Act has expired on 31st March, 2002 and the election programme was already published and by letter dated 2nd January, 2002 of respondent NO.2, process of election has been declared and has reached upto the stage of finalization of voter''s list on 20th February,2002.He has submitted that once the election programme has been declared and it reached to the stage of finalization of the voter''s list and the same is published, thereafter, with an ulterior motive, the State Government has exercised the powers by issuing notification dated 18thMarch, 2002 extending the term upto 30th June,2002 and thereafter by notification dated 15th July,2002, term has been extended upto 31st December, 2002. He has also submitted that considering the notification dated 18thMarch, 2002 wherein also, though the term has been extended upto 30th June, 2002,but option has been kept open by the State Government in case if found necessary, administrator will be appointed for such market committee. Therefore, Mr. Patel has submitted that while issuing the notification dated 18th March, 2002,the term has been extended upto 30th June, 2002 with an option that in case of necessity, the State Government will appoint administrator after 30th June, 2002 but on the contrary, the State Government has extended the term for a further period by notification dated 15th July,2002 upto 31st December, 2002. He has relied upon the language of section 11(2)(a) of the Act and has submitted that if for any reason in the case of a market committee no election is held, the Director shall report the fact to the State Government and with the previous approval of the State Government, nominate on the market committee members of the respective class specified in sub section (1) from amongst the persons qualified to be elected members of the respective class and has emphasized that the State Government has no power to nominate the market committee u/s 11(2)(a). Therefore, according to his submission, the action on the part of the State Government in exercising the powers u/s 11(2)(a) of the Act as well as the extension of the term of such nominated market committee is without power and

authority. He has also pointed out that in the notification dated 15th July, 2002, the State Government has made distinction without any reason and justification that the term of the elected market committee has been extended upto 31st October, 2002 and in respect of the nominated market committee and administrator, their term has been extended upto 31st December, 2002. Why this difference has been made out by the State Government,for that, there is no justification given by the State Government. Learned advocate Mr. Patel has also submitted that at the midst of the election process, such powers cannot be exercised by the State Government to postpone or avoid the election while extending the term of such market committee. Learned advocate Mr. Patel has also submitted that the Government notification and the provisions contained in the Statute are required to be read as they are if there is no ambiguity. According to him, the Court cannot legislate the section or rewrite the provisions of the Statute. He has also submitted that when the question of interpretation of the statute has arisen, it is well settled principle that the Court cannot add or rewrite which is not there in the section and it is not open for the court to fill up the gap. Similarly, he has submitted that the notification which has been issued by the State Government is required to be read as it is.He has submitted that the notification dated 18th March, 2002 has been issued by the State Government u/s 11(2)(a)(b) of the Act and section 11(4)(aa) and section 11(5)(a)(i) of the Act. While referring to the aforesaid sections, he has submitted that section 11(2)(a) will not apply to the facts of the present case because under this section, only Director is having power to nominate the committee. He has submitted that section 11(4)(aa) will not apply because it is applicable in case of an elected market committee. He has submitted that though section 11(5)(a)(i) has been referred to but in none of the case, the State Government has appointed the administrator after completion of the term of such market committee and, therefore, according to him, the State Government has no power to extend the term of nominated market committee u/s 54(2) and there is no such provision made for extending the term of such nominated market committee under the Act and, therefore, such notification issued by the State Government dated 18.3.2002 and 15.7.2002 is without authority, jurisdiction and power and is contrary to the statutory provisions and, therefore, same is required to be quashed and set aside by directing the State Government to immediately appoint the administrator in place of nominated market committee and to initiate the election process within some reasonable period.

10. Learned Government Pleader Mr. A.D.Oza appearing for the State Authorities in these three petitions has submitted that on behalf of the State Government, detailed affidavit in reply has been filed. He has submitted that on account of the instructions contained in the Circular dated 2.8.80 issued by the Director of Agricultural Marketing and Rural Finance, Gandhinagar which provides that during the monsoon season, the working of holding the elections will not be undertaken generally, for the period from 15th June to 30th September of any year and since the term of the present committee was expiring on 19.8.2002 i.e.

between the above specified period, therefore, election will be held only after the monsoon season. He has also submitted that the present committee is a nominated committee appointed by the Government u/s 5 and 52 of the Act as there was bifurcation of one committee viz. Dhanera APMC into two committees i.e. Dhanera and Panthawada. He has also submitted that the market committee had already started its functions actively like development of the market yard,allotment of lands for shops,construction of compound wall and roads, installation of lights etc.and has also undertaken other work which is beneficial to the farmers and,therefore, the Government has issued notification dated 26.6.2002 u/s 11 sub clause (2)(a)(b) of the Act and has, thereby extended the term of the committee for one year. He has also submitted that on account of the notification dated 26.6.2002 issued by the Government, the term of the committee now has been extended from19.8.2002 to 18.8.2003 and, therefore,the prayer of the petitioner to direct respondent no.2 to start the process of holding elections of APMC cannot be granted nor can an administrator be appointed in this case. He has also submitted that recently in June, 2002, the term of Navsari APMC has been extended by the State Government for a further period of one year. According to him,this extension of Navsari APMC was given by the State Government for 3rd time. According to him, it is the policy adopted by the State Government to extend the term of APMC in certain cases only for the beneficial interest and welfare of the agriculturists and farmers and, therefore, these petitions are required to be rejected and no relief is required to be granted in these matters. He has further submitted that the petitioners in special civil application no. 5732 of 2002 and 5734 of 2002 have not challenged the notification dated 18th March,2002 and 22nd August,1980 but the petitioner in special civil application no. 6713 of 2002, the petitioner has challenged the notification dated 15th July, 2002. In special civil application no.5732 and 5734 of 2002, notification dated 26th June 2002 has not been challenged but only power or authority to extend the term of the nominated committee has been challenged. He has also submitted that in view of the provisions contained u/s 11(4)(aa) of the Act,the State Government has power to extend the term of such committee. He has submitted that the reason not to hold the elections is genuine and reasonable and it is not arbitrary exercise of the power as alleged because the government has extended the term of each existing committee uniformly without any distinction. He has also submitted that in all, term of 26 committees has been extended while exercising the powers u/s 11(2) of the Act and, therefore, there is no mala fide as alleged by the petitioner. He has submitted that this being the policy decision taken by the State Government, this Court should not interfere with the policy decision of the State Government. According to him, u/s 11(2) of the Act, the State Government has power to nominate the Committee for a period of two years and such powers have been rightly exercised by the State Government looking to the facts and circumstances of the case. He has submitted that each case of extension of such committee will be required to be examined on the basis of the facts and circumstances of such committee. He has also submitted that the reasons have been given while extending the term of such market committee which are genuine justifying the extension and, therefore, no interference is required by this Court in exercise of the extraordinary powers under Article 226 of the Constitution of India. He has emphasized that in all, there were 26 such market committees, some of which under the control of the administrator and in case of a committee under the control of administrator also, period has been extended without making any discrimination amongst the market committees nominated, elected and administered by the administrator. According to him, uniform policy has been adopted and applied by the State Government to each market committee by extending period upto 31st December, 2002. He has further submitted that if the period of such market committee is extended, same will not be having any adverse effect on the petitioner or the elections and, therefore, no interference is necessary by this Court. He has further submitted that it is the discretion of the State Government to decide whether the period should be extended or whether the committee should be nominated or whether the administrator should be appointed or not. According to him, it is for the State Government to decide either to renominate the committee or to appoint the administrator or to extend the term of such committee and such discretion has rightly been exercised by the State Government and, therefore, this Court should not interfere with such discretion exercised by the State Government in exercise of the powers under Article 226 of the Constitution of India. According to him, policy decision of the State Government is beyond the scope of judicial review and, therefore, when the State Government has rightly issued notification for extending the term of such committees, this Court should not interfere with such decision. He has also submitted that there is no any political influence or political interference as alleged by the petitioners. He has further submitted that the Hon''ble Minister concerned against whom allegations have been made have not been joined as a party to the present proceedings and, therefore, this Court should not look into such allegations made against the Minister concerned without joining him as a party to the present proceedings. He has relied upon two decisions of this Court. One, in case of Agricultural Produce Market Committee, Bhavnagar versus State of Gujarat reported in 1989 (2) GLH 33 and the another, in case of Sodha Parmar Chhanabhai Gandabhai versus State of Gujarat reported in 1993 (1) GLR page 738.

