

(2003) 05 GUJ CK 0003
In the Gujarat High Court

Case No : Special Civil Application No 366 of 2003

Sonaben Mamanbhai Juneja

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Gujarat Panchayat Election Rules, 1994 — Rule 63
Gujarat Panchayats (Amendment) Act, 1993 — Section 116, 116(1), 15(1), 243(O), 249
Gujarat Panchayats Act, 1961 — Section 12, 126
Gujarat Taluka and District Panchayat Financial Accounts and Budget Rules 1964 — Rule 161

Citation : (2003) 05 GUJ CK 0003

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Harin Raval and Anshin H. Desai, for Petitioner No. 1-5, for the Appellant; N.V. Anjaria and H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—The petitioner no.1 is a lady Sarpanch of Amarpur (Kathi) Village Panchayat, Taluka Mendarda, District Junagadh and petitioner no.2 is Upsarpanch. and other petitioners are the members of the said Panchayat. They have prayed for issuance of appropriate writ, directions and orders invoking jurisdiction of this Court, under Article 226 of the Constitution of India.

2(i). In this petition the petitioners have challenged , inter alia, the legality and validity and especially the propriety of the order dated 30.11.2002 passed by the respondent no.1 in exercise of the powers u/s 253 of the Gujarat Panchayats Act 1993 (hereinafter referred to as the said Act) communicated to her by service on 15.1.2003 dissolving the Amarpur (Kathi) Village Panchayat. Copy of this order is at Annexure-A to the petition. Copy of the letter dated 8.1.2003 to which order dated 30.11.2002 was attached and communicated to the petitioners by RPAD is annexed hereto and marked as Annexure-B to the petition. The document at

Annexure-C is the xerox copy of the envelope sent/dispatched by RPAD on 8.2.2004 and the petitioners have stated on oath that the same was received on 15.1.2003. This statement needs to be appreciated in the light of the 3 intervening holidays viz. 11th and 12th January 2003 respectively being Second Saturday and Sunday and 14th January 2003 being Makarshankranti, a holiday declared by the State Government. The petitioners have also challenged the letter dated 30.11.2002 whereby the authority (Respondent no.1) appointed Administrator for the said Panchayat and the Notification allegedly issued by the respondents on 30.11.2002. The Circle Inspector, Mendarda has been appointed as Administrator under the said order. According to the petitioners that action of the respondents is not only of lack of bonafides but it also smells malafides and passing of these orders and the consequential action taken by the authority are nothing but absolute colourable exercise of power, not only under political pressure and use of office in highly unconstitutional and arbitrary manner. It is also the say of the petitioners that the political vendetta has resulted into mechanical exercise of powers without application of mind on the part of the respondent no.1. The order dissolving village Panchayats passed by the respondent no.1 was, for the first time dispatched on 8.1.2003 i.e. after almost one month and 8 days. The petitioners have produced the relevant document including the Notification published with the petition.

3. In order to appreciate the say of the petitioners, the facts in brief, may be stated.

3.1. The petitioners state that the petitioner no.1 has been selected as Sarpanch of village Panchayat adopting "Samras Yojna". Samras Yojana, if adopted by a Village Panchayat, there is selection of Sarpanch and not election and such Panchayat is granted some special benefits and privileges. The petitioner no.2 was elected to the post of Upsarpanch on 15.1.2002. On 13.3.2003, the petitioner no.1 expressed grievances before the respondent no.2-Taluka Development Officer (TD0), Mendarda by way of a complaint that inspite of her selection and election of Upsarpanch on 15.1.2003, she has not been handed over the charge by the Administrator and the Talati cum Mantri of the village is not handing over the records etc. of Panchayat. Copy of the said complaint/communication dated 13.3.2002 is on record at Annexure.G to the petition.

3.2. Till the date of election of Upsarpanch, the Administrator was incharge. On 16.3.2002, the agenda was issued calling for a meeting on 27.3.2002 for consideration of annual budget of the Gram Panchayat. This budget was undisputedly prepared by the Administrator and was sent to the Taluka Panchayat under the provisions of section 116(1) of the Act. In the meeting dated 27.3.2002, total 8 members were present. In that meeting the Talati cum Mantri, Samant N. Wala did not permit one member i.e. Bhanubhai R. Chudasma to sign muster in the minutes book for showing his presence and participation in the meeting and thus the Talati cum Mantri committed material illegality who was not co-operative since 15.1.2002.

