GUJARAT HIGH COURT

Babubhai Girdharbhai Patel

Vs.

Manibhai Ashabhai Patel

Spl. C.A. No. 231 of 1974

(M.P. Thakkar, J.)

04.09.1974

JUDGMENT

M.P. Thakkar, J.

1. An important question relating to the convening of a statutory ordinary general meeting of a municipality constituted under the Gujarat Municipalities Act, 1963 ("the Act"), namely, whether the President of a municipality having convened a meeting has the power to cancel or adjourn the meeting unilaterally before the councilors assemble at the appointed hour without the consent or against the wishes, of the councilors, at his pleasure, acting on his own, is raised by a councilor of Anand Municipality in this petition under Article 226 of the Constitution of India.

2. By a notice dated January 15, 1974, the President of Anand Municipality (called "Municipality" hereafter) issued a notice convening a meeting to transact 46 items of business specified in notice Annexure "A". The meeting was convened for January 24, 1974. Two days before the scheduled date of meeting i.e. on January 22, 1974, the president of the Municipality issued a notice informing the councilors that having regard to the situation obtaining in the city the meeting scheduled to take place on January 24, 1974, would take place on February 5, 1974. On February 5, 1974 the District Magistrate issued an order under Section 144 of the Code of Criminal Procedure (Annexure "D") prohibiting the assembly and movement of more than five persons within the specified locality. By this order the members of the public were restrained from entering the municipal office premises but it was clarified that the order would not apply to Municipal councilors and municipal employees. He also made it clear that curfew permits would be issued to the municipal councilors and to the employees in order to Enable them to assemble at the meeting scheduled to take place at 4-00 p.m. on that day. It appears that at about 2-00 p.m. the president of the Municipality (respondent No. 2) took a mental decision to postpone the meeting and issued a circular addressed to the Municipal councilors. At the material time there were 35 elected councilors. Out of them 20 councilors refused to endorse or take cognizance of

the circular addressed by the President to them giving intimation as regards the postponement of the meeting. At 4-00 p.m. at the appointed hour, 20 councilors assembled in the lobby of the Municipal Hall. The President and 14 other councilors were not present. As the President was absent, the Vice-President presided at the meeting. The meeting took place as scheduled at 4-00 p.m. Several items of business including the business of electing the Executive Committee and various other committees were transacted at the meeting. Thus, the 20 councilors who were present elected the members of various committees notwithstanding the fact that the President and 14 others were absent. The petitioner, who is one of the councilors who were absent, has challenged the legality and validity of the business transacted at the meeting of February 5, 1974, inter alia claiming a declaration that the business transacted at the meeting of February 5, 1974 was illegal and unauthorized and that the meeting was not a duly constituted meeting. He has also claimed an appropriate writ restraining the respondents from treating the business transacted at the meeting as valid.

3. The first question, and the one which goes to the root of the matter, is as to whether the meeting presided over by the Vice-president at 4-00 p.m. on February 5, 1974 was a validly convened meeting and whether the business transacted thereat had been validly transacted. It is argued by the learned Counsel for the petitioner that even though that notice convening the meeting of the Municipal councilors for transacting the Specified business had been issued by the President on January 15, 1974, inasmuch as an intimation was given to all the councilors at 2-30 p.m. i.e. some 1 hours before the appointed hour of the meeting that the meeting will not take place, it was not open to the Vice President and the 19 other councilors to have transacted any business at the meeting. The communication addressed to the councilors in question is found at Annexure "C". There is a recital therein as regards the disturbed situation prevailing in the city and a reference to the order passed by the Sub-Divisional Magistrate. It is mentioned therein that having regard to the circumstances the meeting will stand adjourned indefinitely. The footnote shows that a copy of the notice was affixed on the Notice Board of the municipal office
and a copy was sent to the Collector of Kaira and Sub-Divisional Magistrate, at Anand.