11. Learned advocate Mr. Kalpesh Jhaveri appearing for the respondent NO.3 in these three petitions has submitted that the State Government in a given situation is having powers u/s 11(2) and 11(4)(aa) of the Act and such powers have rightly been exercised by the State Government. He has also submitted that there is justification in exercise of such powers by the State Government and the term of the respective market committees has rightly been extended by the State Government in exercise of such powers specified u/s 11 of the Act. He has also submitted that the word ''reconstitution'' would mean ''renomination'' by way of extension and, therefore, at the most, extension may be considered as ''renomination'' of such committees. He has also submitted that there is no

difference or distinction under the Act in respect of the Market Committee. He has also submitted that the market committee may either be nominated by the State Government or it may be elected by the process of election or it may be controlled by the administrator. He has submitted that the term ''market committee'' has been defined u/s 2(xiv) of the Act and as per the said definition, market committee means a market committee established or deemed to be established under the Act and no such difference has been pointed out by the Statute. According to his submission, once the committee has been nominated by the State Government, either u/s 54 or proviso to section 11(1) of the Act or u/s 11(2)(a) or the committee elected by process of election u/s 11(4)(a), it would make no difference or distinction between such committee which has been considered as market committee. Therefore, according to him, once the market committee has been nominated by the State Government, then, the State Government has right and power to extend the term of such nominated market committee upto one year u/s 11(4)(aa) of the Act. He has also submitted that there is no need to specify such extension power of the State Government for the nominated committee. He has also submitted that these are the general powers of the State Government which it may exercise looking to the facts, circumstances and the situation prevailing in the State and the instant case, the State Government has, after considering the facts, circumstances and the situation prevailing in the State, has extended the term of such market committees for the genuine and cogent reasons as a policy decision of the State Government and it is beyond the scope of judicial review in a petition under Article 226 of the Constitution of India. He has also relied upon the decisions cited by Mr. A.D. Oza, learned G.P. before this Court. In short, it is the submission of Mr.Jhaveri that the State Government was right in extending the term of the committee and during this period, the State Government will definitely held the elections and there is no prejudice caused to the petitioner and there is also no adverse effect to the legal right of the petitioner and, therefore, in such circumstances, no interference is necessary.

12. We have considered the arguments advanced by all the learned advocates for the respective parties. We have also considered the relevant provisions of law namely section 11 and 54 of the Act. Before dealing with the submissions made by the learned advocates, it is necessary to peruse the original file produced by the State Government before this Court.

13. In respect of special civil application no.5734 of 2002 relating to Panthawada APMC, first letter of the said file is bearing No. APM/102002/1393/G wherein no date has been mentioned. While reading the said letter, it appears to us that it is relating to Panthawada APMC wherein it has been mentioned that the Hon''ble Minister Shri Harjianbhai Patel has addressed letter dated 29th May,2002 to the Hon''ble Minister Shri Vadibhai Patel with a recommendation to extend the term of Panchawada APMC for a period of one year. As per the noting made in the said letter, an order has been made to the Director of the Agricultural Produce Market Committee Shri Takodara to immediately process separately and considering the

recommendation made by the Hon''ble Minister Shri Harjivanbhai Patel to Hon''ble Minister Shri Vadibhai Patel, a proposal was made to extend the term of Panthawada APMC while exercising the powers u/s 11(4)(aa) of the Act. It is also necessary to note that in the said letter dated 29th May,2002 written by the Hon''ble Minister Shri Harjivanbhai Patel which is at page 37 of the said file relating to Panthawada APMC, Hon''ble Minister Shri Harjivanbhai Patel has made endorsement addressed to the Hon''ble Minister Shri Vadibhai Patel that the term of Dhanera APMC as well as Panthawada APMC is required to be extended for a period of one year. This being the mandate or decision of the Hon''ble Minister Shri Harjivanbhai Patel addressed to Hon''ble Minister Shri Vadibhai Patel, below that, there is signature of the Hon''ble Minister Shri Harjivanbhai Patel dated 25th June,2002, as a result of such mandate or decision or direction given by the Hon''ble Minister Shri Harjivanbhai Patel to extend the term of Panthawada APMC and Dhanera APMC for a period of one year, the State Government has immediately issued notification dated 26th June, 2002 i.e. on the next day itself, the State Government extended the term of the said two market committees for a period of one year with effect from 19th August, 2002. According to our opinion, this is nothing but clear case of political interference for extending the term of Panthawada and Dhanera APMC at the instance of the Hon''ble Minister Shri Harjivanbhai Patel. Hon''ble Minister Shri Vadibhai Patel has written letter dated 27th June, 2002 which is at page 35 which has been addressed to Hon''ble Minister Shri Harjivanbhai Patel wherein it has been mentioned that the recommendation made by him has been received by the Hon''ble Minister Shri Vadibhai Patel and that they will immediately follow and hand over the papers to the Secretary concerned. It is also necessary to note one important aspect from the said file that the Director namely respondent No.2, under his letter dated 7/10th June,2002 has made recommendation to the Secretary of the concerned department for making appointment of the administrator in view of the provisions made u/s 54(3) read with section 11(5)(a) of the Act. Thus, from the file, it appears that the respondent No.2 has recommended to the Secretary concerned by giving his opinion for the appointment of the administrator in respect of Panthawada APMC but ultimately, in view of the recommendation made by the Hon''ble Minister Shri Harjivanbhai Patel as stated above, his recommendation or opinion has no voice because of the fact that the Hon''ble Minister Shri Harjivanbhai Patel has decided to extend the term of Panthawada and Dhanera APMC for a period of one year and such decision has been implemented by the Hon''ble Minister Shri Vadibhai Patel and pursuant to that, on 26th June, 2002, notification to that effect has been issued by the State Government. The letter dated 7/10th June, 2002 of the Director is at page 1/585 wherein it has been specifically opined in respect of Panthawada to make appointment of the administrator u/s 11(5)(a) of the Act but his opinion has been overruled by the Hon''ble Minister Shri Harjivan Patel and the directions were issued to the Secretary of the concerned department to extend the term of Panthawada APMC for a period of one year. Why the Hon''ble Minister has differed from the opinion given by the Director, for that, no justification has been given by the Hon''ble Minister Shri Harjivanbhai Patel, as it appears from the file. At page 37 of the said file, there is letter No.1344 of the Hon''ble Minister Shri Harjivanbhai Patel wherein clear mandate has been given or clear decision has been taken to extend the term of Panthawada and Dhanera APMC for one year. This being the position of the original file and ultimately, the result has come out for extension of one year period by the State Government by issuing notification immediately on 26th June, 2002 and therefore, according to our opinion, this has substantiated the contention of Mr.Jani about political influence and/or interference in extending the term of Dhanera and Panthawada APMCs for one year. Subsequently, after some discussion in the pending matter before this Court, another note was prepared by the concerned Deputy Secretary Mr. S.A. Shaikh and has requested the authority to reduce the period from one year to 31st December, 2002. Accordingly, order has been passed by the concerned authority reducing the extended term of Dhanera and Panthawada APMCs to 31st December, 2002. Therefore, initial movement for extension of Dhanera and Panthawada APMCs was made by the Chairman of the Nominated Market Committee, Panthawada by letter dated 28th May, 2002 which was received by the Hon''ble Minister Shri Harjivanbhai Patel on 29th May,2002 received by the said Hon''ble Minister on the same day and very quickly he wrote letter addressed to the Hon''ble Minister Shri Vadibhai Patel with a clear mandate to extend the term of Panthawada and Dhanera APMCs for a period of one year. The correspondence which is on the original file shows nothing but clear political influence and interference of the Hon''ble Minister ignoring the opinion given by the respondent No.2 to appoint the administrator in Pandhawada and Dhanera APMCs. According to our opinion, non-acceptance of the opinion given by respondent No.2 which is an authority under the law and ignorance thereof and taking view which is different and contrary to such opinion given by respondent No.2 suggests something for other ulterior oblique motive or purpose.

