HIGH COURT OF GUJARAT *(D.B.)*

BHAICHANDBHAI MAGANLAL SHAH
V/S
STATE OF GUJARAT

Date of Decision: 03 December 1965

Citation: 1965 LawSuit(Guj) 102

Hon'ble Judges: J M Shelat, P N Bhagwati

Eq. Citations: 1967 AIR(Guj) 105, 1967 GLR 210, 1967 (3) GLT 163

Case Type: Special Civil Application

Case No: 551 of 1962

Subject: Constitution

Head Note:

Petlad Municipality election - Municipal District limits extended - words not reconstituted - newly added are not included for election purpose court night to interfere under Art.226 -The validity of election which left out nearly areas.

It is undoubtedly true that though there is nothing in the language of Article 226 which requires the Court to reject a petition if the petitioner has other adequate remedy available to him the Courts have prescribed to themselves a rule of practice that where the petitioner has adequate alternative remedy available to him the Courts should not ordinarily interfere to grant relief to the petitioner in the exercise of their extra-ordinary jurisdiction under Article 226. But this rule is not an inexorable rule which must be applied regardless of the facts and circumstances of each case. There may be cases where the Court may think it fit and proper to intervene in the exercise of its extraordinary power under Article 225 even where it finds that the petitioner had other remedy available to him but

he did not pursue the same. (Para 4).

Sec. 22 of the Bombay District Municipal Act 1901 provides for the filing of an election petition for bringing in question the validity of any election of a Councillor. But where the validity of the entire election is sought to be challenged on the ground that it has been held contrary to the provisions of the Act without taking an essential step necessary to be taken before it could be held an election petition under sec. 22 would not be the proper remedy. (Para 4).

Held further that the entire election is contrary to the democratic principles and if there is any case where it is necessary to interfere in the exercise of the discretion under Article 226 without the slightest hesitation it is the present one for no Municipality can be allowed to continue to govern a part of the municipal district when that part has been denied representation on the Municipality and the voters in that part have had no opportunity to stand as candidates or even as much as to express their views on the question as to who should be elected. (Para 4).

Held further that where an institution is created by a statute a right to vote at an election to such institution is dependent on the statute and it can be asserted only to the extent and subject to the conditions specified in the statute creating it and the right of the petitioner to vote must therefore be found in some provision of the Act. That right is given to the petitioner under sec 12 of the Act. (Para 5).

Held further that there was a change in the limits of the municipal district and that change clearly necessitated fresh action on the part of the State Government under sec. 11 sub-sec. (1) clause (c) and the State Government had power to take such action as is evident from the use of the words from time to time occurring at the commencement of the section. Unless the State Government constituted the wards for the whole of the municipal district which came into being as a result of the extension of its limits no valid election could be held to elect councillors to the Municipality and inasmuch as the impugned election was held on the basis of the existing wards which comprised only a part of the municipal district leaving out the newly added area it was clearly null and void and would have to be set aside. (Para 6).

Held further that it is undoubtedly true that a writ of quo warranto is not issued as a matter of right. It is a discretionary relief and the Court has to ask itself whether under the circumstances of each Case the petitioners should be given the relief in the nature of mandamus or quo warranto which he seeks. It is also true that the Court should always be reluctant to interfere with elections except on the clearest and strongest of grounds and they should be loath to interfere with elections

merely because some technicality has not been observed or some irregularity has been committed. But it would be quite a different matter if the irregularity has resulted in the people not being able to express their views properly or if there was any corrupt practice which has materially affected the result of the election or where the election has been held without any authority of law. (Para 7). Manilal v. Union of India Bairulal Chunilal v. State of Bombay Kalabhai v. Village Panchayat of Patdi referred to.

Acts Referred:

Constitution Of India Art 226

Bombay District Municipal Act, 1901 Sec 22, Sec 11(1)(c)

Final Decision: Petition allowed

Advocates: K S Nanavati, I M Nanavati, K L Talsania, B G Thakore, M I Patel, M M Shastri

Reference Cases:

Cases Cited in (+): **5**

Cases Referred in (+): **4**

Judgement Text:-

Bhagwati J

[1] This is a petition under Article 226 of the Constitution for a writ of mandamus or any other appropriate direction, order or writ for quashing and setting aside the election of the Councillors to the Municipality for the municipal district of Petlad held on 9th July 1962 and directing respondents Nos. 1 and 2, namely, the State and the Collector to reconstitute the wards comprising the whole of the extended limits of the municipal district of Petlad and for a writ of quo warranto or a writ in the nature of quo warranto calling upon respondents Nos. 5 to 32 who are purported to be elected as Councillors at the election to state by what authority each of them claims to hold the of fice of a Councillor and restraining them from acting as such Councillors. The question arising in the petition is one of some importance, but it does not admit of much doubt or debate and is relatively simple and easy of solution. But before we proceed to state the

question and deal with it, it is necessary to mention briefly a few facts giving rise to the petition.

