

GUJARAT HIGH COURT

Satubha K. Vaghela

Vs.

Moosa Raza,

Special Civil Application No. 736 of 1964 with Civil Application No. 389 of 1968 decided on
20.2.1968

(J.B. Mehta, J. and D.A. Desai, JJ.)

21.02.1968

JUDGMENT

J.B. Mehta, J.

1. In this petition, under Articles 226 and 227 of the Constitution of India, the petitioner challenges the order at Annexure 'P', dated 7th/8th September 1964, removing the petitioner as Sarpanch and as a member of the Sayala Gram Panchayat and the order at Annexure 'R', dated 8th September 1964, disqualifying him for a period of four years passed by respondent No. 1, the District Development Officer, as a delegate of respondent No. 2, the competent authority viz the Surendranagar District Panchayat. The petitioner has also challenged along with these two orders, the resolution No. 3/11 dated 17th August 1963 delegating powers under Section 49 of the Gujarat Panchayats Act, 1961, hereinafter referred to as 'the Act', to respondent No. 1.

2. The short facts which have given rise to this petition are as under: The petitioner is elected Sarpanch of the Sayala Gram Panchayat, hereinafter referred to 'the Panchayat' from about December 1963. It appears that there was an audit objection in regard to the uniforms which had been given to the Panchayat sweepers as no relevant rules had been framed in that connection. The said expenditure on uniforms incurred during the period from 1st April 1956 to 31st March 1962 was under audit objection. It is the case of the petitioner that he was directed by the Assistant Examiner of Local Authorities to recover the amount of Rs. 16/- for the uniform supplied to each sweeper, failing which the said amount was ordered to be recovered from the petitioner Sarpanch personally. The sweepers having refused to accept the orders regarding the recovery of the said amount and as they disregarded the other orders and instructions of the Panchayat from time to time the petitioner issued show cause notices on 2nd March 1964 to these 11 sweepers to show cause why they should not be dismissed from service for wilful negligence and disobedience of the orders of the Panchayat. These notices were served

individually on 3rd March 1964 and the inquiry was fixed on 8th March 1964 which was a Sunday and holiday for the Panchayat. It is the case of the petitioner that on 8th March 1964, the Up-sarpanch along with the chairman of the P.W.D. Committee and the Education Committee and the Agricultural Production Committee and all the members present during the inquiry proceedings empowered him on 8th March 1964 for conducting the inquiry proceedings. The petitioner accordingly held ex-parte proceedings on 8th March 1964 as the sweepers had refused to accept the show cause notices and had not remained present at the inquiry. Thereafter the petitioner by the order, dated 9th March 1964 dismissed these 11 sweepers. An extra-ordinary meeting of the Panchayat was called on 26th March 1964 which decided to terminate the services of these 11 employees giving them one month's notice i.e. from 26th April 1964. It is the case of the petitioner that these sweepers against whom departmental proceedings were held were on strike from 9th April 1964 and they had not resumed work. The sweepers challenged the orders terminating their services in appeal under Section 290 of the Act before respondent No. 1, who was duly delegated powers of the appellate authority in that connection. In the said appeal, respondent No. 1 set aside the decision of the Panchayat incorporated in its resolution dated 26th March 1964 for termination of the services of these 11 sweepers and he ordered that all these 11 sweepers should be forthwith reinstated with continuity of their service with the Panchayat. This order was passed on 13th July 1964 and was communicated on the same day to the petitioner Sarpanch instructing him to implement it immediately. The petitioner by his letter, dated 16th July 1964 raised certain points for clarification. On 16th July 1964 the said clarification was given and the petitioner was directed to implement the decision of respondent No. 1 with immediate effect. On 18th July 1964 the petitioner informed respondent No. 1 that he was filing a writ petition challenging the said appellate order. The petitioner thereafter proceeded to Ahmedabad to obtain legal advice and he was told that certain copies would be necessary and he asked for the certified copies. The Taluka Development Officer meanwhile by the two letters dated 18th July 1964 directed the petitioner to carry out the said decision of reinstatement of the 11 sweepers and in the second letter of that date the petitioner was informed that this direction was necessary under Section 295 for securing health of the citizens. On 25th July 1964 a third letter also was written to the petitioner to implement the said decision. Meanwhile, a telegram was sent by respondent No. 2 the District Panchayat on 23rd July 1964 threatening the petitioner with drastic action if the decision was not implemented. Thereafter some correspondence ensued between the petitioner and respondent No. 1. On 21st July 1964 the petitioner applied for uncertified copies. There is no dispute that the petitioner's secretary was permitted to take out a copy of the entire decision with reasons on 21st July, 1964 and was given a copy of one resolution. It is the case of the petitioner that he was not given all the copies that were necessary to enable him to file a writ petition before this Court. On 22nd July, 1964 the petitioner had filed an application for four certified copies and he sent repeated reminders in that connection. It is the case of the petitioner that for the first time on 6th August 1964 the petitioner received an intimation, dated 4th August 1964 that copies were ready for delivery. Thereafter, it is the case of the petitioner that these copies were not delivered to him on lame excuses that the person who had gone to receive the copies was not properly authorised; or by detaining his representative

without giving him interview till he was forced to leave for catching the bus. The petitioner had sent even Money Order and finally two copies were supplied on 24th August, 1964. It is the case of the respondents, however, that even though the copies were ready for delivery and the petitioner was asked to take delivery of those copies by the letter, dated 4th August 1964, the petitioner's representative had refused to accept those copies on 7th August 1964 by stating that he did not intend to file a writ petition. Thereafter, it appears that on 1st August 1964 the petitioner sent a letter to the Taluka Development Officer stating that he was not bound to comply with such an illegal and ultra vires order. It should be noted that for the period from 13th July 1964 to 12th August 1964, respondent No. 1 was on leave and Shantilal Shah was holding the post of the District Development Officer. The said Shantilal Shah in his capacity as District Development Officer issued a notice to the petitioner on 1st August 1964 at Annexure 'M' calling for his explanation why he should not be removed as a Sarpanch and as a member of the Panchayat as provided under Section 49(1) of the Act within the period of 15 days from the receipt of that notice on the ground of six charges of misconduct as alleged in the said notice. The inquiry was kept on 18th August 1964. The petitioner gave his reply at Annexure 'N' dated 19th August 1964 reiterating his contention as per his letter dated 1st August 1964. Respondent No. 1 thereafter by the impugned order at Annexure 'P' dated 7th/8th September 1964 removed the petitioner both as Sarpanch and as a member of the Panchayat. Respondent No. 1 found the petitioner guilty of misconduct as he had dismissed those 11 sweepers without any authority whatsoever end without giving them proper opportunity. Respondent No. 1 also found that the petitioner had disobeyed the directions issued to him for implementation of the order of reinstatement of these 11 sweepers and that constituted a very gross misconduct on the part of the petitioner. Thereafter respondent No. 1 passed the subsequent order disqualifying the petitioner for a period of four years at Annexure 'R' dated 8th September 1964 under Section 49(2) of the Act. The petitioner has, therefore, challenged both these orders along with the resolution delegating the powers under Section 49 to the respondent No. 1 in the present petition which was filed on 21st September 1964. It appears that the Panchayat had filed the other petition challenging the appellate order on or about 11th September 1964. As the petitioner had filed C.A. No. 389 of 1968 for expediting the hearing of the present petition on the ground that the order came in his way in the fresh elections for which nominations were to be immediately filed, this petition alone has been put up for hearing before us at the petitioner's special request. On behalf of the respondents, the District Development Officer himself filed an affidavit denying the allegations of the petitioners. The District Development Officer in charge Shri Shantilal has also filed an affidavit-in-reply.