3.3. ON 23.3.2003, 3 members supported the budget and 4 members opposed the budget proposal prepared by Administrator without any reasons. If the presence of Bhanubhai Chudasma was shown, then there was a possibility of equality of voters and the casting vote by petitioner no.1 as Sarpanch could have been given in the capacity of a person presiding in the meeting approving Budget. So on 31.3.2002, the petitioner no.1 moved a circulating Resolution which was approved by 4 members and opposed by 4 members. The petitioner no.1 being the Sarpanch, gave the second casting vote and treated the said Resolution as passed and treated the budget as approved. On 3.4.2002, Bhanubhai Chudasma complained to District Development Officer (DDO) Junagadh District Panchayat that the Talati cum Mantri Samant N Wala purposely did not permit him to show his presence and to vote on 27.3.2002. On 5.4.2002, the Sarpanch made an application to the DDO, respondent no.2 and Dy. DDO), District Panchayat, Junagadh and others that they may remain present in the meeting to be held on 11.4.2002 as she apprehends defiant behaviour of Talati cum Mantri or the Talati cum Mantri may not even remain present or many not act in accordance with the law as he has acted earlier. On 8.4.2002, the respondent no.2 TDO stayed the consideration of agenda item nos 5 and 6 of the meeting to be held on 11.4.2002 by his order dated (8.4.2002.) On 11.4.2002, the stay order was granted by the Appellate Authority of Junagadh District Panchayat against the order passed by the respondent no.2 dated 8.4.2002 and on 11.4.2002, the meeting was held.

3.4 It is contended in the meeting of 11.4.2002 that these facts were considered and while dealing with item no.4, approved the Resolution dated 31.3.2002 passed by circulation. Passing of Resolution at item no.5 is recorded in the meeting dated 11.4.2002 which is at Annexure-O to the petition (page 82). Item no.6 independently concerning the approval of the budget was also discussed and passed the Resolution, on casting vote of petitioner no.1 Sarpanch. For both these Resolutions, officially equal votes were casted. Thus on casting vote the Resolutions were passed by majority. It is pointed out that till the agenda item 4 was also cleared unanimously.

3.5. Thus it is clear that the body of the Panchayat has equal division.

3.6. When the appeal preferred before the DDO, challenging the order passed by the respondent no.2, TDO on 8.4.2002 was required to be interpreted and decided on its own merit, the respondent no.2 made an endorsement to the effect that nothing is required to be done, as the proceedings have taken place.

3.7. On 15.4.2002, the petitioner no.1 made a complaint requesting the DDO, President of District Panchayat and Collector, Junagadh to take steps against the Talati cum Mantri as he was not acting in accordance with law. Receipt of this complaint by these authorities, is not in dispute.

3.8. On 20.5.2002 practically within two months from the actual talking over of the administration of the Panchayat, the respondent no.1 issued a notice to show

cause u/s 253 of the Act calling upon the petitioners to show cause as to why the Amrapur (Kathi) Gram Panchayat should not be dissolved as the annual budget has not been approved or sanctioned by 31.3.2002 and stating that there is no provision for the petitioner no.1 to give casting vote in circulating Resolution This notice to show cause was replied on 25.5.2002 and complained to the DDO, Junagadh and appraised him about the illegal behaviour of Talati cum Mantri and the fact of approval of budget by circulating Resolution, approval of the circulating Resolution in the subsequent meeting of the Panchayat and its effect along with approval of budget afresh while dealing with the agenda item no.6 on 11.4.2002.

3.9. Because of the representation made through the Resolution of Panchayat a meeting was ordered to be called on 31.5.2002. However, in view of the previous conduct of Talati cum Mantri, District Panchayat, Junagadh and Taluka Panchayat, Mendarda were requested to send representative who may remain present to see to it that the proceedings are initiated in accordance with law. This request was made by RPAD and Under Certificate of Posting.

3.10. On 31.5.2002 the Amarpur (Kathi) Gram Panchayat having the strength of 8 members (even number) , 4 members suddenly left the meeting but as the quorum was available, the minutes of earlier meeting was approved and other items were discussed and one clarificatory Resolution was also passed as Resolution No.6 in the said meeting. This Resolution contains that the lady Sarpanch is not fully literate or aware about the political smartness which can be played in the local politics.

3.11. On 2.6.2002 an agenda was issued calling for a meeting on 7.6.2002 for appointing petitioner no.2 to represent the case of Gram Panchayat wherein 4 members remained present and authorised petitioner no.2 to represent the case qua the notice for dissolution served u/s 253 of the Act and on 10.6.2002, a detailed reply to the said the notice to show cause was filed The respondent no.2, vide order dated 29.6.2002, in exercise of the powers u/s 249 of the Act, permanently suspended the item nos 1 to 6 of the meeting dated 11.4.2002. Copy of this order is at Annexure-U to the petition (page 96). The endorsement made by TDO referred to as herein above has been ignored.

4.1. It is alleged that some person from State Government was interested to see that the petitioners who are the members of Amarpur (Kathi) Gram Panchayat are removed by hook or crook and the election takes place during the wind and wave favouring the ruling party. The order passed by the respondent in its purported exercise of power u/s 249 was challenged by way of appeal and an application for stay of the order was preferred on 3.8.2002.

4.2. But without considering the provisions of the Act and the relevant Rules the District Panchayat, Junagadh dismissed the said appeal on 8.8.2002. According to the petitioners in spite of number of applications and complaints pointing out the illegalities committed by the Talati cum Mantri, he had not cared to remain

present in the meeting except once. Thereafter a Review Application was also preferred before the State Government u/s 249(4) of the Act along with an application for interim relief on 23.8.2002. But the respondent Nor. Mr. P.D.Waghela passed order dated 30.8.2002 dissolving the Amarpur (Kathi) Gram Panchayat and issued a Notification appointing the Administrator.