14. In respect of Special Civil Application No. 5732 of 2002 in respect of Dhanera APMC also, similar situation is on record. We have perused the entire file and same process has been followed in case of Dhanera APMC also. However, it is necessary to note one aspect of the original file at page 13/585 which is a letter dated 12thJune, 2002 of the Director, respondent No.2 in respect of Dhanera APMC wherein specific recommendation and clear opinion has been given by respondent No.2 to the Secretary of the concerned Department that in case of Dhanera APMC, appointment of the administrator u/s 11(5)(a) of the Act is essential and yet, such opinion given by the Director, respondent No.2 has been disregarded by the State Government by extending the term of Dhanera APMC for a period of one year which is similar to Panthawada APMC. In short, after perusal of both the original files, it appears to us that the decision has been taken by the State Government to extend the term of Dhanera and Panthawada APMCs for a period of one year ignoring the opinion and recommendation given by the Director, respondent No.2, at the instance of the Hon''ble Minister.

15. In respect of Special Civil Application No. 6713 of 2002, on perusal of the

original file bearing No. APM/102002/1537/G wherein first letter item No. 8 is regarding Talod APMC wherein due to alteration of the market area, market committee has been nominated by the State Government u/s 54(2) and it was a letter dated NIL wherein option has been given to the Government that the term of 28 market committees has been expiring between 1st July, 2002 to 31st December, 2002 and, therefore, the State Government can make appointment of administrator u/s 11(5) (a) and (i) and section 11(4)(aa) of the Act. The concerned authority who has forwarded the papers for consideration of the main authority has pointed out two options to the Government either to extend the term or to appoint the administrator under the provisions of the Act and on the back side of the said letter, after some discussion, it is mentioned that whenever the State Government has nominated the market committee and its term is expiring in that area, according to law, elections are essential and,therefore, administrator can be appointed and when elected market committee is there, for that, term of such elected market committee may be extended for a further period upto 30th September, 2002 and, thereafter, case of such committee may be considered for appointment of the administrator. Said writing has been written on the back side of the letter and signature is also there which is illegible but the date thereof is 26th June, 2002 but ultimately, though legal provision has been pointed out to the authority, however, same has been ignored by the State Government by extending the term of even nominated market committee u/s 54(2) of the Act. In the said file, by letter dated 3rd June, 2002, letter of the Director respondent No.2 is there which is addressed to the Secretary of the concerned Department wherein the respondent No.2 has pointed out two options available to the Government to appoint the administrator or to extend the term of such committee. There is one letter at page 5/585 in the said file wherein in all 32 market committees have been mentioned and in most of the cases where the market committee has been appointed because of the alteration and division of the market area, decision has been taken by the State Government to appoint the administrator u/s 11(5)(a) of the Act and then in such list, Talod is at item No. 8 wherein no remarks have been made but except that, almost in cases, decision has been taken by the Government to appoint the administrator in cases of all the market committees which has been nominated by the State Government u/s 54 due to alteration of the area of the market committee, then, why in respect of Talod, distinction has been made for extending the term of Talod Market Committee for a period upto 31st December, 2002, for that no reasons have been given by the State Government and from the original file, we are unable to get anything for such distinction by the State Government. It is also necessary to note from page 1 to 10 of the said file as regards Bavda, CHanasma, Bechraji, Dhanera, Pandhawada,Idar,Vadal, Talod, Prantij, Dhansura, in 10 market committees in all,the State Government has appointed or nominated the market committee because of the alteration of the area u/s 54(1).Out of ten, in respect of 7, recommendation has been made in remarks column to appoint the administrator u/s 11(5)(a) but no recommendation has been made in respect of Talod APMC by the concerned authority.

16. We have considered submissions made by all the respective advocates appearing on behalf of the parties. Before deciding the controversy raised in the present petitions, for appreciating the contentions raised by the learned Counsel for the parties, it would be necessary to refer to Sec. 11 of the Gujarat Agricultural Produce Markets Act, 1963, it reads as under :

"11.[1] Every Market Committee shall consist of the following members, namely :

[i] eight agriculturist who shall be elected by members of Managing Committees of Co-operative Societies [other than co-operative marketing societies] dispensing agricultural credit in the market area :

[ii] four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences;

[iii] two representatives of the co-operative marketing societies situate in the market area and holding general licences, to be elected from amongst the members [other than nominal, associate or sympathiser members] of such societies by the members of the managing committee of such societies:

Provided that where the number of co-operative marketing societies so situate does not exceed two, only one representative shall be so elected;

[iv] one member to be nominated by the local authority [other than the market committee] within whose jurisdiction the principal market yard is situated from amongst its Councillors or, as the case may be, members who do not hold any general licence:

Provided that where under the law applicable to the local authority its Councillors or members have vacated office and any person or administrator has been appointed to exercise the powers and perform the functions of the local authority, such person, or, as the case may be, administrator shall nominate a member under this paragraph from amongst persons qualified to be Councillors or members of the local authority and not holding a general licence;

[v] two members to be nominated by the State Government:

Provided that when a market committee is constituted for the first time all the members thereof shall be persons nominated by the State Government and shall hold office for a period of two years from the date of their nomination.

[2][a] If for any reason in the case of a market committee no election is held, the Director shall report the fact to the State Government and with the previous approval of the State Government nominate on the market committee members of the respective class specified in sub-sec [1] from amongst persons qualified to be elected as members of the respective class;

[b] The persons so nominated shall hold office for such period not exceeding two years as the Director may, with the approval of the State Government, determine.

[3] If for any reason in the case of a market committee an election does not

result in the return of the required number of qualified persons to take office the Director, after taking into consideration the views of the members already elected shall as soon as possible nominate from amongst persons qualified to be elected such number as is necessary to make up the required number and the persons nominated shall be deemed to have been duly elected as members of the market committee.

[4][a] The term of office of a market committee shall, save as otherwise provided in this Act, be four years from the date of its first general meeting.

[aa] The State Government may by order published in the Official Gazette and for reasons to be recorded therein, extend the said term for a period not exceeding one year in the aggregate;

[b] Save as otherwise provided in this Act, the term of office of the members of the market committee shall be co-extensive with the term of the market committee and also shall be deemed to extend to and expire with the day immediately before the date of the appointment of an Administrator under clause [a] of sub-sec.[5].

5[a] Where the term of office of a market committee has expired, the State Government shall, by order published in the Official Gazette, direct that:

[i] such person as may be appointed by the State Government from time to time shall be the Administrator to manage the affairs of the market committee, during the period beginning with the date specified in the order and ending on the day immediately preceding the date of the first general meeting of the market committee as reconstituted on the expiry of the term of the market committee [hereinafter in this sub-section referred to as ''the said period'']

[ii] the market committee shall be reconstituted within such period not exceeding one year in the aggregate as may be specified in the order;

[b] During the said period, all powers, functions and duties of the market committee under this Act shall be exercised and performed by the Administrator;

[c] The Administrator may by an order in writing delegate any of the powers, functions and duties to be exercised or performed by him under clause [b] to any officer for the time being employed by the market committee;

[d] The Administrator shall receive such remuneration from the Market Committee Fund as the State Government may from time to time by general or special order determine."