4. Now so far as the Act is concerned, there is no provision therein which enables a president of a municipality to cancel or adjourn before the appointed hour a statutory ordinary general meeting envisaged by Section 51 which contemplates the holding of four such meetings in the months of January, April, July and October respectively. There is, however, a provision in the Act with regard to the adjournment of a meeting. The provision is embodied in Sub-section (11) of Section 51 which may be quoted:

> "51 (11). Any general meeting may, with the consent of a majority of the councilors present, be adjourned from time to time to a later hour on the same day or to any other day; but no business shall be transacted at any adjourned meeting, other than that left undisposed of at the meeting from which the adjournment took place.
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> A notice of such adjournment posted in the Municipal Office shall be deemed sufficient notice of the adjourned meeting."

On a plain reading of Sub-section (11) it is evident that a general meeting can be adjourned only provided the majority of the councilors present accord their consent to such adjournment. It postulates the assembly of the councilors at the appointed hour and the postponement or adjournment of the meeting thereafter. In the first place Sub-section (11) will not apply. In the second place even if it can be resorted to for adjourning the meeting by way of cancellation or postponement of the meeting, it can be done only with the consent of majority of councilors. It will be recalled that so far as the present case is concerned 20 out of 35 councilors were against the adjournment of the meeting. Even if the power could be exercised under Sub-section (11) of Section 51, the meeting could not have been lawfully adjourned. Having realized this situation it was argued by the learned Counsel for the petitioner that implicit in the power to convene the meeting was the ancillary and necessary power of cancellation of the meeting before the councilors assemble. Now is the time to spotlight the remarkable features of the profile of the problem. The president is the office-bearer elected by the councilors for a smooth, efficient and orderly functioning of the democratic institution for local self government. He is merely the arm of the body (of councilors) and no more. He has no over reaching or inherent powers. In the matter of a statutory general meeting all that he has to do is to convene the meeting. Having done so, the future course of action has to be decided upon by the councilors for the councilors acting as a body (not the president) constitute the collective conscience of the democratic institution in whom the electorate has reposed its trust. The councilors collectively have to discharge their public duties and to honor their commitment to the electorate. Can they be prevented from discharging their functions by the simple expedient of cancelling the meeting (once convened) from time to time as per the pleasure or the humour of the president? Would it not tantamount to trifling with the collective representatives of the town, making a mockery of their functions, and reducing their status to that of chess pieces for being played with by the president? If, however, the position of law is such, the Court may feel helpless and yield to such an interpretation of the law. But it is not. The Legislature has envisaged and anticipated numerous situations and has made a provision for almost all conceivable situations in the Act itself. If, therefore, no provision is made in regard to unilateral cancellation by the president of a statutory ordinary general meeting once it is convened, such a power cannot be presumed or deemed to exist. It is possible to visualise a situation where on account of an emergency or in view of extraordinary circumstances it becomes physically impossible for the councilors of a municipality to assemble at the appointed hour. For instance, if there are sudden disturbances in the city, if there is an earthquake, or air-raid, or some such situation which makes it physically impossible for the councilors to assemble at the appointed hour at the appointed place, then the meeting would have to be abandoned. If the councilors can physically remain present and if the situation so demands, the meeting may be adjourned as contemplated by Sub-section (11) of Section 51 with consent of the majority. It is not possible to accede to the argument that the president can cancel or adjourn the meeting if he personally considers it necessary or desirable to do so before the councilors assemble. Assuming that such a power were to be presumed to exist, even then he can cancel or adjourn the meeting only with the express or implied consent of a majority of the councilors.