4.3. Against the said order of dissolving the Panchayat mainly petitioners nos 1 and 2, preferred a writ petition being SCA No. 9017 of 2002 before this Court. Said SCA came up for hearing before the court on 9.9.2002 and the same was heard in detail and on 11.9.2002, at the end of admission hearing, Rule was issued and the court granted ad-interim relief to maintain status quo prevailing on 9.9.2002. Copy of the order passed by this Court (Coram:Jayant Patel-J) is at Annexure-Z (page 119) to the petition. Till the order of status quo was granted, no charge was taken over by the Administrator. Atleast till 9.9.2002, the administrator had not taken over charge. But the respondents have taken up a stand in the present petition that the charge was taken over by the administrator at the time of admission hearing of the said petition.

5.1. It is alleged that the stand is taken because of the communication amongst the respondents, mainly under pressure of respondent no.1. Undisputedly, this petition has been heard on merit by the court and on 28.10.2002 this court (Coram: P.B.Majmudar-J) passed an order allowing the petition and quashed and set aside the order of the respondent no.1 dissolving the Panchayat by a reasoned and speaking order and remanded the matter back to the respondent no.1 for taking fresh decision.

5.2 The petition has been allowed by making clear cut observations taking into account of the ratio of the decision of the Division Bench of this court in the case of Nathalal Manilal Patel and Another Vs. A.R. Banerjee, and by referring decision of this court (Coram: J.M.Panchal-J) in SCA No. 6492 of 1997. It is also observed and held that after the new Act came into force the effect of non passing of budget before 31.3.2002 may not result into super session or dissolution of the Panchayat. It is interpreted that passing of the budget before 31st March is not mandatory and therefore, there cannot be either supersession or dissolution of the Panchayat only on that ground u/s 253 of the Act. It is the say of the petitioners that after full fledged adjudication the petition was allowed and the matter was remanded to the authority so that the authority can take fresh decision in the light of the observations made and prevailing law.

6. The respondent no.1 under the directions issued by this court while disposing of the above said writ petition fixed he hearing of the matter and the same was heard on 26.11.2002. Written arguments were submitted by the petitioners through their advocate. Copy of the written argument so submitted is attached with the petition at Annexure-Z-3. It is important to note that this fact has not been specifically controverted by the respondent no.1 .Though the petition was allowed by the High Court till 28.11.2002 the respondent no.2 TDO had managed not to hand over the charge of Sarpanch to the petitioner no.1, and the

respondent no.1 passed the order dissolving Panchayat under challenge in the present petition on 30.11.2002.

7. In order to appreciate the say of the petitioners as well as the respondents the learned counsel for the parties are heard at length. Both the learned counsel have taken me through each event occurred till the date of service of the order dissolving the Panchayat and appointment of administrator by respondent no.1 and declaration or proclamation of election of Amarpur (Kathi) Gram Panchayat made on 15.1.2003 along with the steps taken by the State Election Commission in reference to the provisions of section 15(1) of the Act and the Gujarat Panchayat Election Rules 1994 (hereinafter referred to as Election Rules) and they have assisted this court by citing relevant decisions in relation to the powers of Panchayat Sarpanch, TDO, DDO and the State Government and the implied duties of concerned officers and Talati cum Mantri emerging from the relevant provisions of the Act mainly provisions of sections 249,253 and 274 of the Act and the Gujarat Panchayat (Procedure) Rules 1997.

8. The petitioners had preferred Civil Application NO. 384 of 2003i praying for interim relief pending hearing and final disposal of this petition. After circulation of this petition on 17.1.2003 the petitioners came to know that the State Government is intending to hold elections of Amarpur (Kathi) Gram Panchayat, treating the Panchayat as dissolved they prayed for amendment in the petition and the same was allowed by this court. The petition has been amended accordingly . It would be appropriate to refer to the relevant portion of the order passed by this court on 24.1.2003 in the said Civil application (CA No.384 of 2003) on admission hearing.

"...Notice to the opponents returnable on the same day.

It is clarified that any further steps, if are taken, in furtherance of the Notification dated 15.1.2003, would be subject to the orders which may be passed by this court while dealing with present Civil Application as well as the main petition viz. Spl.Civil Application No. 366 of 2003. Direct Service today is permitted."

The newly joined respondent no.4 i.e. Returning Officer and respondent no.5 Collector, Junagadh and officer of the Election Commission are served as per the amendment carried out. On 3.2.2003 further directions were issued to produce letters referred to by the Development Commissioner in para 2.6 of the impugned order dated 30.11.2002 wherein he has mentioned that the Secretary of Panchayat had asked the Sarpanch to take over the charge referring the letter dated 17.3.2002. The learned AGP was directed to produce in all 8 letters before this court on 4.2.2003 i.e. on the next date. The registry was directed to keep the papers of the earlier petition filed by the present petitioners, mainly petitioners onos 1 and 2 i.e. SCA No.9017 of 2002. On 4.2.2003, after hearing the Id. counsel appearing for the parties and especially submission of Mr. N.V.Anjaria representing independent statutory body i.e. respondent no.3 State Election Commission disposed of the CA by making some observations and

issuing certain directions. Reproduction of relevant portion of the order dated 4.2.2003 be made for beneficial purpose.

