Jayantbhai Manubhai Patel and Others

Vs

Arun Subodhbhai Mehta and Others

Civil Appeal No. 1994, of 1989

(L. M. Sharma, M. H. Kania JJ)

28.03.1989

JUDGMENT

KANIA, J. –

1. Leave granted.

2. As a substantial point of law is involved in this case, we have granted special leave and the appeal is being taken up for hearing with the consent of the parties. The appeal is directed against the judgment of a Division Bench of the Gujarat High Court, allowing the writ petition filed before it.

3. The facts of the case relevant for the disposal of this appeal, briefly stated, are as follows :

> Appellants 1 and 2 are persons elected in 1987 as Mayor and Deputy Mayor respectively of the Municipal Corporation of Bhavnagar, respondent 5 herein (referred to in the judgment as "the Corporation"). Appellant 3 is the Secretary of the said Corporation. Respondents 1 and 2 are persons claiming to have been elected as Mayor and Deputy Mayor of the Corporation at a meeting held on June 1, 1988, the validity of which is disputed before us.

4. The Corporation came into existence in 1982. The elections to the Corporation were duly held in 1985 and 51 members were elected. On June 30, 1987, appellants 1 and 2 were duly elected as Mayor and Deputy Mayor respectively of the Corporation for a period of one year. On May 21, 1988, a notice was issued by appellants 1 and 2 to convene a meeting of the members of the Corporation at 5.00 p.m. on June 1, 1988 to elect a Mayor and Deputy Mayor of the Corporation for the second term and certain other business mentioned in the Agenda circulated. On May 31, 1988, appellant 1 gave instructions by a letter to the Deputy Secretary of the Corporation to postpone the meeting of the Corporation as appellant 1 had to go to Gandhinagar for a certain urgent work of the Corporation. It seems clear from the record that the said instructions were given by appellant 1 after consulting 32 members of the Corporation, presumably those belonging to his own party. Pursuant to the said letter and the instructions contained therein appellant 3 issued a letter addressed to the members of the Corporation that the meeting scheduled for June 1, 1988 had been postponed. The said letter was circulated to all the members of the Corporation. In spite of the said letter postponing the meeting, 19 members of the Corporation, presumably belonging to the minority party or parties assembled at the place indicated in the notice dated May 21, 1988 and elected respondents 1 and 2 as Mayor and Deputy Mayor of the Corporation respectively. At the said meeting neither the Commissioner of the Corporation nor the Secretary or Deputy Secretary was present and the minutes of the said meeting were not recorded by the Secretary of the Corporation. As appellants 1

and 2 did not hand over the charge to respondents 1 and 2, the latter filed a writ petition, being Writ Petition No. 2772 of 1988 in the Gujarat High Court for being declared as legally elected Mayor and Deputy Mayor of the Corporation respectively and for an order that charge of the said post should be handled over to them. On June 9, 1988, the said writ petition was dismissed by a learned Single Judge of the Gujarat High Court. The learned Single Judge, who dismissed the said writ petition, took the view that, as the Mayor in exercise of the power conferred upon him under sub-clause (c) of clause 1 Chapter II of the Schedule (under Section 453) in the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "the said Act") can issue a notice for convening the meeting, he is also entitled to the power to cancel or rescind the notice under the provisions of Section 21 of the Bombay General Clause Act, 1904. It was held that appellant 1, as the Mayor, was exercising a statutory power vested in him and could, therefore, cancel the notice and postpone the meeting convened by him before the meeting was held. It was pointed out by him that in the history of the Corporation meeting had been postponed by the Mayor in the same manner. The learned Single Judge further took the view that even assuming that appellant 1 had no right to postpone the meeting, even then the election of respondents 1 and 2 as Mayor and Deputy Mayor at the meeting held on June 1, 1988 could not be held legal and valid as the majority of the members of the Corporation had been deprived of the opportunity of exercising their right to elect a Mayor and Deputy Mayor by reason of the notice for postponing the meeting. A Letters patent Appeal was preferred by respondents 1 and 2 against the decision of the learned Single Judge to a Division Bench of the Gujarat High Court. The Division Bench of the said High Court took the view that it was bound by the view taken by a Division Bench of this Court in Chandrakant Khaire v. Dr. Shantaram Kale ((1988) 4 SCC 577 : AIR 1988 SC 1665) where it was observed as follows : (SCC p. 589, para 16)