3. The petitioner has challenged the aforesaid orders on various grounds but the entire challenge at the hearing is confined to the following grounds:

- (1) That the order for disqualification of the petitioner under Section 49(2) has been passed without following any procedure at all as required under that section and, therefore, the same should be quashed.

(2) That in absence of any valid delegation, respondent No. 1 could not exercise the powers of competent authority to hear appeal under Section 290 or to pass orders under Section 49.

(3) That the appellate order passed by respondent No. 1 reinstating the 11 sweepers is a null and void order on the ground that the appeal was competent before respondent No. 1 and because the said section did not empower any appeal to be entertained in respect of such an order terminating the services of a Panchayat servant.

(4) That respondent No. 1 was in the position of a complainant and as such he could not have held the proceedings inasmuch as a person could not be a judge of his own complaint and, therefore, the orders of respondent No. 1 were in violation of principles of natural justice.

(5) That the charges alleged against the petitioner did not amount to any misconduct within the meaning of Section 49, and in any event as all the charges had not been established, the entire order was vitiated.

(6) That, in any event, Shantilal Shah, who had issued the notice at Annexure 'M' under Section 49 on 1st August 1964 could not assume powers of competent authority as it would amount to sub-delegation of the powers of the competent authority which were delegated to respondent No. 1 himself.

4. The first point of Mr. Vyas must be accepted on a bare reading of Section 49 which runs as under:

"49(1): The competent authority may remove from office any member of Panchayat or the Sarpanch after giving him an opportunity of being heard and giving due notice in that behalf to the Panchayat and after such inquiry as it deems necessary if such Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under the Act or has become incapable of performing his duties under the Act. The Sarpanch... so removed may at the discretion of the competent authority also be removed from the membership of the Panchayat.

(2) The competent authority may, after following the procedure laid down in Sub-section (1), disqualify for a period not exceeding four years, any person who has resigned his office as a member, Sarpanch or otherwise ceased to hold any such office and has been guilty of misconduct specified in Sub-section (1) or has been incapable of performing his duties. Provided that an action shall be taken within six months from the date on which the person resigns or ceases to hold, any such office.

(3) Any person aggrieved by an order of the competent authority under Sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the State Government."

From the scheme of Section 49(1) and (2) it is clear that both these clauses deal with different

situations and different consequences are provided in the two sub-clauses even though an identical procedure has to be followed, namely,

- (1) of giving an opportunity of hearing to the delinquent concerned,
- (2) giving due notice in that behalf to the Panchayat, and
- (3) holding such inquiry as the competent authority deems necessary.

Under Sub-section (1) of Section 49 the officer or the member concerned can be removed on the various grounds stated therein; while under Sub-section (2) the competent authority can disqualify only a person who has resigned his office as such member or as such Sarpanch, Chairman or Vice-chairman or who has otherwise ceased to hold any such office and such disqualification is curtailed only on two grounds, namely, if the person has been guilty of misconduct specified under Section 49(1) or has been Incapable of performing his duties provided such action is taken within six months from the date on which the person resigned or ceased to hold any such office. Section 49(1) therefore, deals with cases where person is continuing in office as a member or as a Sarpanch, Upsarpanch, Chairman or Vice/chairman as he has to be removed from that office. While Sub-section (2) is in a sense wider in its scope as it contemplates action being taken against persons who have ceased to be in office whether by resignation or otherwise. But it is equally limited in scope as it applies only in cases of such persons who have ceased to be in office. It is not available while the person is continuing in office and it is also applicable on those limited grounds. Besides the procedure in both the cases is identical. Admittedly, in the present case after the first order was passed removing the petitioner as Sarpanch and as a member under Section 49(1), the competent authority has on the very same day viz. 8th September 1964 passed another order under Section 49(2) disqualifying the petitioner for a period of four years as if it was an automatic consequence of the first order, without following the requisite procedure as provided under Section 49(2), of giving an opportunity of hearing to the petitioner to have his say why he should not be disqualified and giving due notice to the Panchayat in that connection and holding an inquiry for that purpose. In fact, right upto the date of the order removing the petitioner he continued in that office as Sarpanch and it is only when that order was passed against him that he was removed from the office and against the said order he had a right of appeal to the State Government under Section 49(3). Therefore, the learned Government Pleader is unable to support the said order under Section 49(2), as admittedly no procedure whatever had been followed in this case of giving any opportunity to the petitioner to give him a hearing on this ground as to why he should not be disqualified. The notice at Annexure 'M' had only sought explanation from the petitioner as to why he should not be removed from his membership and from his office as Sarpanch of the Panchayat and no notice whatever had been given for disqualifying the petitioner. Therefore, the second order at Annexure 'R' must be quashed and the petition to that extent must be allowed.