"13. Hence Election Commission -respondent no.3 is directed to intimate the returning officer to conclude the election process in respect of Amarapur (Kathi) Gram Panchayat, carry out counting of votes, and not to declare formal the result of the election under Rule 63. The result shall be kept in sealed envelope with the Election Commission-respondent no.3 and same shall not be declared till the final disposal of the main petition, or any other order passed by this Court.

14. It is also pointed out by Id. counsel Mr. Munhshaw appearing for Taluka Panchayat that at present Panchayat is being run by the Administrator and Administrator should be continued with the the Administration till the petition is heard finally. Undisputedly Amrapur (Kathi) Gram Panchayat is not joined as party-respondent and in absence of Panchayat, it would not be proper to issue any interim directions to the Administration, but it is rightly argued by Id. counsel Mr. Raval that the petitioners have challenged the action of the Development Commissioner and subsequent steps taken by the State machinery. The Panchayat is neither a necessary party nor a proper party and Taluka Development Officer can be directed to hand over the administration to the petitioner as Sarpanch till the hearing and final disposal of this petition.

15. On careful consideration of certain documents tendered before the court today by Id. AGP and the taking over the charge of Panchayat ex-parte on 13.1.2003 without commenting upon the certain aspects brought to the notice of this court, the respondent taluka Panchayat requires to be directed to restore the status quo ante and it is necessary with a view to see that democratic values which are intervovos with the basic contractual guarantee, prevail and any political wish or desire or the administrative embargo created by the arbitrary behaviour, may not uproot or disturb the democratic set up. So, respondent Taluka Panchayat is directed to see that Administrator having charge of Amrapur (Kathi) Gram Panchayat hands over the charge of the Panchayat to the petitioner no.1 and body elected at the earliest and preferably within 72 hours from the date of receipt of this order. This action may be intimated to the government on the next date of hearing.

16. This Civil Application is disposed of accordingly with above directions and observations. Notice discharged. Registry is directed to place the main petition for final hearing on 13.2.2003."

9.1. The grievances expressed by the petitioner against the respondents, on appreciating the facts placed before the court and the decisions cited are found genuine and the impugned order does not deal with clarity to the very relevant grievances expressed by the petitioners that the charge was not taken over from petitioner no.1 on or before 9.9.2002 and what prevented respondents in handing over charge of the office of Sarpanch till 28.11.2002 though the earlier order of dissolving Panchayat was quashed interpreting section 253 of the Act. All

submissions which were made before this court during the course of hearing of earlier writ petition No.. SCA No.9017 of 2002 were made before the respondent no.1 even then the order under challenge is silent. It was pointed out before the authority that it could never have happened that the TDO/DDO have been served of the order before the petitioners were served, as the date of posting of the impugned order as stated in the petition, is the same and therefore, the registered AD letter would have been received by the office of the TDO/DDO on the same day, on which the petitioners received same. Statement made in the present petition is not controverted that earlier in the presence of the learned counsel for the petitioners, Development Commissioner and the representative of officer of Junagadh District Panchayat, original file and inward and outward register of fax messages were called for and it was found that no such fax message was ever sent from the office of the Development Commissioner. So there was no scope for the authority to take over the charge on or before 9.9.2002. When these submissions were made before the respondent no.1, the ego of the Development Commissioner as alleged, was hurt.

9.2 It is not challenged either by the TDO or by any authority that during the course of the hearing before the Development Commissioner, no oral submissions were made either by TDO or by DDO. Even then it is mentioned in the order that such submissions were made by these two authorities. Though the petitioners have tried to place several circumstances and contingencies to the notice of this court, from where it can be inferred that either the State Government or the Development Commissioner was keen to see that Amarpur (Kathi) Gram Panchayat is superseded. The approach of the respondent no.1 while recording the finding is neither logical nor legal. When the earlier petition was decided by the court, the fact of passing of Resolution by circulation and subsequent events occurred, confirming the earlier decision as to approval of budget were very well before the court. Otherwise, the issue in question i.e. supersession or dissolution of Panchayat on the ground of non passing of the budget, is clearly decided. It seems that with a view to escape from the finding recorded by this court, it is observed that the procedure followed by the Panchayat is not proper and it should be construed as serious and enough for dissolving a Panchayat.

10.1. Samras Yojana floated and recommended for adoption for village panchayats, of course, has not been placed before this court by the respondent state Government. However, when a supersession of a Panchayat and especially the selection of Sarpanch under Samras Yojana comes before the authority, then in that eventuality, the State should act with caution and others including officers should think above all political consideration. The officer who is asked to exercise the jurisdiction u/s 253 of the Act is supposed to act as quasi judicial authority and not as a representative of Government run by a party or coalition. A selected Sarpanch under Samras Yojana normally, should not be uprooted or such Panchayat normally, should not be dissolved mechanically on the ground of alleged procedural irregularity or some mistakes which can be rectified either by the superior elected body or statutory authority. Where rectification is possible or

carried out , and the mistake found cannot be termed as grave, then the authority should go very slow and act with reasonable restraint in case of such Panchayat. Panchayat headed by a person falling in reserved category also be taken with similar approach.