A properly convened meeting cannot be postponed. The proper course to adopt is to hold the meeting as originally intended and then and there adjourn it to a more suitable date. If this course be not adopted, members will be entitled to ignore the notice of postponement, and, if sufficient to form a quorum, hold the meeting as originally convened and validly transact the business thereat.

The Division Bench pointed out that the number of members present at the said meeting on June 1, 1988 was sufficient to constitute the quorum prescribed and hence, the meeting must be held to be valid and respondents 1 and 2 duly elected as Mayor and Deputy Mayor respectively. The Division Bench took the view that even if the aforesaid observations made by this Court constituted only an obiter dictum of this Court and not the ratio of the case, they were nevertheless binding as a precedent on the Division Bench. The learned Judges constituting the bench did note that the result and the conclusion arrived at by them would be a little starting inasmuch as the party which in the majority in the Corporation would not be having a Mayor or Deputy Mayor from its own party but would have to suffer as Mayor and Deputy Mayor are persons belonging to the minority party but observed that such a result could not be helped because the majority of the councillors who had consented to the postponement of the said meeting to be held on June 1, 1988 had acted illegally and had thereby invited the result. It is this decision which is sought to be assailed before us.

5. It was contended by Mr. G. Ramaswamy, learned Additional Solicitor General who appeared for the appellants, that the Division Bench had committed an error in following the observations made in Chandrakant Khaire case ((1988) 4 SCC 577 : AIR 1988 SC 1665) which we have already set out above as that case could be distinguished on facts. It was submitted by him that, on the other hand, the question raised in this appeal was practically covered, on the basis of analogy, by the ratio of the decision of this Court in Mohd. Yunus Saleem v. Shiv Kumar Shastri ((1974) 4 SCC 854 : AIR 1974 SC 1218 : (1974) 3 SCR 738) which dealt with analogous provisions of the Representation of

the People Act, 1951. It was further submitted by him that in view of the provisions of Section 21 of the Bombay General Clauses Act, 1904, which were applicable to the case, since appellant 1, Mayor had the power to convene the meeting of the members of the Corporation, it must be held that he also had to implied power to cancel or postpone the meeting.

6. In order to appreciate these contentions, it is necessary to refer to certain provisions of the said Act.

7. The relevant clauses of Section 19 of the said Act runs as follows :

> 19. Mayor and Deputy Mayor. - (1) The Corporation shall at its first meeting after general elections and at its first meeting in the same month in each succeeding year elect from amongst the councillors one of its members to be the Mayor and another to be the Deputy Mayor.
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> (2) The Mayor and the Deputy Mayor shall hold office until a new Mayor and a new Deputy Mayor have been elected under sub-section (1) and, in a year in which general elections have been held, shall do so notwithstanding that they have not been returned as councillors on the results of the elections.
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Chapter XXIX of the said Act deals with the subjects of rules, by-laws, regulations and standing orders. Section 453 in the said chapter provides that the rules as amended from time to time shall be deemed to be part of the said Act.