5. As regards the second ground raised by Mr. Vyas, there is no dispute that respondent No. 2 the District Panchayat is the competent authority constituted under Section 2(5) of the Act. There is

no dispute that by a resolution of the District Panchayat powers under Section 290 and under Section 49 have been delegated to respondent No. 1 by the District Panchayat. The contention of Mr. Vyas is that the powers which vest in the competent authority to exercise such judicial or quasi-judicial functions must be exercised by the competent authority itself and such powers or functions could not be a proper subject of delegation under Section 321(4)(iii). Section 321 Clause (4) provides that subject to the general or special orders which the State Government may issue from time to time (i) a District Panchayat may delegate to a District Development Officer and (iii) a competent authority may delegate to any officer subordinate to it, any powers exercisable by it under this Act. This question raised by Mr. Vyas is also concluded by a decision of the Division Bench consisting of Miabhoy J. (as he then was) and myself, in *Satubha v. Sayala Panchayat*¹ We have in terms held that the term 'its functions' in Section 111(1) of the Gujarat Panchayats Act would not only include the functions of the Taluka Panchayat which were specified in the Act but also functions which were entrusted to it by or under the Act, or under any other provision of law as provided by Section 8(4) of the Act. The term 'its functions' was of a wide amplitude and was not restricted to only day-to-day or administrative functions referred to in Sections 117 or 118 of the Act but would cover even quasi-judicial functions. It is further held that the functions of the competent authority under Section 50(2) of the Act which are entrusted to the Taluka Panchayat of the District Panchayat by the State Government under Section 2(5) of the Act became part

¹ VI G.L.R. 409

and parcel of the functions of the Taluka Panchayat or the District Panchayat, as soon as notification under Section 2(5) is issued. In the said decision a distinction is made between "assignment of power of the Panchayat to a smaller body like committee" and "delegation as contemplated by Section 221(4)". When assignment is made to a smaller committee of the powers of the parent Panchayat there would be no necessity of any delegation under Section 321(4). It is further held in terms that all the functions including the functions as a competent authority, which may be quasi-judicial function could form proper subject of delegation under Section 321(4) and if, therefore, such functions are delegated by the Panchayat who is appointed as a competent authority to the District Development Officer or the Taluka Development Officer of the Panchayat concerned, the delegation would be legal and valid. This decision, therefore, furnishes a complete answer to the contention raised by Mr. Vyas. Mr. Vyas, however, sought to distinguish this decision on the ground that even though delegation may be possible there was nothing in the Act which would show that the delegate would become the competent authority itself. Once the Legislature provides for delegation of any of the powers the delegate would be exercising the same powers as the competent authority itself. Mr. Vyas also argued that Section 321(4) in terms provides that such delegation was subject to the general or special orders which the State Government may issue from time to time and in the absence of any such orders no delegation could be effectively made. The respondent No. 4 has categorically stated that no order has been issued by the State Government. The power to issue such general or special order would be only limiting the exercise of jurisdiction by the delegate but in the absence of any such general or special orders, there would be no restriction or limitation whatever. There is, therefore, no

substance in the contention of Mr. Vyas that if no orders limiting such power would be issued, the delegation itself would not become effective. Therefore, the second contention raised by Mr. Vyas must fail.

6. Our decision on this second ground of Mr. Vyas also answers some part of ground No. 3 raised by Mr. Vyas because the powers of the appellate authority under Section 290 having been delegated to respondent No. 1, his jurisdiction to entertain such appeal could not be challenged on that ground. Section 290 Clause (1) provides that save as otherwise provided in this Act, an appeal shall lie to the District Panchayat against any order or decision of a Gram Panchayat or Nagar Panchayat affecting any individual or institution, Sub-clause (2) provides limitation power as 30 days and Sub-clause (3) provides that the District Panchayat may pass such order on the appeal as it may deem just and proper and the order on appeal shall be final. Mr. Vyas argued that Section 290(1) provides an appeal against the orders or decisions of the Gram Panchayat which affect any individual or institution and, therefore, such orders must be those orders which are judicial or quasi-judicial orders and that section could have no application to a resolution of the Panchayat terminating the services of 11 sweepers. Even though the order of termination of services of the Panchayat servants would be an administrative order as it vitally affects the said servants, the said order has to be passed after holding an inquiry against him in accordance with the principles of natural justice, and, therefore, even the Panchayat seeking to terminate the services of the employees on the ground of misconduct would have to act as per the principles of natural justice. Besides, the Legislature has advisedly used the expression "any order or decision" in Section 290(1) and the only limitation is that it must be affecting any individual or any institution. Once that condition is satisfied every order or decision would be appealable under Section 290(1). Section 290(1) provides an appeal not only against the decision but even against the order which affects an individual. There is no further limitation in so far as an individual is concerned that the individual shall be a person other than the Panchayat servant. When the Legislature has used the expression of such widest amplitude and when the purpose of the enactment is to provide a right of appeal to any individual or institution affected by the order or decision of the Gram Panchayat or Nagar Panchayat to a higher authority like the District Panchayat, the provision must be construed as per its plain language. In fact the construction suggested by Mr. Vyas would amount to rewriting the section by modifying it to mean that the appeal shall lie only against the orders passed in exercise of judicial or quasi-judicial functions and when they affect individual other than the panchayat servant. On no canon of construction such a modification can be done when there is no ambiguity or absurdity or redundancy Even no two constructions are suggested by Mr. Vyas and he straightway wants us to modify the language of the statute in a manner which would really frustrate the object of this provision of providing an appeal in terms which are of the widest amplitude so that every individual or institution affected by any order of the Gram Panchayat can file an appeal against, such order or decision. Therefore, there is no substance in the third ground raised by Mr. Vyas that respondent No. 1 had no jurisdiction to entertain an appeal in respect of the order terminating the services of the 11 sweepers of the Panchayat.