10.2 The Samras Yojna is floated with principal idea of promoting solidarity in a small village and to avoid election expenses including otherwise. Undisputedly the entire village elects the Sarpanch and where such Sarpanch or body works with him is to be removed from office, then the State Government, before taking such harsh action, cannot ignore the relevant provisions of the Act and the Rules framed thereunder and the decisions taken earlier by the Government and/or by this Court and the Apex Court. The interpretation of law may be the privilege of an authority exercising quasi-judicial power but when the relevant provision has been either interpreted or clarified by the High Court or Supreme Court, then the subordinate judicial authority or quasi judicial functionaries should not venture in ignoring such interpretation made or finding recorded considering the relevant provision. If it is possible for a pen master who is able to put his own notions smartly in order to ignore the judicial pronouncements, even then, such official should not forget that ultimately, the law interpreted by the High Court of Supreme Court prevails and shall have to prevail. Such a venture unnecessarily takes the State Government into multiplicity of proceedings, expenses and the authorities are leaving the court room either with unwarranted stigma or criticism; viz. (i) that the authority is toeing with a ruling party or (ii) he is inefficient to interpret the law placed before him or (iii) he is otherwise prejudicial personally to a particular party or (iv) he is not free to decide the issue under adjudication because of some pressure of higher ups. These all are illustrative and not exhaustive.

11. During the course of oral submissions and in response to a query raised by the court learned counsel appearing for respondents nos 1 and 2 have mentioned that the officer is free to interpret the rules as per the practice normally followed by the department and there is no element either of contemptuous behaviour or any prejudicial behaviour. It is not a matter of dispute that the decision of the Division Bench of this court in the case of Nathalal (Supra) was placed before the Development Commissioner whereby it has been held that the provisions of approval of the budget estimates before 31st March are directory and not mandatory.

12.1. In the present case the budget proposal were prepared by the administrator. Not only that when the administrator was incharge, he has acted and made expenses on the budget proposals approved by the Panchayat. The total population of the village, strength of staff members of Panchayat, payment of salary to the said staff members , payment of salary if made to such staff members including payment made to third parties, if made, are also relevant aspects which cannot be ignored by the authority. It is true that the decision in the case of Nathalal (Supra) deals with the provisions of Gujarat Panchayats Act

(old). The provisions of the Act of 1961 are considered i.e. sections 12 and 126 of the Act of 1961 and the Rule 161(b) of Gujarat Taluka and District Panchayat Financial Accounts and Budget Rules 1964 and all these read together, they are almost *pari materia* to section 116 of the Act.

12.2 It is pertinent to note that one more decision of this court in the petition filed by the present petitioners was available with the authority and with great profound disappointment, I am inclined to observe that the authority has attempted to ignore the findings, directions and observations made by the court for the reasons best known to the authority. This is a clear case of lack of bonafides and colourable exercise of powers,. Even after passing the order allegedly on 30.11.2002, the authority has not cared to intimate the Sarpanch of the Panchayat about the decision taken. There is no convincing explanation why the intimation by RPAD was sent for the first time on 8.1.2003,. Though illogically favours the petitioners to some extent. There is an element of ante dating in some documents in the present case and it logically favours the petitioner but just to keep a judicial restrain, I am not inclined to pass any comment qua this element brought to the notice of the court by Mr. Raval.

12.3 There are allegations against one Mr. Solanki who was at that time a Minister and who lost the election against one Bhikhabhai Joshi. According to the petitioners Mr. Solanki has political rivalry with Shri Bhikhabhai Joshi. Present village Amarpur (Kathi) falls within the taluka Mendrda and said Mr. Solanki has the the view that as this village adopted Samras Yojana because of the motivation of Mr. Bhikhabhai Joshi and therefore, Mr. Solanki was keen to see that this Yojna fails and the Gram Panchayat is dissolved. When a question was asked by the court to Mr. Raval learned counsel appearing for the petitioners as to why the authority should exercise the power, in response to which Mr. Raval has taken this court through the allegations made in the relevant para 25 of the petition. But I am not inclined to observe anything adverse as Mr. Solanki is not joined as one of the party respondents in this petition.

13. While issuing certain directions and commenting upon the declaration of election of this very village Panchayat, certain observations are made by this court in the order dated 4.2.2003. Just to avoid detailed discussion and for convenience, some paras being relevant, of the said order dated 4.2.2003 are reproduced as under:

"2.3. There are serious allegations against the conduct and functioning of the Secretary of the Panchayat and Administrator qua their approach and attitude towards unanimously elected Sarpanch and according to the petitioners, their political rivals under the influence of the State are determined to see that Panchayat does not function at all. there are allegations against the Administrator and the Secretary that on one side they were not handing over the charge of the record of the Panchayat and on the other hand, administrator himself was preparing the budget for approval of the Panchayat though the elected body was very well existing at the relevant point of time.