8. Chapter II of the Schedule (under Section 453) of the said Act deals with the proceedings of the Corporation, Transport Committee, Standing Committee, etc. Sub-clauses (a) to (c) of clause 1 of the said chapter are as follows :

> 1. Provisions regulating Corporation proceedings. - (a) There shall be in each month at least one ordinary meeting of the Corporation which shall be held not later than the twentieth day of the month;
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> (b) the first meeting of the Corporation after general elections shall be held as early as conveniently may be on a day and at a time and place to be fixed by the Commissioner, and if not held on that days shall be held on some subsequent date to be fixed by the Commissioner;
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> (c) the day, time and place of meeting shall in every other case be fixed by the Mayor or in the event of the office of Mayor being vacant, or of the death or resignation of the Mayor or of this ceasing to be a councillor, or of his being incapable of acting, by the Deputy Mayor, or failing both the Mayor and the Deputy Mayor, by the Chairman of the Standing Committee.

9. Sub-clause (f) of clause 1, briefly put, provides that one-third of the whole number of councillors constitutes the quorum. Sub-clause (h) provides that at least seven clear days' notice shall ordinarily be given of every meeting, other than an adjourned meeting, but in cases of urgency any such meeting may be called on a shorter notice except for certain other purposes with which we are not concerned here.

10. Section 21 of the Bombay General Clauses Act, 1904 runs as follows :

> 21. Power to make to include power to add to, amend, vary or rescind, orders, etc. - Where, by any Bombay Act, or Maharashtra Act, a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or by-laws, so issued.

11. It is clear from the judgment of the Division Bench of the Gujarat High Court the correctness of which is challenged before us that the Division Bench considered itself itself bound by the observations in Chandrakant Khaire case ((1988) 4 SCC 577 : AIR 1988 SC 1665) set out by us earlier. The facts of that case that the first meeting of the Municipal Corporation of Aurangabad after elections was held on May 6, 1988 at 2.00 p.m. as scheduled. The Municipal Commissioner presided over the said meeting. At the said meeting, not only the councillors but many outsiders were also present in the hall when the meeting was being held. There were also a large number of supporters of the rival parties, spectators and journalists. The Municipal Commissioner was surrounded by some 20-25 persons apart from the councillors belonging to the rival parties, one group, comprising of the supporters of Shiv Sena, insisted upon the meeting being adjourned for the day while the other group consisting of the supporters of the Congress (I) party demanded that the meeting should be continued. There was total confusion inside the hall. The Municipal Commissioner informed the Collector, who was present in the hall, that he could not hold the meeting in the unruly and disorderly situation prevailing and complained that his repeated requests to the councillors to maintain peace, had no effect and they kept on shouting, raising slogans and fighting amongst themselves. The Commissioner announced that the polling for the offices of Mayor, Deputy Mayor and Members of the Standing Committee would commence from 2.30 p.m. onwards. Some members belonging to Shiv Sena Party sat on the ballot boxes and others belonging to that party and its supporters surrounded the Municipal Commissioner demanding the meeting be adjourned to a subsequent date. Thereupon, the councillors belonging to a Party-in-Power, namely, Congress (I), started shouting at him that the meeting should be held later on that day. This was followed by shouting of slogans, hurling of abuses and thumping of tables and even throwing of chairs. It appears that the Superintendent of Police and the Collector asked the outsiders to clear out of the hall and requested the councillors to take their places to enable the Municipal Commissioner to transact the business for the day and brought the situation under control. The affidavit filed by the said officers, namely, the Superintendent of Police and the Collector, showed that the atmosphere then claimed down and the order was restored and they left the hall. It was there after that the Municipal Commissioner announced on the mike that the meeting would continue and the elections would be held at 4.30 p. m. It was at this election, that respondents 1 and 2, namely, Dr. Shantaram Kale and Takiqui Hassan, were declared elected as Mayor and Deputy Mayor respectively. This election was challenged in court and it is in the context of these facts that the observations set out earlier were made. The contention of the appellant was that the meeting was adjourned for the day or some die by the Municipal Commissioner and hence the holding of the adjourned meeting later on the same day without fresh notice was bad in law.