17. It is also equally important to note that in Section 11, sub-sec.4[aa] and sub-sec.5 are added in pursuance of the Gujarat Agricultural Produce Markets [Amendment] Act, 1990. Said amendment has come into effect on 31st July, 1990. The statement of objects as well as reasons for the Amendment are necessary to be reproduced here for appreciating the contentions raised by the learned advocates for the parties. The Statement of Objects and reasons for

amendment read as under :

: STATEMENT OF OBJECTS AND REASONS :

"Clause [a] of sub-sec.[4] of Sec. 11 of the Gujarat Agricultural Produce Markets Act, 1963 provides for the term of the office of the market committee to be four years from the date of its first general meeting.It is considered necessary to take powers to the State Government to extend the said term of the market committee for a period not exceeding one year in the aggregate. In order to avid any hiatus between the market committee, the term of which has expired and the new market committee which is elected, clause [b] of the said sub-sec.[4] provides that the term of office of the members of the market committee shall be deemed to extend to and expire with the date immediately before the date of the first general meeting of the market committee as reconstituted. However, whenever the elections of a market committee are challenged in a Court of law and stay is granted against the functioning of the new market committee, the members of the market committee, the term of which has already expired continue to remain in office on account of the aforesaid provision in clause [b] of the said sub-sec.[4] till the Court vacates the stay. Consequently, the members of the market committee, the term of which has expired continue to remain in office for several years even after the expiry of the term of that market committee. In order to avoid such a situation, it is considered necessary to appoint an Administrator to manage the affairs of the market committee whenever the term of office of the market committee expires and to provide that the Administrator shall hold office till the first general meeting of the new market committee. It is also considered necessary to take power to the State Government to appoint an Administrator, if it appears to the State Government that a market committee has not been validly constituted as well as in the case where a market committee after its being liable to be reconstituted by reason of the expiry of its term or otherwise, continues to function and the members as as well as the Chairman and the Vice Chairman of the market committee continue to hold their office."

18. Similarly, it is also necessary to consider the effect of Section 54 in light of the provisions made in Section 11 of the Gujarat Agricultural Produce Markets Act, 1963, which runs as under :-

"54. Powers of State Government to dissolve and constitute market committee on alternation of limits of market.-

[1] When during the term of a market committee the limits of the market area for which it is established are altered or the market area is divided into two or more separate market areas, the State Government may by order in writing dissolve the market committee and direct that a market committee be constituted for each market area as formed on account of such alteration. The members of the market committee so dissolved shall vacate their office from the date specified in the order.

[2] A new market committee constituted under the provisions of sub-section [1] shall consist of members nominated by the State Government and its Chairman and Vice Chairman shall be elected in the manner provided in this Act. The member shall, so far as in the opinion of the State Government may be practicable, be persons who were members of the dissolved market committee.

[3] The members of such new market committee shall hold office for such period not exceeding two years as the State Government shall by order in writing specify.

[4] On the expiry of the period of office of the members of a market committee under sub-section [3], the market committee shall be reconstituted in the manner provided in Section 11."

19. Learned advocate Mr.K.S.Zaveri and learned Government Pleader Mr.A.D.Oza have relied upon two decisions of this Court. The first decision relied in case of AGRICULTURE PRODUCE MARKET COMMITTEE, BHVNAGAR V. STATE OF GUJARAT AND ANOTHER reported in 1989 [2] GLH 33. Learned advocate Mr.Zaveri has more specifically emphasised on para-6 of the said judgement which is quoted as under :-

"6. The law point raised by the petitioners is also devoid of merits. Section 11(2) of the Act reads as follows.

"11[2][a] : If for any reason in the case of a market committee no election is held, the Director shall report the fact to the State Government and with the previous approval of the State Government nominate on the market committee members of the respective class specified in sub section [1] from amongst persons qualified to be elected as members of the respective class;

[b] The persons so nominated shall hold office for such period not exceeding two years as the Director may, with the approval of the State Government determine."

A bare reading of the aforesaid provisions of the Act clearly indicates that for any reason whatsoever election is not held, the Director is required to make report about the said fact to the State Government. Thereafter he is required to take previous approval of the State Government for the nominating the members of the Committee from the respective class specified in sub section [1] of Section 11. The members should be qualified to be elected as members of the respective class. Sub clause [b] provides that the persons so nominated shall hold office for such period not exceeding two years. The person so nominated are to hold office for a period which may be determined by the Director with the approval of the State Government, but the said period not exceed two years. The contention of the learned counsel for the petitioner that it is only when the committee is to be formed for first time that all the members thereof can be nominated by the State Government is devoid of merits. Even when Committee is constituted for the first time and the term of the members so nominated expires and thereafter for any reason whatsoever the election is not held the provisions of Section 11(2) can be invoked. If this not done an absurd situation would arise. The Government would not be in a position to again nominate the member of the Committee on the one hand and on the other hand for one reason or another there will be stalemate ["created"] as regards election of the Committee is concerned. As it has happened in this case it may be on account of the devices adopted by the members of the Committee who are nominated at the time of constitution of the Committee for the first time that the election may not be held. It may be for any other reason. If the contention advanced by the learned counsel for the petitioner is accepted it would amount to inducting the people to do something wrong and then `legally'' reward them for doing such wrong things. Such interpretation cannot be accepted for the simple reason that the statute cannot be interpreted so as to lead to absurdity. In this view of the matter the contention that the Government has no powers to nominate the members on the Committee has no merits."

20. The second decision which has been relied upon by learned advocate Mr.Zaveri and Mr.A.D.Oza, learned GP in case of Sodha Parmar Chhanabhai Gandabhai Vs. State of Gujarat and Others, . Learned advocate Mr.Zaveri and Mr.Oza, Learned GP have led their emphasis on contents of para-12 and 13 of the aforesaid decision which is referred as under :-

"12. Therefore, from the scheme of this Section, it abundantly clear that the market committee is to be constituted from the class of persons mentioned in sub-sec. [1]. The members of the first committee are to be nominated by the State Government. Sub-secs.[2] and [3] are to be read together. Sub-sec.[2] provides that in case for any reason the election of the market committee is not held, the Director is empowered to nominate members of the respective class specified in sub-sec.[1] from amongst persons qualified to be elected as members of the respective class. He can exercise this power only with the previous approval of the State Government. The Committee so nominated can continue upto the period of two years. Similarly sub-sec.[3] provides that if for any reasons an election does not result in the return of the qualified persons to take office, then the Director is empowered to nominate such number of persons as may be necessary to make up the required number and the persons so nominated shall be deemed to have been duly elected as members of the market committee. Therefore, sub-sec [2] contemplates a situation where no election of the market committee is held for any reason. Sub-sec.[3] deals with the situation where election of the market committee is held but required number of qualified persons are not elected. By addition of sub-sec.5[a], in a case where term of the market committee has expires, the State Government is empowered to appoint Administrator to manage the affairs of the market committee and to see that the market committee is reconstituted within such period not exceeding one year in aggregate. It is true that powers under sub-sec. [2] and powers under sub-sec. [5] are to some extent overlapping. However, it would be difficult for us to accept the contention of the learned Addl. Advocate General that powers under sub-sec.[2] are to be exercised only after constitution of the first market committee on the basis of the proviso to sub-sec.[1] and that sub-sec.[2] is to be read as further proviso to sub-sec [1]. In our view, since the inception of the Act, it has been understood by all concerned that if election of the market committee is not held for any reason, the Director with the approval of the State Government is empowered to nominate members on the committee as provided in sub-sec. [2] [a]. In the present case also, the powers were exercised under sub-secs.[2][a] and [b] of Sec. 11 after the term of the market committee expired on 25th May, 1991. No doubt, the same members continued as members of the market committee. Learned counsel Mr.Vakharia has pointed out number of other instances wherein the State Government has exercised powers under sub-sec.[2] of Sec. 11 after expiry of term of the Agricultural Produce Market Committee. Not only that but it would also be difficult for us to hold that sub-sec. [2], which is an independent section, is required to be read as second proviso to sub-sec [1]. If the Legislature wanted to provide a proviso to proviso, it would have specifically provided so. Further, it would not have specifically used the phrase "if for any reason in the case of a market committee no election is held". This phrase in our view indicates that, at any point of time after constitution of the market committee if for any reason election of the market committee is not held, the Director is empowered to nominate the members on the market committee with the prior approval of the State Government. This power is also controller by laying down guideline that the Director shall nominate on the market committee the members from the respective class as specified in sub-sec. [1] and that too they must be qualified to be elected as members of the respective class. It is to be noted that in the proviso to sub-sec.[1], there is no such guideline. The power of the State Government is not restricted. It nowhere provides that the members of the first market committee shall be the persons from the respective class as stated in clause [i] to [v] of sub-sec [1]. There is no indication in sub-sec.[2][a] or there is no other reason pointed out by the learned Advocates for the respondents for reading sub-sec.[2] as proviso to a proviso of sub-sec. [1]. In our view, as stated above, proviso to sub-sec.[1] empowers the State Government to constitute the first market committee while sub-sec.[2] empowers the Director to nominate on the market committee from amongst persons qualified to be elected as members of the respective class specified in sub-sec.[1] for a maximum period of two years at any point of time when election of the market committee is not held.