2.4 Written representations made in this regard by the elected Sarpanch are considered today carefully by the Court. As per the allegations made by the otherside namely Taluka Panchayat and the State through the Secretary & Administrator, who are present today, the elected Sarpanch had never cared to take over the charge from the Administrator and on the contrary, on different occasions, in presence of panchas, she had refused to take over the charge of the Panchayat as Sarpanch. Her failure to see that budget is prepared and approved and passed by the body of the elected members amounts to her failure in discharging the statutory duties has resulted into the functional disability of the Panchayat itself. It is the say of the respondent nos 1,2,4 and 5 that as the Panchayat was not able to pass the budget on or before 31st March of the year 2002, it has created a deadlock and functional disability and that by itself was sufficient for superseding the village Panchayat. The order under challenge is legal and valid order. " 2.5. According to the applicants, the impugned order of superseding Panchayat is arbitrary, high handed and against the law interpreted and against the constitutional mandate. Against such act and interpretation earlier the petitioners were compelled to move this court by invoking jurisdiction of this court under Article 226 of the Constitution of India by filing Special Civil Application No. 9017/2002 whereby the Panchayat had challenged the order of the Development Commissioner dated 3.8..2002 superseding the Panchayat. After hearing the Id. counsel appearing for the parties, this court (Coram: P.B.Majmudar-J) allowed the petition vide oral judgment dated 28.10.2002 observing and interpreting the relevant provisions of section 116i of the Act referred by the Development Commissioner and set aside the order of the Development Commissioner and remanded the matter back to him for taking decision afresh. Development Commissioner was also directed to give an opportunity of being heard to the petitioner and to consider the material available on record. In compliance with the aforesaid order passed by this Court, the Development Commissioner after hearing the parties including the petitioner, passed the impugned order dated 30.11.2002 at Annex.A.

3. In more than one decisions, this court has held and observed that the provisions of Section 116 of the Act are directory and not mandatory in the earlier petition filed by the present petitioner, this court also observed the same thing. It would be proper to quote the relevant part of the order passed by this court (Coram: P.B.Majmudar-J) dated 28.10.2002 in Special Civil Application No. 9017/2002.

After hearing both the sides, I am of the opinion that the Development Commissioner has committed an apparent error in reaching the conclusion that the provisions of Section 116 is mandatory. Since this court has already taken the view that the provision is directory, in my view, the matter is required to be sent back to the Development Commissioner for reconsidering the matter on merits. Since the aspect about mandatory part is already decided by this Court in Special Civil Application No.6968 of 2002, the matter is now required to be remanded to the Development Commissioner for deciding the issue on merits,

whether it is a fit case in which the Panchayat was required to be superseded for not passing the budget by the stipulated time. Under these circumstances, the matter is sent back to the Development Commissioner for reconsideration, as stated above. It is clarified that this court has not expressed any opinion on merits of the issue and it is for the Development Commissioner to take decision as per the facts of the case. The matter is sent back only on the ground that the Development Commissioner has come to the conclusion that the provision is mandatory and not directory.

Under the circumstances the petition is allowed. The Development Commissioner is directed to take final decision latest by 30th November 2002 and the parties are directed to co-operate in the final disposal of the matter by the Development Commissioner.

The effect of the order is that till the decision is taken by the Development Commissioner, the elected body will be entitled to continue to function. The petition is accordingly allowed to the aforesaid extent. The order of the Development Commissioner is quashed and set aside. The matter is remanded to the Development Commissioner for taking fresh decision. The Development Commissioner shall thereafter pass an fresh order after hearing the petitioner and after considering the material on record.

4. During the course of oral submissions before me, Id. counsel appearing for the applicants-petitioners has drawn my attention to different decisions, namely (i) Luvara Gram Panchayat vs. State of Gujarat, rendered in Sp.CA No.6492/1997 by this court (Coram: P.B.Majmudar-J) on 29.12.1997 and (ii) decision of the Division Bench of this court in the case of Ramlal Manilal & Another vs. A.R.Banerji & Another reported in 1991(2) GLR 801. It is submitted that the approval of budget estimate before 31st March of every year is an important provision but considering the scheme of the Act, this court has held on both these occasions that the said provisions are directory and not mandatory and the same does not require strict compliance. In the case of Ramlal Manilal (supra) the court has further held that if the budget estimates is not approved, the same can be approved within the reasonable period of time thereafter depending on the facts and circumstances of the case. Prima-facie, the order under challenge has been passed in complete ignorance of the observations made by the Court."