12. It was submitted by the learned Additional Solicitor General of India, counsel for the appellants, that the Division Bench which delivered the impugned judgment, erred in taking the view that it was bound by the observations set out earlier by us in the judgment in Chandrakant Khaire case ((1988) 4 SCC 577 : AIR 1988 SC 1665). It was submitted by him that in that case the meeting of the Aurangabad Municipal Corporation had already commenced and the question was as to whether the Municipal Commissioner could on him own adjourn the meeting for the day or sine die or whether

this could be done only by a resolution passed at the meeting. It was submitted by him that that was a case which dealt with the question of adjournment of a meeting which had commenced whereas in the present case, a meeting which had been convened was cancelled and, later on, another meeting was fixed on a different date. The question in Chandrakant Khaire case ((1988) 4 SCC 577 : AIR 1988 SC 1965) was relating to an adjournment of a meeting whereas in the present case the question related to the cancellation of a notice convening the meeting. It was urged by him that in view of the provisions of Section 21 of the Bombay General Clauses Act and sub-clause (c) of clause 1 of the said Schedule set out earlier, the Mayor who had the power to convening the meeting must be held to have the implied power to cancel the meeting which was convened. It was, on the other had, submitted by respondent 1, who appeared in person, that the decision in Chandrakant Khaire ((1988) 4 SCC 577 : AIR 1988 SC 1665) case is directly applicable to the case before us and view of the same, it must beheld that the Mayor, namely, appellant 1, had no power to cancel the notice convening the meeting and hence it must be held that the meeting at which the supporters of respondents 1 which met and elected respondent 1 as aforesaid was validly held and the resolution appointing respondent 1 was validly passed.

13. As we have pointed out earlier in Chandrakant Khaire case ((1988) 4 SCC 854 : AIR 1988 SC 1665), the meeting which was convened had already commenced and the contention of the appellant was that in view of the riotous behaviour of the councillors as well as the outsiders who had got into the meeting, the Commissioner had adjourned the meeting sine die. It was common ground that no resolution was passed at the meeting regarding its adjournment. It was in those circumstances that the aforesaid observations have been made by the Division Bench of this Court which decided the case. The bench in that case was not really concerned with a situation where a meeting had not commenced at all and the notice convening the meeting had been cancelled by the person authorised to issue the notice convening the meeting. In this connection, we may refer to the meaning of the term 'adjournment' given in certain dictionaries. It has been observed in Stroud's Judicial Dictionary, Fifth Edition. Volume I at page 61 that the word 'adjourned' must be construed with reference to the object of the context, and with reference to the object of the enquiry. In Webster's Comprehensive Dictionary, International Edition, at page 18 the term 'adjournment' has, inter alia, been defined as "(1) To put off to another day or place, as a meeting or session; postpone (2) To put off to the next session, as the decision of a council (3) To postpone or suspend proceedings for a specified time". In Concise Oxford Dictionary, Sixth Edition, the word 'adjournment' has been defined, inter alia, as "(1) Put off, postpone; break off for later resumption". The definitions of the aforesaid term 'adjournment' in Chambers Twentieth Century Dictionary, Revised Edition (1964) and Collins English Dictionary are more or less similar to the aforestated definition of the said term in Webster Comprehensive Dictionary, International Edition. It appears to us that strictly speaking, unless the object of the context or inquiry otherwise warrants the term 'adjournment' in connection with a meeting should be applied only to the case of a meeting which has already convened and which is thereafter postponed and not to a case where a notice convening a meeting is cancelled and subsequently, a notice for holding the same meeting on a later date is issued, as in the case before us.