This limitation will have to be read into the implied power having regard to the spirit of the doctrine which is embodied in Sub-section (11) of Section 51 and the considerations stressed a moment ago. It must be realized that Section 51(1) makes it obligatory to hold four ordinary general meetings in an year. The councilors would be anxious to ensure that the obligation cast in regard to a public duty imposed on them is faithfully discharged. Under the circumstances, it is reasonable to hold that a president does not have unrestricted power to cancel or adjourn a meeting at his humour or pleasure or caprice. If a given situation demands it and if the majority of the councilors agree to such cancellation expressly or impliedly, no occasion for questioning the validity of the postponement would possibly arise. When the Act is silent and when there is no other provision which empowers the president to do so, it would be difficult to confer the power on the president to cancel the meeting by implication by resort to the theory of a power which is concomitant to a power to convene a meeting. If the proposition which appears to be quite evident is required to be backed by the authority of some well-known author, a reference may be made to "The Law and Practice of Meetings" by Shackleton, Fifth Edition, page 165, where the following passage occurs:

> When once a general meeting has been convened it is questionable whether it can be cancelled. The correct procedure, where a postponement of a meeting is desired, is to hold the meeting as convened and adjourn it to the desired date. This procedure 1 would not, of course, apply where the interests of only a few are concerned, and there is unanimity in the matter.

I have therefore, no manner of doubt that a president does not have any such power. It must also be realized that to confer such power by implication is to open the gates to arbitrariness and caprice. It would also be against public policy to confer such power by implication by virtue of a theoretical doctrine that the power to convene a meeting includes the power to cancel a meeting. If that were so, a president would go on cancelling a notice convening a meeting from time to time and make it difficult for the councilors to discharge their public duties. What is then to prevent a president from saying that as there are guests at his house he would adjourn the meeting. Or that as he is not feeling too well he would cancel the meeting for that reason. The president is a responsible officer heading the institution for self-government like a municipality where every councilor is supposed to be anxious to discharge his public duties with expedition and to the best of his ability. It would, therefore, not be possible to hold that the president had any such power. It must be realized that no impasse is likely to be created by taking the view which commends itself to me. All that would happen would be that the councilors would attend at the appointed hour at the specified place and if the majority so decides the meeting can be adjourned. If on the other hand a situation arises where there is a physical impossibility of attending the meeting, naturally it would be abandoned. In my opinion, therefore, there is no reason to hold that the meeting which actually took place on February 5, 1974 (presided over by the Vice-President) was an illegal meeting. The challenge to the legality and validity of the business transacted at the meeting must, therefore, fail.

5. The legality of the meeting is also challenged on the ground that the Chief Officer of the Municipality did not remain present at the meeting. Attention was called to the provision contained in Sections 52 of the Act. It is in the following terms:

> "52. The chief officer shall be present at every meeting of the municipality, and may with the permission of the president or of the municipality make an explanation or a statement of facts in regard to any subject under discussion at such meeting, but shall not vote upon or make any proposition at such meeting."

This provision does nothing more than casting a duty or an obligation on the Chief Officer to remain present at the meeting. If the Chief Officer is unable to remain present or refuses to remain present, it can have no impact on the validity of the meeting. There is no warrant for saying that the validity of the meeting depends on the presence of the Chief Officer. In the present case the affidavit of the other side is to the effect that though the Chief Officer was apprised of the fact that 20 councilors had assembled and were proceeding to hold the meeting at the appointed hour, he refused to remain present. Be that as it may, there is no warrant for the proposition that if the Chief Officer remains absent, a validity convened meeting which transacts business in accordance with law would be rendered invalid.

6. The last ground of challenge is built on the circumstance that the meeting was held in the lobby of the Municipal building and not in the Municipal Hall. Reliance was placed on Sub-section (4) of Section 51 which provides that every meeting of a municipality shall, except for special reasons to be mentioned in the notice convening the meeting, be held in the building used as a municipal office by such municipality. Now, when a meeting is held in a lobby, it does not mean that it is not held in the building used as a municipal office. At any rate, it would merely be an irregularity (though in my opinion there is no such irregularity) and not illegality. There is no substance in any of the three contentions.

7. The petition fails and is rejected. Rule is discharged with costs. The interim orders are vacated. Petition dismissed.