14. In the back ground of the facts the decisions cited and the Scheme of the Act, it requires to be held that the respondent no.1 has tried to focus only on one fact that of non passing of the budget on or before 31st march and not on the element of disability or functional impairment which requires to be established before superseding a Panchayat. I am inclined to hold that when an element of disability of functional impairment is brought to the notice by a Panchayat constituted under the adoption of Samras Yojana, then also the authority, before superseding or dissolving the Panchayat should positively record a reasoned finding that the disability is not either curable or the same has not been cured though opportunity was afforded . In the same say, if functional impairment is

pleaded in the notice to show cause and if the Panchayat has started functioning satisfactorily leaving the said impairment behind, then normally, the authorities should refrain from exercising harsh powers vested u/s 253 of the Act because such decision is likely to hamper the harmony arrived at while adopting this Samras Yojana and the State will incur huge expenses of election. Inflicted division may take a village to unhealthy group politics. Till the Samras Yojana was floated, it was not possible to categorise Panchayat as institutions and unit nursing democratic values and teaching in any category or a class for the purpose of taking the steps in exercise of the power u/s 253 of the Act. But now it is possible and it would be advisable for the officials heading and functioning as heads of department of the State Government to act in this direction. The Samras Yojana is like a flower made of paper which has no fragrance and so it is the duty of the authorities or atleast an attempt to add fragrance to the Samras Yojana, who are implementing the same and make the same a reality. When the State Government has floated such a scheme with its original name, the State Government is under an obligation to see that if the higher officials are not able for whatever reason, to add fragrance in the flower then atleast they may not try to de-shape it. The element of reality, while implementing this Yojna in true spirit, should emerge from the proceedings drawn, only then, the body constituted to teach the element of democratic value would be able to carry the torch further.

15. The petitioners have successfully established that bye election to Amarpur (Kathi) Gram Panchayat was declared in haste and only with a view to defeat the result of the petition. The schedule placed before this court dt. 20.12.2002 vide Annexure Z (page 136) does not bear the name of Amrapur (Kathi) Gram Panchayat in Sch.III wherein the names of either dissolved or superseded village Panchayats are shown. Total 23 Panchayats are shown in the list and the name of the Panchayat headed by petitioner no.1 is not included in the list. So , it is inferable that till 20.12.2002 the Election Commission was not informed either about the dissolution of "Amarpur (Kathi) Gram Panchayat and/or the wish of the Government to hold election of the said Panchayat with other Panchayats was not expressed otherwise, in the election programme while declaration programme the Commission could have included the name of this Panchayat election with other 23 Panchayats mentioned in the Schedule.

16(1) State Election Commission issued programme of election of various Panchayats to be held on 9.2.2003. So it was possible for the State Government to inform the Election Commission to hold election in the petitioners" Panchayat. The absence of the name of petitioners" Panchayat in the list indicates many things.

16(2) The Sarpanch who has been intimated about dissolution at day after 8.1.2003 is indirectly compelled to contest the election if so desires, as per the programme notified on 15.1.2003. This is nothing but to put an individual or a body democratically in a remediless situation. One notice was issued by Deputy

Mamlatdar and Returning Officer, Mendarda taluka district Junagadh along with Notification dated 15.1.2003 wherein it is stated that "As Amarpur (Kathi) Gram Panchayat has been dissolved and therefore, elections are to be held on 9.2.2003" . This lack of bonafides on the part of the Government machinery, cannot be normally brought on record in a way better than the way in which petitioners have attempted before this court. Orders passed by quasi judicial authorities may remain silent on some important point but such silence if found convincied, then it smells element of arbitrariness.

16.3 It is alleged that the respondent no.1 has issued an order of dissolution by giving back dated of 30.11.2002. Mr. Raval learned counsel appearing for the petitioner has hammered this point again and again drawing attention of the court to Annexure-B(page 59) that in absence of any cogent and convincing reasons or explanation, the allegation of back dating in the order and publication, the allegation of back date order and publication of Notification should be accepted; otherwise there was nor reason for the authority to suppress the decision till 8.1.2003. Even the learned counsel appearing for the District Panchayat has fairly submitted that the District Panchayat was not aware about the order of dissolution passed by the respondent no.1 till 8.1.2003. When Taluka Panchayat, Mendarda was to actively participate in the election and the formal requisition was required to be sent to the State Election Commission, even then, the TD0, Mendarda also was not aware about the decision taken by respondent. If, either the Taluka Panchayat, District Panchayat or Collector, Junagadh were made aware of the action taken by respondent no.1 on 30.11.2002, then it was possible to incorporate the name of Amarpur (Kathi) in the schedule of names of Panchayat attached with the Notification dated 20.12.2002,. The undue haste in holding the election of this Panchayat has been made immediately any time after 8.1.2003 i.e. after the date of communication sent to the petitioner by RPAD on 8.1.2003, itself shows lack of bonafides. The acknowledgment of the intimation received by the petitioner no.1 is not brought on record. Therefore, it can be reasonably inferred that the communication of dissolution of Panchayat must have been received by all other concerned not earlier than 13th or 15th January 2003 because the date of dispatch is undisputedly 8.1.2003.