7. As regards the fourth ground the relevant allegations are to be found in para 35 of the petition where it is alleged that respondent No. 1 was in the position of a complainant and as such he could not have conducted proceedings under Section 49 where he was in the position of a Judge, inasmuch as a person could not be a Judge in his own complaint or it would violate the principles of natural justice. Respondent No. 1 while meeting this allegation has in his affidavit in reply denied this allegation that the principles of natural justice were violated as alleged. Mr. Vyas has himself argued that the notice in the present case at Annexure 'N' was signed by Shri Shantilal Shah as the District Development Officer because respondent No 1 was on leave from 13-7-64 to 12-8-64. Besides the petitioner has not been able to make out any case that respondent No. 1 had any personal interest. It is true that respondent No. 1 had as competent-authority directed rain statement of these 11 sweepers in his appellate order under Section 290 of the Act. As Executive officer at the time of passing of the said order on 13th July 1964 respondent No. 1 directed the petitioner to implement the said order and clarified it. When the petitioner had sought any clarification the Taluka Development Officer had issued direction on 1-7-64 and on 24-7-64 asking the petitioner to comply with the said order especially as the health of the citizens was likely to be affected. Under Section 8(3)(a) of the Act subject to the control of the State Government and the competent authority, a Gram or Nagar Panchayat shall be subordinate to the Taluka Panchayat and the District Panchayat. Thus the competent authority is the controlling authority subject to the control of the competent authority, there is further subordination of the Gram Panchayat both to the Taluka Panchayat and the District Panchayat. Therefore, both the competent authority as well as the Taluka Panchayat could legally in exercise of their powers under Section 8(3) of the Act require the petitioner as executive officer of the Gram Panchayat to implement the appellate order passed under Section 290 for reinstatement of 11 sweepers. If such directions were issued either by the competent authority or by the Taluka Development Officer in execution of the appellate order, it could not be said that the competent authority had any personal interest against the petitioner or that it was biased on any such ground so as to make it incompetent or to disqualify it in exercise of the functions of a competent authority. Merely from these facts it is not open to the petitioner to allege that respondent No. 1 was in the position of a complainant or that he was a Judge of his own complaint. Mr. Vyas, however, argued that the doctrine of bias would in any case be applicable even though the competent authority may not have any personal interest as such. The proceedings held against the delinquent concerned were on the ground of misconduct and when such a delinquent was facing such serious charge against him, there would be a reasonable apprehension in his mind that the competent authority whose orders he was challenging as illegal and ultra vires could not sit as a tribunal to decide this very dispute where he would be one of the interested parties himself. On that ground Mr. Vyas argued that there would be reasonable likelihood of a bias and the competent authority could not hold scales even when the whole ground of misconduct was that the concerned delinquent had not complied with the order issued by the competent authority and the allegation was sought to be repelled by arguing before the same competent authority that his order was illegal and ultra vires. In such cases it is not sufficient that justice is done but justice must also appear to have been

done. Mr. Vyas in this connection vehemently relied upon the decision in *Rizvi v. Divisional Engineer Telephones, Ahmedabad*², by the Division Bench consisting of Miabhoy J. (as he then was) and myself. At page 184 it was pointed out in that decision that in the eye of law a person is disqualified from being a Judge or an adjudicator if he has a bias in the dispute which he is called upon to adjudicate. It is also pointed out that the disqualification of a Judge or an adjudicator results in the vitiation of the whole proceeding before him and demands that his orders should be quashed or set aside. The proceeding being void, the Court does not pause to enquire whether the order passed or decision arrived at is right, nor does it pause to consider whether a qualified Judge or an adjudicator would have passed the same order or come to the same decision. The decision having been arrived at by a disqualified person is no decision in the eye of law and even if it happens to be a correct decision in the opinion of the Court before which the decision is brought, the same deserves to be set aside because a disqualified person has no jurisdiction to pass even a correct order or record a right decision. My learned brother rightly pointed out that theoretically it is possible to say that holiness, piety or a high sense of duty may endow a person with the rare gift of deciding correctly a case even against himself. The law views the matter entirely on the footing that an average individual is subject to human frailties, and it bases itself on the fact that a person, endowed with ordinary qualities and subject to weaknesses, to which human flesh is heir to, is not likely to maintain that mental equipoise, open mindedness and fair play, which are the true badges of a Judge or an adjudicator. The mind of a Judge or an adjudicator must be always pure so that the moment the law feels that a Judge or an adjudicator is so situated with reference to a cause that the stream of his thought is likely to be polluted by personal or extraneous considerations or, as stated by Lord Cranworth, L.C. in *Ranger v. Great Western Railway Co*³. the Judge or the adjudicator is not likely to be indifferent, it concludes that the cause is one which cannot be entrusted to the person suffering from such disqualification. Thus, the test to be adopted is whether the Judge or adjudicator could remain indifferent or he was so situated with reference to the lis that he could not hold the scales even as between the two contesting parties whose lis was determined by him as a third party. Mr. Vyas, therefore, argued that in the present case respondent No. 1 was so situated that he was

² V G.L.R.175

³1854 (5) House of Lords Cases 72

bound to uphold his own order and he would naturally have a bias for his own order which he had passed and he could never entertain such objection by remaining complete indifferent in the matter when he was really enforcing his own order against the delinquent. Mr. Vyas also argued that in such cases the matter must be viewed objectively by considering the effect of such a tribunal on the mind of the delinquent and himself as to whether he could get justice at the hands of the tribunal who was so situated that he could never remain indifferent. Therefore, even if the bias was something like official bias on the facts and circumstances of the present case, Mr. Vyas argued that respondent No. 1 was disqualified from deciding the present lis and his objection went to the entire root of the proceeding and the proceeding before him must be quashed for inherent lack of jurisdiction. No doubt, this is

subsequent development of the case from what it was averred in the petition itself. But the development is sought to be argued on the facts and the record itself. The learned Government Pleader, Mr. Sompura, however, vehemently objected to any such new ground being raised especially as his objection was waived. Respondent No. 1 had merely denied the allegations that principles of natural justice were contravened. Mr. Vyas also argued that respondent No. 1 had not raised any contention that this objection was waived by the petitioner and he argued that in a case where an objection goes to the root, as to the want of initial jurisdiction, the principle of waiver could never be invoked. Mr. Sompura, however, is right in urging that when the petitioner comes before this Court in a writ petition without making any averment that he had no knowledge of the relevant facts which would give him a right to object and that he was not aware of his right to raise any such Objection, the petitioner by his conduct would be disentitled from raising any such contention for the first time in this Court. In fact in the present case the petitioner had knowledge of all the relevant facts and circumstances and the point Mr. Vyas seeks to develop even at this stage is itself on all the admitted facts which were known to the petitioner even from the very beginning and still he had not raised this specific contention Of want of jurisdiction on the ground that the competent authority was disqualified being biased in this case. In the written reply to the show cause notice the petitioner challenged the jurisdiction of the competent authority only on the ground that there can be no valid delegation of the powers of the competent authority but there was no such objection raised on the ground of bias. Mr. Vyas, however, argued that the competent authority had not given him any hearing on merits, and, therefore, the petitioner had no opportunity to raise this ground at the time of hearing. In para 9 of the petition, the petitioner has alleged that he had ascertained from his advocate and the secretary of the Panchayat that on 24th August 1964 the matter was adjourned and no arguments on merits were heard. The petitioner had made this allegation as the competent authority had in terms stated in its order that the same points which were raised in the written statement were pleaded by the Advocate Shri Shah representing the petitioner. The petitioner did not file with the petition any affidavit of his advocate. In the affidavit-in-reply the respondent No. 1 has in terms stated that the petitioner's advocate Shri Shah was heard on merits on 24th August 1964. The petitioner has thereafter filed affidavit of the advocate Shri Shah. Mr. Shah has stated in his affidavit that in the beginning he stated before the competent authority that he was arguing on preliminary objection on the point of jurisdiction. Before starting the hearing of objection he requested the competent authority that as the copies asked for were not available, the matter should be adjourned and he had presented an adjournment application. Finally, he states that the competent authority in the oral discussion stated that if the writ petition was allowed by the High Court the proceeding under Section 49 would come to an end; otherwise the proceeding would be heard after the decision from the Court. This version appears to be highly improbable. If it had so happened the petitioner or his advocate would never have remained silent so long till the present petition was filed. Besides, it is the settled principle as pointed out by Their Lordships of the Supreme Court in *Union of India v. C.R. Varma*⁴ held that where there is a dispute as to what happened before the Court or the tribunal, the statement of the presiding officer in regard to it is generally taken to be correct. Therefore, there is no reason why we should not accept the version