14. It seems that the passage in the judgment in Chandrakant Khaire case ((1988) 4 SCC 577 : AIR 1988 SC 1665) which has been strongly relied upon by respondent 1 has been taken substantially from the observations at page 156 in Shackleton on the Law and Practice of Meetings, Seventh Edition. Shackleton has based those observations on the decision of a single case, namely, Smith v. Paringa Mines Ltd. ((1906) 2 Ch 193) In that case, a company had two directors and there was disagreement among them regarding the appointment of an additional director. The aggrieved director commenced an action and after this a notice was issued postponing a general meeting

already called but, in the belief that the attempted postponement was illegal, the aggrieved director advertised the meeting in the press for the same day as previously arranged. On that day, he with certain other shareholders attended the meeting and at that meeting resolutions were approved re-electing himself as a director and refusing to re-appoint the other director. It was held that the resolutions were valid, for, in the absence of express authority in the articles, the directors of a company have no power to postpone a general meeting properly convened. It appears, therefore, that these observations are based on a decision which dealt with the powers of the directors of a company which are derived from the articles of association of the company which essentially are in the nature of a compact or an agreement. The only powers which the directors of a company have, are such as have been conferred upon them by articles of association of the company. The powers of the Mayor of the Corporation, on the other hand, are statutory in nature and they are derived from the Bombay Municipal Corporation Act. As set out by us earlier, sub-section (1) of Section 19 of the said Act provides for the election of a Mayor of a Municipal Corporation. The Mayor has various powers conferred under the said Act. Sub-clause (c) of clause 1 in Chapter II of the said Schedule in the Municipal Corporation Act provides that except for the first meeting for a new Corporation which has been duly elected, the time, day and place of meeting shall be fixed by the Mayor. The powers of the Mayor regarding the holding of meeting of the Corporation, therefore, are not derived from any compact as in the case of directors of a company but are essentially statutory in nature. We do not think, with respect, that, in these circumstances, it would be proper to apply the aforestated observations of hackleton to the present case. Moreover, as we have already pointed out, the case before this Court in Chandrakant Khaire v. Dr. Shantaram Kale ((1988) 4 SCC 577 : AIR 1988 SC 1665) was not a case where a notice convening a meeting was cancelled and later a notice convening another meeting was issued but it was a case where a meeting duly convened had commenced and it was alleged that the Municipal Commissioner had adjourned it without there being any resolution to that effect. We are, therefore, of the view that the aforesaid observations in the decision of Chandrakant Khaire case ((1974) 4 SCC 854 : AIR 1974 SC 1218 : (1974) 3 SCR 738) are not applicable to the case before us.

15. We can derive some support to our view from a decision of this Court in Mohd. Yunus Saleem v. Shiv Kumar Shastri ((1988) 4 SCC 577 : AIR 1988 SC 1665). In that case, the facts were that a parliamentary constituency from which election to Lok Sabha took place in 1971 consisted of five assembly constituencies. The polling at two of these was scheduled to take place on March 1 and at the other three on March 3, 1971. The polling at the first two constituencies took place as scheduled but on March 2 there was a communal riot, as a result of which the Election Commissioner postponed the poll at the other three constituencies from March 3 to March 9. The polling took place in the said constituencies on the postponed date and the first respondent was declared elected. The appellant challenged the election in an petition. It was contended by him, inter alia, that the Election Commissioner had no power to alter the date of the poll at the remaining constituencies. The election petition was dismissed by the High Court. On appeal to this Court, this Court took the view that Section 153 of the Representation of the People Act, 1951 on which reliance had been placed by the High Court in taking the view that the Election Commissioner had power to postpone the poll was not applicable because it dealt only with the question of extending time for completion of the election and not for altering the date of the poll; Sections 57 and 58 of the Representation of the People Act, 1951 could not be invoked by the Election Commissioner for this purpose. It was, however, held that Section 30 of the Representation of the People Act read with Section 21 of the General Clauses Act gives necessary powers to the Election Commissioner to alter the date of the poll. We may point out that we do not propose to set out the provisions of Section 30 of the Representation of the People Act because it is not necessary to do so. Suffice it to note that the said