13. Further, it cannot be said that sub-sec. [2] and sub-sec.[5] are inconsistent. In our view, these two sub-section are to be read harmoniously. Sub-sec.[2] empowers the Director with the approval of the State Government to nominate members on the market committee as per the guidelines laid down in the said sub-section. If this is not feasible for any reason, it is open to the State Government to appoint an Administrator to manage the affairs of the market committee and that market committee is to be reconstituted within the period of one year from the date of the appointment of the Administrator. That means, it

would depend upon the facts and circumstances in each case and the State Government has to exercise its discretion as to whether to appoint a committee as provided under sub-sec.[2] or to appoint an Administrator for smooth functioning of the market committee. Therefore, it cannot be said that powers under sub-sec.[2] and sub-sec.[5] are inconsistent with each other."

21. Learned advocate Mr.Zaveri and Mr.A.D.Oza, learned GP relying on these two decisions have submitted that the State Government is empowered to extend the term of market committee which has been nominated by the State Government u/s 54(2) of the Act.The submission is that if for any reason, it is not feasible then it is open for the State Government to appoint administrator to manage the affairs of the market committee and that market committee has to be reconstituted within a period of one year from the date of appointment of the Administrator. It is further submitted that such exercise would depend upon facts and circumstances in each case and the State Government has to exercise its discretion as to whether to appoint a Committee as provided under sub-sec.2 or to appoint the Administrator for smooth functioning of the market committee. Therefore, according to their submission, the powers under sub-Sec.[2] and [5] of Section 11 are not inconsistent with each other. Therefore, they submitted that the term of the market committee which has expired, has been rightly extended on the basis of genuine reason by the State Government exercising the discretionary powers vested upon the State Government u/s 11(2)(a), 11(4)(aa) and Section 11(5)(a). In short, their submission is that the State Government is having powers to extend the term of nominated committee u/s 54(2) of the Act.

22. Learned advocates Mr.P.K.Jani and Mr.B.S.Patel appearing on behalf of the petitioners have submitted that the State Government is not empowered to extend the term of the nominated market committee as there is no specific provision made either in Section 11 and Section 54 of the Act. They submitted that decisions relied on by the respondents, out of which, the first decision reported in 1989 [2] GLH 33 was delivered on 30th November, 1988 and therefore, it was prior to amendment made under the Act dated 31st July, 1990. Therefore, this judgment is not applicable to the facts of this case as there was no discussion as to Section 11(5) read with Section 54 of the Act. So far as the second decision reported in 1993 [1] GLR 738 is concerned, according to the learned advocates for petitioners, in the said decision, the Division Bench of this Court has not considered the effect of Section 54 read with Section 11 of the Act and therefore, this judgment is also not applicable on the facts and in the circumstances of the present case. Learned advocate Mr.P.K.Jani has, on the other hand, relied on observations made by the Apex Court in case of Prakash Amichand Shah Vs. State of Gujarat and Others, . The observations made in para-26 of the Apex Court in aforesaid decision as relied upon by Mr.Jani are reproduced hereunder :-

"26. But the learned counsel for the appellant however drew our attention to certain subsequent decisions of this Court to persuade us to differ from the above view. First he referred us to the decision of this Court in Rustom Cavasjee Cooper Vs. Union of India (UOI), which is popularly known as the Bank Nationalization Case, in which again the majority judgment was written by Shah, J. Then the learned counsel referred us to the decision in Kesvaoanda Bharati v. State of Kerala [1973] Suppl. S.C.R. 1 and to the decision in The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another, in support of his plea that the decision in Shantilal Mangaldas''s case (supra) stood overruled. We have gone through these decisions carefully. Before embarking upon the examination of these decisions we should bear in mind that what is under consideration is no a statute of a legislation but a decision of the Court. A decision ordinarily is a decision on the case before the court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. We have earlier seen what Justice Shah has laid down in Shantilal Mangaldas''s case (supra). The very same Judge delivered the majority judgment in the Bank Nationalisation Case (supra) in which he observed at pages 303 & 304 thus :-

"There was apparently no dispute that Article 31(2) before and after it was amended guaranteed a right to compensation for compulsory acquisition of property and that by giving to the owner, for compulsory acquisition of his property, compensation which was illusory, or determined by the application of principles which were irrelevant, the constitutional guarantee of compensation was not complied with. There was difference of opinion on the matter between the decisions in P. Vajravelu Mudaliar''s case (supra) and Shantilal Mangaldas''s case (supra). In the former case it was observed that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the owner : in the latter case it was held that "compensation , being itself incapable of any precise determination, no definite connotation could be attached thereto by calling it just equivalent or full indemnification , and under Acts enacted after the amendment of Article 31(2) it is not open to the Court to call in question the law providing for compensation on the ground that it is inadequate, whether the amount of compensation is fixed by the law or is to be determined according to principles specified therein. It was observed in the judgment in Shantilal Mangalda''s case (supra) at p.651 :

''Whatever may have been the meaning of the expression compensation" under the unamended Article 31(2), when the Parliament has expressly encated under the amended clause that ''no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate'', it was intended clearly to exclude from the jurisdiction of the court an enquiry that which is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is deprived."

23. While citing above referred decision, learned advocate Mr.Jani has submitted that the decision is ordinarily is decision on the case before the Court, while principles underlined in the decision, would be binding as precedent in a case, which comes up for decision subsequently. He also submitted that the scope of authority of a precedent should never be expanded unnecessary beyond the needs of the given situation. Learned advocate Mr.Jani has also relied upon another decision in case of S.R. Chaudhuri Vs. State of Punjab and Others, and mainly emphasised on contents of para-34 and 35. The observations made in the aforesaid decision relied by Mr.Jani are reproduced as under :-

"34. The very concept of responsible government and representative democracy signifies government by the people. In constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their chosen representatives and for exercise of those powers, the representatives are necessarily accountable to the people for what they do. The member of the Legislature, thus, must owe their power directly or indirectly to the people. The members of the State Assemblies like the Lok Sabha trace their power directly as elected by the people while the members of the Council of State like the Rajya Sabha owe it to the people indirectly since they are chosen by the representatives of the people. The Council of Ministers of which the Chief Minister is the head in the State and on whose aid and advice the Governor has to act, must, therefore, owe their power to the people, directly or indirectly.