of the competent authority that the advocate Shri Shah had argued points on merits and he did not canvass any other ground except what was stated in the detailed written statement submitted by the petitioner by way of explanation to the show cause notice issued under Section 49. The learned Government Pleader has relied upon the decision in *Rex v. Williams, Ex-parte Phillips*⁵, In the principle judgment by Channel J. observed at page 613 that it is a rule of the Court not to grant writ of certiorari except upon an affidavit which negatives knowledge on the part of the applicant when he was before the Court below of the facts on which he bases his objection and the said rule applies equally whether the objection is on grounds which make the act of the justices voidable or void. When objection to a conviction is taken merely by a member of the public and not by a party more particularly aggrieved the granting of a certiorari is discretionary; where the objection is by a party aggrieved, then, as a rule the writ issues ex-debito justitiae; this position is however, subject to the exception that a party aggrieved may by his conduct preclude himself from taking objection to the jurisdiction of an inferior Court. Further proceeding at page 614 the learned Judge pointed out that the writ of certiorari is discretionary and a party may by his conduct preclude himself from claiming the writ ex debito justitiae, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of certiorari. This special remedy will not be granted ex debito justitiae to a person who fails to state in his evidence on moving for the rule nisi that at the time of proceedings impugned he was unaware of the facts on which he relies to impugn them. By failing so to do a party aggrieved precludes himself from the right to have the writ ex debito justitiae and reduces his position to that of one of the public having no particular interest in the matter. To such a person the granting of the writ is discretionary. Mr. Vyas argued that in the decision in *Natverlal v. Dakar Co-op. S.G.P. Society*⁶ by the Division Bench consisting of S.T. Desai C.J. and Bakshi J. where it was held that at the antecedent to the party aggrieved the remedy at writ would be ex debito justitiae and would be almost as a matter of course. That decision does not propound any different principle because there the question about a party being precluded by her conduct from getting a relief by a writ of certiorari even when the remedy is ex-debito justitiae is not considered. The aforesaid decision of Channel J. is approved by their Lordships of the Supreme Court in *Manek Lal v. Dr. Prem Chand*⁷, In that case the Bar Council Tribunal was appointed to make an inquiry into alleged misconduct of an advocate of the Rajasthan High Court. One of the members of that Tribunal was the person who had filed his Vakalatnama on behalf of the opposite party, in these circumstances Their Lordships held the constitution of the Tribunal suffered from a

⁴ AIR 1957 SC 882 at page 884

⁶ 2 G.L.R. 299

⁵(1914) 1. K.B. 608

⁷ AIR 1957 S.C. 425

serious infirmity. At page 429 it was observed that it was well settled that every member of a Tribunal that is called upon to try issues in judicial or quasi judicial proceedings must be able to act judicially and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without

any bias. In such cases the test is not whether in fact a bias has affected the judgment; that test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. And this rule applies not only in case of Courts of Justice and even judicial tribunal but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others. As observed in *Frame United Breweries Co. v. Bath Justices*⁸ Their Lordships pointed out that a distinction must be made between pecuniary interest and prejudice or bias attributed to the members constituting tribunals, because pecuniary interest, however, small it may be in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. At page 431 Their Lordships considered the aforesaid observations of Channel J. whose decision proceeded on two grounds. Their Lordships found nothing in the said decision to justify the contention which was raised in that case that even if constitution of the tribunal was held to be defective or improper, the proceedings taken could not be successfully challenged unless it was shown that the defective constitution of the tribunal had in fact led to any prejudice. As far as the other question about waiver was concerned, Their Lordships approved the said ratio at p. 431 in terms held that the alleged bias in a member of the tribunal did not render the proceeding invalid if it was shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about alleged bias and was aware of his right to challenge the presence of the member in the tribunal. Of course Their Lordships added that it was true that the waiver could not always and in every case be inferred merely from the failure of the party to take the objections and it could be inferred only if and after it was shown that the party knew about the relevant facts and was aware of his right to take the objection in question. Therefore, in that case even though the constitution of the tribunal was found to be suffering from a serious infirmity on the ground of bias attributed to the tribunal as the objection about the defective constitution had been waived by the party who had full knowledge of the relevant facts and who was aware of his right to take the objection, the conclusion reached was that the party had waived his objection deliberately and he could not be allowed to raise it before the High Court. This decision provides a complete answer to this fourth ground raised by Mr. Vyas. Even if there was any defect in the constitution by reason of the bias of the tribunal as alleged, as the petitioner had waived the objection, it is not open to him to raise that contention before this Court for the first time in this petition as he had disintitiled himself by his conduct and is precluded from raising that

⁸1926 A.C. 586 at page 590

contention. If he had raised that contention before the competent authority or had moved the District Panchayat and pointed out the defect it could have been cured at the earliest stage. The

petitioner, however, having chosen to argue the case on merits before the authority and having invited decision in his favour, he is now precluded from raising this point after a decision has gone against him. In that view of the matter, it is not necessary to consider the wider question whether this being merely official bias of the competent authority as distinguished from his personal bias statute must be deemed to have sanctioned the same by reason of the constitution of such a competent authority relying upon the decision in *G. Nageshwar Rao v. State of A.P.*⁹.