17. On one hand the petitioners receive order of dissolution passed by the respondent no.1 and on the other hand on that very day the process for election starts, then under the settled legal proposition, the aggrieved members of the Panchayat or the petitioners may not have any legitimate remedy but indirectly , they would be thrown to election. It seems that somebody in the Government machinery was keeping a track on each event, then only such a fact situation could be created. it is not impossible for this court to name the person; otherwise this court ought to have served a special notice to such person or persons or otherwise it could have fasten with the liability of bearing the election expenses of Amarpur(Kathi) Village Panchayat and special costs of this litigation. Some other sensitive things are also brought to the notice of this court by Mr. Raval learned counsel for the petitioner and he has attempted to establish that

even publication of Notification in the Government Gazette is possible naming it to be an Extra Ordinary Gazette published by the authority in part I-A Central Section and the concerned department can keep the entire set of copies of the Notification, so published with it. On call, original file from the department was brought before the court and on perusal of some of the papers of the file which were pointed out to learned AGP also indicates some such aspects. The date of publication of Notification is shown as per the covering letter sent by the authority issuing the Notification and in reality the actual publication of the Notification may be of any subsequent date. In the present case the Notification was allegedly published on December 16, 2002, even then the name of the present Panchayat is not mentioned in the above referred Schedule-II attached with the Notification dt. 20.12.2002. So there are reasons to believe fori this court that even the Taluka Panchayat and District Panchayat, Junagadh were also not aware about the Notification issued on 30.11.2002 and its publication on 16.12.2002. It is not the case that immediately after 16.12.2002 District Panchayat and/or Menderda Taluka Panchayat had started exercise for election to be held

18. Without going into the merits of these submissions and the court is not able to make any observations in this regard, I am inclined to keep judicial restrains in the larger interest of public administration. The responsible persons in the Government should think twice in posting any officer to a responsible post especially when this officer is supposed to exercise quasi judicial powers concerning the people at large especially in relation to the institutions which have concern with the basic democratic values. The responsible officers who have developed certain the of phobia of ignoring judicial verdicts and pronouncements of Higher Courts should not be encouraged but they should be discouraged in doing so.

19. In view of the stand taken by respondent no.3 in the reply affidavit to CA No. 384 of 2003 and the bar contained in section 243(O), the election declared vide order dated 15.1.2003 were not stayed. I am told by Mr. Anjaria that the State Election Commission has not treated this litigation as adversarial to it and has complied with the order passed by the court on 4.2.2003. As submitted by Mr. Anjaria the dissolution of the concerned Panchayat is held to be bad and the decision taken in exercise of the powers u/s 253i of the Act is quashed and set aside, then appropriate orders may be passed; otherwise the Election Commission is ready with the declaration of the result of the election held. It is not a matter of dispute that the respondent Taluka Panchayat in compliance with the direction has restored the status of the petitioner no.1 and body elected. So at present the elected body can be said to have in existence.

20. The submissions made on behalf of Election Commission being very relevant and may be mentioned here.

20.1. It is submitted that this court has referred to relevant Article 143(O) of the Constitution of India in the order dated 4.2.2003 but it would be proper to quote

the same for ready reference.

"243(O) Bar to interference by courts in electoral matters-

Notwithstanding anything in this contained in the Constitution.-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

20.2. However, in view of the provisions of Rule 63 of Rules 1994 this court can issue directions to the Election to the effect that there shall not be any formal declaration of the result of the election and it would be proper to reproduce the relevant part of Rule 63 of Rules 1994. "63. Declaration and publication of result.- (1) When the counting of votes has been completed, the returning officer shall in absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in Form 28 by affixing a signed copy of the result in that form on the notice board in his office. He shall also send a copy of the same to-

(a) the Election Commission.

(b) The Secretary to Government, Panchayats & Rural Housing Department.

(c) the Development Commissioner.

(d) the District Election Officer. (e) the District Panchayat.

(f) the Taluka Panchayat

(g) the village Panchayat in respect of village Panchayat election of sarpanch"

20.3. Mr. Anjaria submitted that in the present case the formal declaration of result has been stayed by the interim order and the stay granted can be made absolute if the petition succeeds and in the present case the petition succeeds and therefore, appropriate orders in this regard are required to be passed. 21. In view of the above discussion and the circumstances narrated I am inclined to observe and hold that there was no need either to proclaim or hold election to Amarpur (Kathi) Gram Panchayat. The same was declared only with a view to defeat the ends of justice.

22. As Talati-cum-Mantri is a party in the present petition, no initiation of formal Departmental Proceedings is directed but it is open to the higher authorities to take appropriate steps for dereliction in duties and/or insubordination.

23. The ultimate result is that the petition succeeds and the same is allowed. The impugned order dt. 30.11.2002 and subsequent Notification issued are steps

taken by the State Government are hereby quashed and set aside. It is declared that the body of Amrapur Panchayat (Kathi) Gram Panchayat, Taluka Mendrada exists even today and there was no need to hold any election or there was no scope for sending requisition to hold election to respondent no.3 either on 8.1.2003 or any other subsequent date for Amrapur (Kathi) Gram Panchayat . The result of the election kept in sealed envelope by respondent no.3 Commission in compliance of the order passed by this court shall not be declared and holding of election, casting of votes and counting votes so casted, now shall have no effect. Rule is made absolute. No order as to costs.