35. The sequence and scheme of Article 164, which we have referred to in an earlier part of our order, clearly suggests that ideally, every Minister must be a member of the Legislature at the time of his appointment, though in exceptional cases, a non member may be given a ministerial berth or permitted to continue as a Minister, on ceasing to be a member, for a short period of six consecutive months only to enable him to get elected to the Legislature in the meanwhile. As a member of the Council of Ministers, every Minister is collectively responsible to the Legislative Assembly. A Council of Ministers appointed during the term of a Legislative Assembly would continue in office so long as they continue to enjoy the confidence of the Legislative Assembly. A person appointed as Minister, on the advice of the Chief Minister, who is not a member of the Legislature, with a view to continue as Minister must, therefore, get elected during a short period of six consecutive months after his appointment, during the term of that Legislative Assembly and if he fails to do so, he must cease to be a Minister. Reappointment of such a person, who fails to get elected as a member within the period of grace of six consecutive months, would not only disrupt the sequence and scheme of Article 164 but would also defeat and subvert the basic principle of representative and responsible government. Framers of the Constitution by prescribing the time-limit of "six consecutive months" during which a non-legislator cannot be permitted to remain a Minister for any period beyond six

consecutive months, without getting elected in the meanwhile. Resignation by the individual concerned before the expiry of the period of six consecutive months, not followed by his election to the Legislature, would not permit him to be appointed as Minister once again without getting elected to the Legislature during the term of the Legislative Assembly.The "privilege" of continuing as a Minister for "six months" without being an elected member is only a one time slot for the individual concerned during the term of the Legislative Assembly concerned. It exhausts itself if the individual is unable to get himself elected within the period of grace of "six consecutive months". The privilege is personal for the individual concerned. It is he who must cease to be a Minister, if he does not get elected during the period of six months. The "Privilege" is not of the Chief Minister on whose advice the individual is appointed. Therefore, it is not permissible for different Chief Ministers, to appoint the same individual as a Minister, without him getting elected, during the term of the same Assembly. The individual must cease to be a Minister, if during a period of six consecutive months, starting with his initial appointment, he is not elected to the Assembly. The change of a Chief Minister, during the term of the same Assembly would, therefore, be of no consequence so far as the individual is concerned. To permit the individual to be reappointed during the term of same Legislative Assembly, without getting elected during the period of six consecutive months, would be subversion of parliamentary democracy. Since Article 164[4] provides a restriction for a non -legislator Minister to continue in office beyond a period of six consecutive months, without being elected, it clearly demonstrates that the individuals concerned appointed as a Minister under Article 164[1] without being a member of the Legislature must cease to be a Minister unless elected within six consecutive months. Reappointing that individual without his getting elected, would, therefore, be an abuse of constitutional provisions and subversive of constitutional guarantees. Every Minister must draw his authority, directly or indirectly, from the political sovereign - the electorate. Even a most liberal interpretation of Article 164[4] would show that when a person is appointed as a Minister, who at that time is not a member of the Legislature, he becomes a Minister on clear constitutional terms that he shall continue as a Minister for not more than six consecutive months, unless he is able to get elected in the meanwhile. To construe this provision as permitting repeated appointments of that individual as a Minister, without getting elected in the meanwhile, would not only make Article 164[4] nugatory but would also be inconsistent with the basic premise underlying Article 164. It was not the intention of the founding fathers that a person could continue to be a Minister without being duly elected, by repeated appointments, each time for a period of six consecutive months. If this were permitted, a non legislator could by repeated appointments remain a Minister even for the entire term of the Assembly - a position wholly unacceptable in any parliamentary system of government. Such a course would be contrary to the basic principles of democracy, an essential feature of our Constitution. The intention of the framers of the Constitution to restrict such appointment for a short period of six consecutive months, cannot be permitted to be frustrated through manipulation of "reappointment".

24. While referring said decision, the submission made by learned advocate Mr.Jani is, a person appointed as Minister on the advice of the Hon''ble Chief Minister who is not a member of the Legislative Assembly with a view to continue as Minister must therefore get elected during the period of six consecutive months after his appointment during the term of that Legislative Assembly and if he fails to do so, he must cease to be a Minister. Reappointment of such a person who fails to get elected as a Member within a period of course of six consecutive months, would not only desperate the consequence and scheme of Article 164 but would also defeat and subvert the basic principles of representative and responsible Government. He also submitted that similar situation has arisen in the instant case that u/s 54 [2], the State Government has nominated the market committee for a period of two years. During the period of two years, if no election is held by the State Government for any other reason, said committee cannot remain / continue by exercising the powers of extension which has been ordered by the State Government. Therefore, according to his submission, the nominated market committee after completion of period of two years, must cease to a Committee and the State Government must have to exercise the powers u/s 11(5) of the Act to appoint the Administrator.

25. We have carefully considered submissions made by learned advocates appearing on behalf of the respective parties, so also the decisions referred and cited before us by the learned advocates. The question is, whether the State Government is empowered to extend the period of nominated market committee while exercising the powers either u/s 11(2) or 11(4)(aa) of the Act. The State Government has issued Notification initially on 18th March, 2002 and 15th July, 2002 in respect of the petition filed by learned advocate Mr.B.S.Patel. In respect of the petition filed by learned Advocate Mr.P.K.Jani, the term of the committee has been extended by Notification dated 26th Jun, 2002 for a period of one year. Thereafter, by cancelling the earlier Notification, issued second notification dated 24th July, 2002 reducing said extension upto 31st December, 2002. It requires to be noted that in all the notifications or the Government Resolutions issued by the State Government, wherein reference is made under Sections 11(2)[a] & [b] and 11(4)(aa). Therefore, it becomes clear that the State Government has exercised the powers while extending the term of nominated market committee u/s 11(2) [a] & [b] and 11(4)(aa). Therefore, question is whether the State Government having powers to extend the term of such nominated market committee beyond period of two years. This Court has considered the Section 11 of the Act in entirety. u/s 11 of the Act, the State Government has powers to nominate all the members under proviso of Section 11(i)(v). The said proviso provides that when a market committee is constituted for the first time, all the members thereof shall be persons nominated by the State Government and shall hold the office for a period of two years from the date of their nomination. u/s 11(2)(a) of the Act, the Director having powers with the previous approval of the State Government to nominate on the market committee members of the respective class specified

in sub-sec.[1] from amongst persons qualified to be elected as members of the respective class. The term of the said committee which has been nominated by the Director is also for a period of two years. The State Government has power to extend the term of elected market committee after recording the reasons for a period of one year in aggregate u/s 11(4)(aa) of the Act. Therefore, the Legislature thought it fit to give power to the State Government to extend the period of elected market committee. The term of elected market committee is four years from the date of first general meeting. But no such power has been given to the State Government or to the Director to extend the term of nominated market committee beyond period of two years. Before amendment made in the said Act on 31st July, 1990, there was difficulty that election of the market committee challenged before the various authority and the result thereof, elected committee will continue till new market committee come into existence. Therefore, just to avoid such situation, the State Government has thought it fit to amend Section 11 of the Act on 31st July, 1990 and thereby, powers have been conferred to the State Government by amending the relevant provisions of Section 11(4)(aa) to extend the period of elected market committee for a period of one year and to appoint an Administrator to manage the affairs of the market committee whenever the term of office of market committee expires and to provide that the administrator shall hold the office till the first general meeting of the new market committee. The State Government has also felt that it is also considered necessary to have powers to appoint an Administrator if it appears to the State Government that the market committee has not been validly constituted as well as in the case where the market committee after its being liable to be reconstituted by reasons of expiry of its terms or otherwise, continue to function and the members as well as the Chairman and Vice Chairman of the market committee continue to hold their office. Therefore, just to avoid abovestated situation, the powers conferred on the State Government in a given case, so that Government can appoint the administrator. The term of the administrator is for a period of one year and in the mean while the market committee shall be reconstituted by the State Government holding the election in accordance with law. Therefore, when there is no provision made u/s 11 for extension of term of nominated market committee, then naturally the State Government has no power to extend the term of the nominated market committee. Learned advocate Mr.Zaveri has submitted that there is no difference in view of definition given under the said Act of the Markets Committee either it may be nominated market committee or elected market committee. It is true that in definition, there may not be any difference because once the market committee validly nominated either by the Director or by the State Government, then it is legal market committee and if it is elected market committee, then also, it is market committee formed in accordance with law. Therefore, in definition, there may not be any distinction made out by the legislation but while enacting the relevant Section 11, there is specific distinction made by making statutory provision that the State Government having powers to nominate the market committee in a first occasion and thereafter on any other occasion, the