8. We would now come to the most important ground raised by Mr. Vyas viz. the 5th ground of his contentions. In order to appreciate the same we would at the outset consider the effect of the relevant findings of the competent authority. The entire order of the competent authority really rests on two heads of misconduct: (1) that the petitioner sought to dismiss these 11 sweepers even though he had no power whatever to terminate the services of any of the Panchayat employees; and, (2) that as he had disregarded in spite of various demands, the directions to reinstate these 11 employees, he was guilty of wilful disobedience of lawful orders. It was this later misconduct which was considered to be very gross misconduct by the competent authority. It may be noted that as regards the two heads of charges under Sections 294 and 295 the competent authority has in terms stated that the directions issued by the Taluka Development Officer were not within the scope of those two sections. He has relied upon those directions only for showing that the petitioner continued to disregard the order directing him to reinstate these 11 sweepers. The other ground mentioned in the charge sheet about the inquiry having been held on Sunday without giving sufficient time to the employees, and that the meeting was called to confirm the action without any agenda have all been relied upon in support of the first finding of misconduct on the ground of want of power to dismiss these 11 sweepers as the act had been done under undue haste and even when the person was conscious of his absence of power in that connection. Section 49(1) provides for removal of the Sarpanch on the ground that he has been guilty of misconduct in the discharge of his duty or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under the Act. Mr. Vyas, therefore, argued that the expression 'misconduct' in Section 49(1) must be construed in a limited way and it would be a necessary ingredient that there must be something like dishonesty or fraudulent conduct or some element of mens rea which would make such misconduct wilful misconduct which alone would justify the action under Section 49(1). Mr. Vyas argued that if misconduct was interpreted in the widest sense, the other grounds mentioned in Section 49(1) would be redundant. It may be kept in mind that the Legislature has advisedly put a limitation on the expression 'misconduct' by providing that it must be misconduct in the discharge of his duties. As to what should be the true interpretation of the term 'misconduct.' there being no statutory definition, the import of that expression will have to be found from the context in which it has been used in Section 49(1). Section 49 deals with the removal from office a member or office bearers of the Panchayat and in that context misconduct in the discharge of his statutory duty is contemplated. Therefore, misconduct in the context of a person holding a public office is in the mind of the Legislature. In *Laws v. London Chronicle Ltd*¹⁰. in the decision of the Court of Appeal,

⁹ AIR 1959 S.C. 1376

¹⁰1959 (2) A.E.R. 285

Lord Evershed M. R. had to construe the expression 'misconduct' in the context of termination of a service contract. At page 287 the learned Judge pointed out that since a contract of service is but an example of contracts in general, so that the general law of contract will be applicable, it followed that if summary dismissal was claimed to be justifiable, the question must be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. It is, no doubt, therefore, generally true that wilful disobedience of a lawful and reasonable order shows a disregard a complete disregard of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master and that unless he does so, the relation ship is, so to speak, struck at fundamentally. The learned Judge then quoted a passage from the judgment of the Privy Council by Lord James of Herford in *Clouston and Co. and v. Corry*¹¹

"Now the sufficiency of the justification depended upon the extent of misconduct, here is no fixed rule of law defining the decree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfillment of the express or implied conditions of service will justify dismissal."

Thus, the test laid down for misconduct which would justify dismissal is that it must be inconsistent with the fulfilment of the express or implied conditions of service so that it can be said that the servant had disregarded the essential conditions of the contract of service. In *Shardaprasad v. Divisional Supdt. C. Ry*¹². the Division Bench consisting of Tambe and Raju JJ. had considered the aforesaid test laid down in *Laws v. London Chronicle Ltd.* as the correct test. The Division Bench also pointed out at p. 1598 ten acts of misconduct as has been held in *Pearce v. Foster*¹³ which illustrated what were the implied conditions of service. At page 1599 it was observed that the implied conditions of service would include conditions that the servant would be trustworthy, that his acts would justify the confidence of the employer, that the employee would not act or conduct or behave himself in a way inconsistent or incompatible with the faithful discharge of his duties to the employer, that he would not behave in an insulting or insubordinate manner, that he would not habitually be negligent etc. These illustrative types of misconduct enumerated were an application of the fundamental principle that to justify dismissal the servant must contravene the express or implied conditions of his service. This decision had approved the earlier decision in the same volume by the same Division Bench in *Modhosing v. The State of Bombay*¹⁴ where the question had arisen in connection with the police service. At page 1540 the Division Bench had pointed out that the test in such cases was whether servant conducted himself in a way inconsistent with the faithful discharge of his obligations undertaken

by him either expressly or impliedly in accepting the service. It was also pointed out that the material difference between the private and public servant was that In case of a private servant It was the master who in his own discretion decided the question of the disciplinary action to be taken against his servant, while in the case of a public servant it was not the master but certain officers of the

¹¹(1906) A.C. 122

¹³(1886) 17 C.B.D. 536

¹²61 Bom. L.R. 1596

¹⁴61 Bom. L.R. 1537

common master who

decided the question, and their powers in that respect were regulated by the Act or rules framed there under. The same principle could, therefore, be equally invoked in such cases where public servant holds such responsible office as member or an office-bearer of the Panchayat and who is sought to be removed on such serious charges against him. In the context of that, the misconduct would be any such conduct which would be in complete disregard of his duty and responsibility under the Act, as such Conduct would be wholly inconsistent or incompatible with the express or in plied conditions of his office of such responsibility. In the present case there can be no doubt that so far as the second head of misconduct was concerned, viz. of wilful insubordination or defiance of the orders of the lawful superiors, it would clearly amount to misconduct. Even as regards the first ground where it is alleged that the Sarpanch dismissed the municipal servants without any authority whatsoever and thus committed an ultra vires act in flagrant disregard of the provisions of the Act and the conditions of his office as Sarpanch, his conduct would obviously amount to misconduct in the sense in which we have analysed this expression. Under Section 47(1), save at otherwise expressly provided by or under this Act, the executive power for the purpose of carrying out the provisions of this Act and the resolutions passed by, a Gram Panchayat or Nagar Panchayat vests in the Sarpanch and he shall be directly responsible for the due fulfilment of the duties imposed upon the Panchayat by or under this Act. The Panchayat being a statutory body, its Sarpanch is made directly responsible to carry out all the duties imposed upon the Panchayat by or under the Act and he cannot in the discharge of his duties commit an ultra vires act, as such an act would be wholly incompatible with his duty to carry out the provisions of the Act.