section provides that the Election Commissioner shall be notification in the official gazette appoint inter alia the date or dates on which a poll shall, if necessary, be taken and also the date before which the election shall be completed. Section 153 confers upon the election Commissioner the power to extend the time for the completion of the election. Section 21 of the Central General Clauses Act is in pari materia with Section 21 of the Bombay General Clauses Act which was applicable in the case before us and which we have already set out earlier. It is true that the ration of this case is not directly applicable to the case before us. However, it does appear to us that, on a parity of reasoning, it must be held that the Mayor had the implied power to cancel a meeting or postpone a meeting which was duly convened before the said meeting commenced and to convene the same on a subsequent occasion. It is needless to say that this power must be exercised by the Mayor bona fide and not for a collateral purpose. The power must again be exercised for a proper purpose. If the Mayor is unable to show this, then the postponement of the meeting must be held to be bad. But it is not possible to say that the Mayor had no power to cancel a meeting duly convened and to direct that the same should be held on a later day provided that the power was exercised bona fide and for a justified purpose.

16. We may now refer to certain other decisions which are cited before us. Our attention was drawn by respondent 1 to the decision of a learned Single Judge of the Gujarat High Court in Babubhai Girdharbhai Patel v. Manibhai Ashabhai Patel ((1975) 16 GLR 566). In that case, the facts were in pari materia with the facts before us. It was held by the learned Single Judge of that court that on a plain reading of sub-section (11) of Section 51 of the Gujarat Municipalities Act, 1963 it is clear that a meeting can be adjourned only provided a majority of the councillors accord their consent to such adjournment. It was also held that it is open to the President to cancel or adjourn the meeting if he personally considers it necessary or desirable to do so before the councillors assemble. It was observed that the President of the Municipality does not have unrestricted power to cancel or adjourn a meeting at his humour or pleasure or caprice. No assistance can be arrived at by respondent 1 from this judgment because that decision has been reversed in respect of the aforestated conclusions by a Division Bench of the Gujarat High Court in Letters Patent Appeal No. 183 of 1974 decided on November 20, 1974 by B. J. Divan, C.J., and T. U. Mehta, J., the judgment having been delivered by Divan, C.J. In that case, it was held that it is obvious that the President of the Municipality in whom the power to call a meeting of the Municipality had been vested by Section 51(1) of the Gujarat Municipalities Act 1963 must also be conferred the power to adjourn the meeting if, because of certain extraordinary circumstances like civil commotion or act of God or any other unusual event, it becomes necessary to adjourn the holing of the meeting. The learned Judges constituting the Division Bench held that they were unable to agree with the view of the learned Single Judge to the effect that the doctrine that he who has such power to convene a meeting has also the power to adjourn the meeting, if the circumstances so demand, cannot be read into the provisions of the Gujarat Municipalities Act. The learned Judges, however, agreed with the learned Single Judge that the President of the Municipality had no power to adjourn the meeting at his will or caprice. They also pointed out that unless unusual circumstances beyond the control of the President of the Municipality prevail, he cannot utilise this power to adjourn a meeting which has once been notified. Taking into account all the facts and circumstances of the case, it was held that the adjournment of the meeting of the Municipality by the President was not warranted in law and was, therefore, invalid. We may, however, point out that neither the learned Single Judge who delivered the judgment in Babubhai Girdharbhai Patel v. Manibhai Ashabhai Patel ((1975) 16 GLR 566) nor the Division Bench, which reversed this decision to the extent set out by us have taken into account the provisions of Section 21 of the Bombay General Clauses Act, which we have already referred to. That section fortifies the view taken by the Division Bench.

17. We may nor refer to the decision of the Allahabad High Court in R. K. Jain v. Bar Council of U. P. (AIR 1974 All 211) In that case, the Bar Council of U.P. in exercise of its power under Section 15(2) of the Advocates Act, 1961, framed rules which regulate the manner and procedure of holding the election of the members to the Bar Council. These rule are known as Bar Council of Uttar Pradesh Election Rules, 1968. Rule 4 lays down that the election of members to the Bar Council shall be held at such place or places, on such date or dates, and during such hour or hours as the Council may appoint. Rule 6 provides that notice of the time and place of election shall be given by publication in the manner prescribed under the rules. The learned Single Judges (K. N. Singh, J., as he then was) who decided the case held that the principles laid down in Section 21 of the General Clauses Act are fully applicable in construing Rules 4 and 6 of the said Election Rules, 1968. On the facts of the case it was held that the Bar Council had the full jurisdiction to change the date of an election and to postpone the election or to fix dates for holding the election afresh till the elections were completed.