Director having powers after obtaining previous approval from the State Government to nominate the market committee. Therefore, distinction which has been made u/s 11 of the Act is very clear in respect of powers of the State Government and the Director. Similarly, u/s 54 the State Government is having powers to direct the market committee be constituted for each market area as formed on account of such alteration. u/s 54(2) of the Act, the State Government has power to nominate the market committee and period for such nominated market committee is prescribed for a period of two years and shall not exceed further beyond period of two years. Relevant Section 54(4) suggests that on expiry of the period of office of the Members of the Market Committee, under sub-sec.[3], the market committee shall be reconstituted in the manner provided in Section 11. Therefore, a moment the market committee which has been nominated by the State Government u/s 54(2) and under sub-sec.[3], if the period expires, then it is the duty of the State Government to reconstitute such market committee in the manner provided in Section 11. Therefore, even we consider Section 54(4), there is no power given to the State Government to extend the term of such market committee but the State Government has to consider the provisions of Section 11 of the Act. u/s 11, it is not first occasion as suggested in proviso 11[1] [v]. Therefore, the committee, in such situation, is not constituted for the first time and therefore, such proviso is not applicable to the facts of the present case. Similarly, in facts of the present case, the Director has not nominated the market committee u/s 11(2)(a). In view of the facts of the present case, it is not the case of the elected market committee and therefore, question of extending the period of nominated market committee does not arise. The Legislature has provided extension for a period of one year by the State Government only in respect of the elected market committee. Therefore, in case when the market committee has been nominated by the State Government u/s 54(2) and after completion of their two years period, the State Government must have to hold election during the period of two years and if for any reason election is not possible to be held, then in such situation, nominated market committee cannot remain in powers for any further period and in such eventuality, the State Government shall have to appoint Administrator u/s 11(5)(a) to manage the affairs of the market committee during period beginning with the date specified in the order and ending on the date immediately preceding the date of first general meeting of the market committee as reconstituted on expiry of the term of the market committee. A conjoint reading of Section 11 and 54 makes it clear that the State Government has no power to extend the term of nominated committee either u/s 54(2) or u/s 11(2)(a) beyond period of two years as specified under the statutory provisions. No similar power has been given to the State Government by enacting specific provision as made in respect of elected market committee for giving extension for a period of one years as provided u/s 11(4)(aa) of the Act. According to us, there is no ambiguity in Section 11 and 54 of the Act. The intention of the Legislature is very clear that in a first time, if market committee is required to be constituted, then, the State Government can nominate the Members of the market committee in case if bifurcation of market area or alternation of the market area, powers has been given to the State Government to nominate the Members of the market committee and the third situation, that in case, for any reason, if election of the market committee is not held, then Director may nominate the market committee with previous approval of the State Government. But in none of the provision, powers have been given to the State Government to extend the term of such nominated market committee. Therefore, Section 11(5) has been enacted by amendment dated 31st July, 1990 conferring powers to the State Government to avoid such situation of extension to such nominated market committee and instead that, to appoint an administrator for the purpose of giving fair election of the Members of the market committee. This is the object while making Amendment in the year 1990. The facts of the decision reported in Sodha Parmar Chhanabhai Gandabhai Vs. State of Gujarat and Others, relied upon by learned advocate Mr.Zaveri, are all together different from the facts of the case on hands. There was question of challenge to appointment of respondent Nos.4 to 10 as Administrators of the market committee when one Administrator - District Registrar was continued as working Administrator by order dated 7th January, 1992. Therefore to remove one Administrator - District Registrar who was Government employee and in his place respondent Nos.4 to 10 have been appointed as Administrator by order dated 6th October, 1992 wherein election was taken place on 27th December, 1992. Before that, on administrator District Registrar was continued by order dated 7th January, 1992 as Administrator u/s 11(5) of the Act, mean while, the State Government has appointed another administrator as respondent Nos.4 to 10 by order dated 6th October, 1992 those who are supporters of respective party in power. The facts of the reported case referred to above, are not similar to the facts of the present case. Therefore, obviously ratio which has been laid down by the Division Bench of this Court in aforesaid case is not applicable to the facts of the present case. Furthermore, in above referred reported case, the effect of Section 54 has not been examined. Similarly, decision which has been relied upon by learned advocate Mr.K.S.Zaveri reported in 1989 [2] GLH 33 which is prior to the amendment dated 31st July, 1990 and therefore, Section 11(2) of the Act has not been examined in light of Section 54 and amended provision made on 31st July, 1990 and therefore, said decision is also not of any assistance in the present case.

26. While interpreting the effect of the relevant Section, in a given case, we are keeping in mind well established principles of interpretation of Statute. It is duty of the Court while interpreting the relevant Section, must identify interpretation which represents the true intention of the legislature and always bear in mind, however, the Court should not try to legislate relevant provision. While interpreting the relevant provisions of the Act, the Court must reject the construction which lead to hardships, serious inconvenience, injustice or uncertainty and friction in the very system that statute concerned is supposed to regulate. While keeping this principle in mind, relevant Sections 11 and 54 has

been interpreted by us. In respect of the powers which has been exercised by the State Government extending the term by issuing notification or Government Resolution of nominated market committed upto 31st December, 2002. Recently, the Apex Court has considered the principles of interpretation of statute in a reported case of BHATIA INTERNATIONAL V. BULK TRADING S.A. reported in 2002 [4] SCC pg.105. The relevant observations made in para-15 which are important at this juncture, quoted as under :-

"15. It is thus necessary to see whether the language of the said Act is so plain and unambiguous as to admit of only the interpretation suggested by Mr.Sen. It must be borne in mind that the very object of the Arbitration and Conciliation Act of 1996, was to establish a uniform legal framework for the fair and efficient settlement of disputes arising in international commercial arbitration.The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the court''s duty to expound arises with a caution that the court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the Court would adopt, particularly in areas such as, constitutional adjudication dealing with social and defuse [sic] rights. Courts are therefore, held as "finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing" [see Corocrat Ltd. V. Pan American Airways, All ER at p.1071 D, WLR at pg.732, State of Haryana v. Sampuran Singh, AIR at p.1957]. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardships, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. [See Johnson v. Moreton and Stock v. Frank Jones [Tipton] Ltd.] In selecting out of different interpretations, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In Shannon Realities Ltd. Ville de St Michel, AC at pp.192-93, Lord Shaw stated:

"Where words of a statute are clear, they must, of course, be followed, but in Their Lordships'' opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

This principle was accepted by Subba Ra, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of Customs.[Collector of Customs v. Digvijaysinhji Spg. & Wvg. Mills Ltd.].