9. Mr. Vyas, however, vehemently argued that in so far as the second head of misconduct is concerned, there could not be any willful defiance or insubordination because the Sarpanch honestly believed that the order of reinstatement was an illegal, an ultra vires order and he had spared no effort to get the order challenged before the proper forum. Mr. Vyas pointed out that immediately when direction or instruction was given to him after serving the operative part of the order dated 13th July 1964 the petitioner sought clarification and even as early as on 18th July 1964 he had in terms intimated to the respondent No. 1 that he was intending to file a writ petition against the same order. Thereafter for the period between 18th to 24th July 1964 various intimations were issued to him by the Taluka Development Officer and by a telegram of the

District Panchayat, asking the petitioner to carry out that order of reinstatement. There is also no dispute that the petitioner's agent was permitted to copy out the entire order with reason on 21st July 1964. The whole case of the petitioner, however, is that as he wanted other copies, he could not file a writ petition. On this question, there is a dispute between the parties. The petitioner had been informed on 6th August 1964 by communication dated 4-8-1964 that copies were ready and he should take delivery thereof. According to the petitioner on 7th only two copies were prepared and the other copies were not ready and so he did not take delivery. On the other hand respondent No. 1 has filed an affidavit of the concerned officer Shantilal Shah who has stated that the petitioner was not willing to take copies as he wanted to compromise the matter and did not intend to file the writ petition. Whatever may be the truth of the rival version, one thing is clear that even after the detail order was known with all the reasons as early as on 21-7-64 and even though time and again intimations were given to the petitioner to carry out that order, he did not file any writ petition nor obtained any stay order. Not only that, but on 1-8-64 the petitioner took up a clear defiant attitude in terms writing to the competent authority that he was not bound to comply with that order which clearly indicated the mind of the petitioner that he was not going to carry out the order. The competent authority, therefore, issued a notice on 1-8-64 under Section 49 asking the petitioner to show cause why he should not be removed for his misconduct. Even thereafter the petitioner has not filed any writ petition. We are told that the other writ petition was filed not by the petitioner but by the Panchayat on 11th September 1964. Thus, even though under Section 47(1) the petitioner was the person directly responsible to carry out this binding order on the Gram Panchayat, on one pretext or the other he failed to carry out this order and finally took up an attitude that he was not bound by any such order. This itself was wilful disobedience and a complete defiance of the lawful order of the authority. Under Section 8(3) as we have already analysed. Gram Panchayat is subordinate to the Taluka Panchayat and the District Panchayat and they are subject to the control of the State Government and the competent authority. Mr. Vyas even attempted to argue that the petitioner had complied with the orders of the Gram Panchayat if not of the higher authorities for he was bound to comply with the orders only of the Gram Panchayat. There is no order of the Gram Panchayat produced. Even if there was any such order the scheme of the Act makes it clear that the petitioner is responsible for the due fulfilment of the directions issued by the superior authorities to which the Gram Panchayat is completely subordinate and especially as the original order of the Gram Panchayat itself was set aside in appeal by the competent authority under Section 290 and the new order of reinstatement was substituted in its place. Therefore, in so far as the second head of misconduct is concerned there can be no answer at all that the petitioner was not guilty of wilful defiance. If in such circumstances a servant or a subordinate officer flouts the order of the superior authority saying that the order is a nullity and not binding on him which he could certainly ignore, he must do so at his own risk. If ultimately it is found that the order of the competent authority was lawful, which the servant was bound to carry out, he must face the consequences for his wilful defiance.

10. As regards the first head of misconduct, Mr. Vyas tried to argue that as Sarpanch the entire executive power vested in him and in the absence of the relevant rules for disciplinary action, the

Sarpanch was competent to take action against the Panchayat sweepers for their misconduct. There is no dispute that the relevant rules viz. Gram Panchayat Servants Disciplinary and Appeal Rules, 1964, came into force only on 16th July 1964 under which the Sarpanch would have no such power of terminating services of Panchayat servants. Mr. Vyas had, however, argued that these were subsequent rules which could not take away power which rested in the Sarpanch under Section 47. Mr. Vyas also relied upon Section 47(2)(i)(b) that without prejudice to the generality of the foregoing provisions the Sarpanch shall exercise supervision and control over the acts done and action taken by all officers and servants of the Panchayat. Sub-clause 2(i)(b) does not confer any such disciplinary jurisdiction on the Sarpanch. Even Section 47(1) which vests executive powers for the purposes of carrying out the provision of the Act and the resolutions of the Gram Panchayat is subject to a saving clause, namely, save or other, wise expressly provided by or under the Act. Assuming, therefore, that executive power could cover such disciplinary jurisdiction or disciplinary control by way of terminating a servant's services, such power under Section 47(1) is clearly subject to the other provisions in the Act. We have already pointed out that the relevant rules which could be made under Section 203(3) in the matter of appointments, transfer, promotions and disciplinary actions against officers or servants of the Panchayat were not in existence at the relevant time. There is, however, Section 102 Clause (1)(b) in the Act which provides that subject to the provisions of the Act and the rules made thereunder, a Gram Panchayat may appoint such servants as may be necessary for the discharge of its functions and duties under the Act. This power of appointing Panchayat servants is specifically vested under Section 102(1)(b) in the Panchayat itself. Under Section 16 of the Bombay General clauses Act, 1904, the power to appoint would also include power to suspend or dismiss any person appointed by it in the exercise of that power. There is, therefore, a specific provision in Section 102(1)(b) read with Section 16 of the Bombay General clauses Act that it is the Gram Panchayat which alone could dismiss a servant appointed by it. In view of this express provision, Section 47(1) would be subject to this express power of the Panchayat to dismiss an employee. Therefore, we cannot accept the petitioner's contention that the Sarpanch had the power to dismiss the Panchayat sweepers for such power vested only in the Panchayat. Unless rules were made which delegated this power of the Panchayat to smaller body like a committee or its officers, the entire Panchayat was bound to perform its function or to exercise its power. The question in the present case is whether one officer of the Panchayat could terminate services of the other servants and as we have already considered this question, the question could be answered only by reference to the provisions of the Act and the rules if any in that connection. Therefore, the conclusion of the competent authority that the Sarpanch had In this case no power whatever to dismiss the servants is the right conclusion and it could not be attacked as patently erroneous. Mr. Vyas tried to argue that the other chairman of the three committees and some members present had authorised the Sarpanch to hold the proceedings for inquiry. If the power was to be exercised by the general body of the Panchayat no chairman or no individual member could have conferred such power on the Sarpanch. Finally Mr. Vyas argued that even the general body had in its resolution dated 25th March 1964 ratified this action which, therefore, supplied the lacuna which existed at the time when the Sarpanch purported to pass the order of dismissal