18. In our view, the learned Judges of the Gujarat High Court who delivered the judgment under consideration before us need not have considered themselves bound by the aforesaid observations in Chandrakant Khaire case ((1988) 4 SCC 577 : AIR 1988 SC 1665), as they have done. In the first place, these observations do not constitute the ratio of the judgment in that case. The question in that case was whether a meeting which was duly convened and had commenced could have been adjourned by the Municipal Commissioner and not whether a notice convening a meeting issued by the Municipal Corporation could be cancelled by him before the commencement of the meeting with a view to have the meeting held on a subsequent date. We are of the view that the Division Bench was not really called upon to consider the situation in such a case, as we have pointed out earlier. Moreover, it appears that the Division Bench has not taken into account the provisions of Section 21 of the Bombay General Clauses Act or the principles underlying that section. No argument was advanced before the Division Bench on the basis of that section at all. The attention of the Division Bench was not drawn to the judgment of this Court in Mohd. Yunus Saleem case ((1974) 4 SCC 854 : AIR 1974 SC 1218 : (1974) 3 SCR 738). Had that been done, we feel that the Division Bench which decided that Chandrakant Khaire case (1988) 4 SCC 577 : AIR 1988 SC 1665), might not have made the aforestated observations at all. In our view, the principles underlying Section 21 of the Bombay General Clauses Act would be clearly applicable in considering the scope of the powers of the Mayor of a Municipal Corporation set out in clause 1 of Chapter II of the said Schedule in the said Act and in particular, in sub-clause (c) of the said clause. We may point out that the rules in the Schedule have been framed under the statutory provisions of the said Act and Section 453 of the said Act provides that the rules in the schedule as amended from time to time shall be deemed to be part of that Act. In our view, the power of the Mayor conferred under clause 1 of Chapter II of the said Schedule must be regarded as a statutory power as distinguished from the powers of directors of a company which are derived strictly from the Articles of Association of the Company which are contractual in nature. There appears to be no reason to take the view that the principles underlying Section 21 of the Bombay General Clauses Act would not apply to the said powers of the Mayor. In our view, appellant 1, the Mayor of respondent 5, Corporation, had the power to cancel the notice convening the meeting before the commencement of the meeting with a view to convene the meeting on later date. The questions, however, whether he has exercised the power within its true ambit is a different question altogether. In this regard, in our opinion, although the Mayor had to power to cancel the notice convening the meeting and to direct the secretary to issue a notice to that effect, the said power could be exercised only bona fide and for a purpose or purposes within the scope of the said Act. If the power was exercised mala fide or for a collateral purpose, the exercise of the power would certainly be bad. In the present case,

there is considerable factual controversy as to whether, even on the footing that appellant 1 had the power to cancel the notice convening the meeting that power was exercised bona fide for a purpose within the scope of the said Act or whether it was exercised for collateral or impermissible purposes. We remand the matter to the Gujarat High Court for the determination of that question. In view of the urgency of the matter, we would request the Gujarat High Court to dispose of the writ petition latest by April 30, 1989 as far as possible. The interim order granted by this Court on November 16, 1988 shall continue up to May 5, 1989, subject to any orders which may be passed hereafter by the Gujarat High Court. From that date, it will be for the parties to apply for appropriate interim orders to the Gujarat High Court till the case is finally disposed of by that court.

19. The appeal is allowed to the extent aforesaid. Taking into account the facts and circumstances of the case, the parties shall bear and pay their own costs.

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