27. We have also considered the Government Resolutions or notifications dated 18th March, 2002, 15th July, 2002, 26th June, 2002 and 24th July, 2002 wherein the term of the nominated market committee has been extended by the State Government. Submissions made by the learned advocates appearing on behalf of the respondents that extending the period of such committee, amounts to reconstitute the committee or renominate the committee by the State Government. The question is that in the said Circular or Notification, no such word has been incorporated and naturally, this Court cannot read something else which is not there in said resolutions. Therefore, submissions of learned advocate appearing on behalf of the respondents cannot be accepted, even otherwise, if the Government Resolution can be read as it is and no addition, deletion or explanation is permissible. Therefore, a bare reading of the said Government notification and Government Resolutions, the State Government has extended the period and not renominated the Committee, nor reconstituted the committee under the provisions of the Act. The power to extend the term by the State Government is only available to the State Government in case of elected body as required u/s 11(4)(aa) except that, the State Government has no power to extend the term of nominated market committee.Recently, while interpreting Government Resolution, the view is taken by the Apex Court in case of SISIR KUMAR MOHANTY vs. STATE OF ORRISSA reported in 2002 AIR SCW 244. The relevant observations made by the Apex Court in above case are reproduced:

"10. Adverting to the rival contentions, it has been a definite assertion for the appellants herein that by virtue of the resolution noticed above, the police ministerial officers serving under the IG/DGP. Orrisa constitute a separate cadre within the general cadre of police officers and as such claim that police ministerial officers holding the post of Junior Clerks in the district offices besides being entitled for promotion in the district offices to the rank of Assistant Sub-Inspectors are entitled to promotion to the post of Senior Assistants in the office of IG / DIG and in the same manner Head Clerks and Senior Assistants of district offices having the ranks of SI of police are entitled to promotion to the rank of Section Officer in the rank of Inspector of Police in the office of IG/DIG. It has been contended that the language itself having reference to paragraph 2 of the resolution cannot but depict a clear intent to create single cadre and not two irrespective of the offices in which they have to work and as such no artificial barrier can be introduced between the selfsame offices. The submissions advanced no doubt require a serious consideration as to the true interpretation of the resolution no addition or deletion can ever be said to be permissible as otherwise an order which happen to be bad at the beginning may through the process of affidavits gets validated by additional grounds later brought out : As a proposition of law, there cannot be any manner of doubt in regard thereto. The effect of the resolution shall have to be judged on the basis of the document itself and no other external aid is permissible. A careful scrutiny of paragraph 2 of the Resolution dated 7th September, 1974 [as noticed hereinbefore] and in particular the user of the language along with "the existing police ministerial officers will form a separate cadre within the general cadre of the Orissa Police and will be designated as Police Officers [Ministerial]" makes the situation abundantly clear as regards the creation of a separate cadre called "Police Officers [Ministerial]". By and under the said clause, option have been provided in terms of Section 7 of the Police Act of 1861, which reads as below:"

28. We have considered submissions made by the learned advocates appearing on behalf of the respective parties and also carefully perused the original Files produced before this Court by the State Government. This Court has also considered the decisions cited before this Court by the respective advocates of the parties. We have also examined the relevant provisions of Section 11 and 54 of the Act from all corners simultaneous with submissions advanced by the respective advocates. According to our opinion, each sub-section of Section 11 are independent and there is no over lapping between Section 11(2) and Section 11(5) of the Act. Both are different and separate powers enjoyed by the Director and the State Government in different situation. While enacting Section 11, the legislature has taken sufficient care to see that nominated market committee cannot work or remain / continue in power beyond the period of two years. The intention of the legislature is very clear that the committee which has been nominated either by the State Government or by the Director cannot remain in power beyond period of two years and during that period of two years, election of such market committee must have to be held and in any case, election is not held and specific period is over, in such eventuality, the State Government shall have to appoint Administrator u/s 11(5) of the Act. The legislature has in clear terms made it clear while giving powers of extension to the State Government in respect of the elected market committee. But no such provision is made for giving powers of extension to the State Government in respect of the nominated market committee neither by the State Government nor by the Director u/s 11 and Section 54 of the Act. If the period of nominated market committee is not extended, then there is no difficulty or any absurd situation will arise which

adversely affect the affairs of the market committee because by way of amendment dated 31st July, 1990 power has been given to the State Government to appoint the Administrator as and when the term of such committee has expired. Intention of the legislature is very clear that within two years period of such nominated market committee, election must be held. Therefore, by extending the period of such nominated market committee, the State Government cannot continue such nominated market committee, who remained in powers upto next general meeting of new market committee because if nominated members of the market committee remained in power beyond period of two years and in between election will be held then, naturally it may have some adverse effect on the election because market committee having various powers as specified under the Statute and having effective control for the affairs of the market committee. Apprehension which has been pointed out by learned advocate Mr.P.K.Jani is well founded inasmuch as the market committee having powers such as to issue licence or to suspend licence or to cancel the licence of such person and many other act/s or an action can be taken by such market committee during the process of election. Another possibility which cannot be ignored that they may create a situation that list of voters can be altered, modified or they may take action to delete the name/s of some of the voters or can include the name/s of voters or to utilise the fund of the market committee for other various purposes. Therefore, the legislature has well anticipated that it can adversely affect the persons in market committee those who are not elected Member and they are nominated being a person of State Government or a party who is in power. That they may be supporter of party in power. Because while nominating the market committee by the State Government under proviso of Section 11(a)(v), there is no such condition to nominate such person who may be qualified to be elected for market committee. Therefore, any person can be nominated by the State Government while exercising the powers as mentioned in proviso of Section 11(1)(v). Similarly, while exercising the powers u/s 54(2), any person can be nominated as Member of the Market Committee without any restriction as provided u/s 11(2)(a) of the Act. The restriction has been only specifically mentioned in Section 11(2)(a) where the Director with a previous approval of the State Government nominate the market committee members of the respective class specified in sub-sec.1 from amongst the persons qualified to be elected as Members of the respective class. Except that, there is no such restriction made either in proviso of Section 11(I)(v) and Section 54(2). Therefore, intention of the legislature is very clear not to continue such market committee beyond period of two years and they may not remain in power beyond period of two years and therefore, the legislature has thought it fit not to give powers either to the Director or the State Government to extend the term of such nominated market committee for a period beyond two years.

29. The submissions made by learned advocate Mr.K.S.Zaveri and Mr.A.D.OZa, learned GP that while extending the period of such nominated market committee,

the reason given by the State Government is genuine and proper looking to the situation which arose in the State. The reasons given by the State Government while extending the period may be genuine but once the State Government is not having powers to extend the period of such nominated market committee, then such notification or Government Resolution is, obviously, without jurisdiction. It is also necessary to note that the State Government cannot exercise the powers u/s 11(2)(a) and State Government cannot exercise the powers u/s 11(4)(aa) for extending the period of nominated market committee. Therefore, after our thoughtful consideration, according to our opinion, there is no provision made in Section 11 which gives powers to the State Government to extend the term of nominated market committee beyond the period of two years. In such situation, it is mandatory duty of the State Government to appoint Administrator as and when such term of the nominated market committee is over u/s 11(5)(a) of the Act. The notification or Government resolution is very clear, wherein period has been extended and it cannot be construed or understood that extension amounts to renomination or reconstitution. Both are different aspects but once it is not the intention of the State Government to renominate the committee or reconstitute the committee, then it cannot be read which is not in notification. Therefore, this submission advanced by the learned advocates for the respondents cannot be accepted. Once the term of the nominated market committee u/s 54(4) is expired, then, the State Government shall have to appoint the Administrator u/s 11(5) of the Act. There is no other provision which gives powers to the State Government u/s 11 of the Act to extend the period of such nominated market committee. Therefore, according to our opinion, Notifications issued by the State Government extending the term of nominated market committee u/s 54(2) of the Act, is clearly without jurisdiction and without any authority in law and therefore the same are required to be quashed and set aside in respect of the market committees of Dhanera, Panthawada and Talod.

30. In the result, Special Civil Applications Nos.5732, 5734, and 6713 of 2002 are allowed. The notifications or Government Resolutions issued by the State Government extending the term of nominated market committee u/s 54(2) of the Act in respect of Dhanera, Panthawada and Talod Market Committees are hereby quashed and set aside. It is directed to the State Government to appoint Administrator u/s 11(5) of the Act in respect of the nominated Market Committee of Dhanera, Panthawada and Talod within period of one month from the date of production of copy of this order. It is further directed to the State Government to hold Election of the market committees of Dhanera, Panthawada and Talod and complete the election process within period of three months from the date of receiving the copy of this order. Rule in each petition stands made absolute with no order as to costs.

[N.G.Nandi, J.] [H.K.Rathod, J.]

Further Order :

After the pronouncement of this judgment, original six files relating to these three matters have been handed over to the learned Government Pleader Mr.A.D. Ozaand the same have been received by him from the Court Master of this Court today itself.