on 28-4-64. Even this contention has rightly been overruled by the competent authority. Panchayat has only ordered termination of the services with one month's notice and it has not confirmed dismissal order passed by the Sarpanch on 3-3-1964. The order of the Sarpanch was not subject to any such ratification and in fact the Panchayat has not ratified the same but only modified the order. If the original order was a void order there would be no question of any modification and if, therefore, the Panchayat purports to modify the same assuming that it can do so, the same could not have any legal effect. In fact, the entire inquiry lacked legal competence and even the general body had made no inquiry whatever except passing this resolution by giving any opportunity to the sweepers to have their say in the matter. Therefore, it is clear that the order of the Sarpanch was clearly ultra vires order when he dismissed these 11 sweepers. Mr. Vyas argued that if an officer like a Sarpanch erroneously believed that he had such power his action cannot be challenged as misconduct. In the present case the facts are too eloquent. The Sarpanch was conscious of his lack of power and he tried to get a semblance of power by making other three chairmen and some members to agree to give him such power. He even went to the extent of getting confirmation from the general body. The competent authority has rightly considered that the whole thing was done with undue haste and even the committee meeting was called without any such agenda and that all these surrounding circumstances and especially his subsequent conduct not to reinstate these employees in spite of various directions leave no doubt of his intention that he had wilfully disregarded the provisions of the Act and had passed this order terminating services of these employees. The competent authority was, therefore, right in holding that both these grounds amounted to misconduct. Even if there was any substance in the contention of Mr. Vyas that the first head of misconduct did not amount to misconduct, the competent authority's order could be equally supported on the ground that in its view the later misconduct of insubordination was of the grossest type. The learned Government Pleader rightly relied upon the decision of the Supreme Court in *State of Maharashtra v. B.K. Takkamore*¹⁵, Their Lordships relied upon the earlier decision of His Lordship Shah J. in *State of Orissa v. Bidyabhushan Nahapatra*, AIR 1963 SC 779 where it was held that if the High Court was satisfied that if some but not all of the findings of the Tribunal were 'unassailable' the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment were placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty because the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, was not justiciable. His Lordship in terms pointed out that if the order might be supported on any finding as to substantial misdemeanour for which the punishment could lawfully be imposed, it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court had no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie made out a case of misdemeanour to direct the authority to reconsider that order because in respect of some of the findings but not all it appeared that there had been violation of the rules of natural justice. In the case before their Lordships, the principle was finally stated in the following words:

"An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or Irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds' some of which are found to be non-existent or irrelevant, can be sustained if the Court is satisfied that the authority would have passed the order on the basis of the other relevant grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision."

In the case before Their Lordships the order was passed on two grounds one of which was relevant and the other irrelevant and Their Lordships had upheld the order as it was found that in the opinion of the State Government the second ground was serious enough to warrant action under Section 408(1) of the Corporation Act in question, and was sufficient to establish that the Corporation was not competent to perform its duties under that Act. That decision clearly concludes this question. In the present case also this second head of misconduct of willful insubordination had been considered to be the grossest misconduct and, therefore, even on that ground the order of removing the petitioner was wholly justified. Therefore, the fifth ground urged by Mr. Vyas must also fail and the conclusion of the competent authority could not be held to be patently

¹⁵ AIR 1967 SC 1353

erroneous and on fact we are agreeing with the said conclusion as the right conclusion in the circumstances.

11. Turning now to the last ground of Mr. Vyas it was sought to be urged at the fag end of the argument that in para 36 the petitioner has alleged that respondent No. 1 was on leave from 14th July to 12th August 1964 and on the relevant date 1-8-64 the charge of the office of the District Development Officer was with Shantilal Shah who was District Village Panchayat Officer working as personal assistant to respondent No. 1. The petitioner, therefore, contended that as the relevant resolution delegated powers of the competent authority by the District Panchayat in this behalf only to the District Development Officer viz. respondent No. 1 such delegated could not have further delegated his power to Shantilal Shah and, therefore, in any event Shantilal Shah would have no authority to issue such notice under Section 49. In the affidavit-in-reply, in para 32 respondent No. 1 has denied that Shantilal had no authority or jurisdiction to issue such notice. He had in terms stated that Shantilal was holding office of the District Development Officer and as such he had authority to issue such notice. Shantilal Shah's affidavit has also been filed and he had stated that on the date when the notice at Annexure 'N' was issued on 1-8-64 he was holding office of the District Development Officer and as such he was entitled to issue a notice. There is no counter affidavit denying this averment that Shantilal Shah held the post of the District Development Officer on the relevant date. The petitioner has not brought out anything on the record to show that Shantilal Shah was a not holding any such post when respondent No. 1 was on leave on that day. Even in the subsequent affidavit which the petitioner

has filed thereafter he has not challenged this relevant averments that Shantilal was holding this post. If we turn to the notice, Shantilal Shah has not signed it for and on behalf of respondent No. 1 but he had signed it in his capacity as District Development Officer himself. Therefore, there is no question of any sub-delegation in the present case. Even on facts it is not disputed that it was respondent No. 1 who had given an opportunity as to petitioner to appear before him and the entire inquiry was conducted by him alone. Therefore, all the requirements of Section 49(1) were duly complied with by respondent No. 1. Therefore, even this last submission of Mr. Vyas fails.

12. In the result no ground whatever has been made out for Interfering with the order at Annexure P for removal of the petitioner and for setting aside the resolution delegating powers of the competent authority to the respondent No. 1. The petitioner, therefore, succeeds only to the extent that the order at Annexure 'R' is set aside, disqualifying him for a period of four years under Section 49(2). Rule is made absolute only to the limited extent in so far as the order at Annexure 'R' under Section 49(1) disqualifying the petitioner is concerned while the rule is discharged in so far as the order of removal at Annexure 'P' under Section 49(1) and in regard to the resolution of delegation are concerned. As success is equally divided, there shall be no order as to costs in the circumstances of the case. In view of our decision no order is necessary on C.A. No. 389 of 1968.

13. Mr. Vyas made an oral request for a certificate under Article 133(1)(c) for appeal to the Supreme Court. We reject the said request for a certificate.
Ordered accordingly.