[2] Prior to the extention of its limits on 11th October 1960 the municipal district of Petlad consisted of various survey numbers in the town of Petlad which were constituted into a Municipal district by the State Government under sec. 4(1) of the Bombay District Municipal Act, 1901. By a Resolution dated 4th August 1953, the State Government in exercise of its powers under sec. 11, sub-sec. (1) clauses (a) and (c) determined the number of Councillors for the Municipality of this municipal district to be 28 and made rules prescribing the number and extent of the wards to be constituted in this municipal district, the number of Councillors to be elected by each ward and the number of seats to be reserved in each ward for the representation of women and scheduled castes. Under the Rules so made, the whole of the then existing municipal district was divided into seven wards and the number of Councillors to be elected by each of these wards was specified so as to make up a total of 28 Councillors for the entire municipal district. The last quadrennial election to the municipality in accordance with these rules was held sometime in 1958 and the term of of fice of the Councillors elected at this election was due to expire on 9th March 1962. In the meantime on 11th October 1960 a notification was issued by the State Government under sec. 4(1) extend-ing the limits of the municipal district of Petlad by adding certain survey numbers specified in Schedule A to the notification. The result was that the area comprised in these additional survey numbers became part of the municipal district of Petlad. Now unless these newly added area was constituted into one or more wards or was included in any existing ward or wards, no one resident in the newly added area could have a right to vote or to stand as a candidate at an election to the Municipality for the municipal district of Petlad and no such election could validly take place under the Act. The Municipality who is the fourth respondent before us, therefore, repeatedly requested the State Government to reconstitute the wards so as to cover the newly added area, since the term of of fice of the existing Councillors was due to expire on 9th March 1962 and it would be necessary to hold an election to elect new Councillors. The State Government, however, did not take any steps to reconstitute the wards and pending consideration of the question of reconstitution of the wards, the Commissioner, by a notification dated 27th July 1962 extended the term of of fice of the existing Councillors upto 30th June 1962. The Municipality thereafter appointed a Special Committee to recommend how the newly added area should be incorporated in the existing wards but the Special Committee was unable to reach an agreement and the matter was, therefore, placed before a general meeting of the Municipality held on 30th

January 1962. At this meeting an unanimous resolution was passed by the Councillors recommending to the State Government to incorporate the newly added area in the existing wards on the basis of geographical contiguity and a copy of the resolution was sent by the President of the Municipality to the Collector on 19th February 1962 for necessary action by the State Government. The State Government, however, failed to take any action in the matter and the President of the Municipality, therefore, addressed a letter dated 25th April 1962 reminding the Collector that the proposal of the Municipality to reconstitute the wards by including the newly added area in the existing wards on the principle of geographical contiguity was already forwarded to the Collector as far back as 19th February 1962 but it had not yet been finalised and pointing out that unless the wards were reconstituted, the unfortunate result would be that the voters within the newly added area would be debarred from exercising their right to vote. But this consequence did not seem to perturb the State Government or the Collector, for instead of reconstituting the wards, the State Government directed the Collector to proceed with the election and the Collector accordingly issued a notice dated 30th April 1962 fixing the dates for the various stages of the election and notifying 9th July 1962 as the date for the holding of the election and the notice was published by affixing copies of it at the Municipal of fice and other conspicuous places specified in the bye-laws on 1st May 1962. On receipt of the notice the President of the Municipality once again pointed out to the Collector by his letter dated 1st May 1962 that if the election were to be held according to the programme fixed by the Collector without reconstituting the wards, the voters in the newly added area would be deprived of their right to vote and the entire election might on that account be held to be illegal involving the Municipality in heavy expenses and requested that the Collector should under the circumstances postpone the election and move the Commissioner to extend the term of of fice of the existing councillors upto 9th March 1963 or at any rate upto 31 st December 1962 and in the meantime get the State Government to reconstitute the wards. This request which, apart from the legal justification behind it which we shall presently discuss, was based on a fundamental principle basic to democratic way of life that the people of every area governed by a political institution must have their elected representatives on such political institution did not evoke any response from the Collector and the State Government. The President of the Municipality was, therefore, constrained to address a letter dated 21st May 1962 to the Secretary to the Government, General Administration Department, pointing out that if the election was held without reconstituting the wards, the voters coming within the newly added area would have no right to vote and that would create legal complications. There was no reply to this letter too and the President of the Municipality, therefore, ultimately wrote

an express letter dated 30th May 1962 to the Collector requesting him to move the Commissioner and the State Government immediately by telegram, the former to extend the time of of fice of the existing Councillors to a suitable date and the latter to reconstitute the wards in the meantime "so as to enable the voters . coming within the extended limits to exercise their votes during the ensuing elections". To these frantic requests and appeals of the President of the Municipality, a reply dated 15th June 1962 was sent by the State Government stating that it was not possible to consider the proposal of the Municipality for reconstitution of the wards for the time being and to postpone the election and it was pointed out that this position had also been personally explained to the President of the Municipality when he had an interview with the Minister for Irrigation Department. The election was thereafter held on 9th July 1962 on the basis of the existing wards leaving out the newly added area and respondents Nos. 5 to 32 were declared elected by respondent No. 3 who was the Returning of ficer at the election appointed by the Collector. The petitioner thereupon filed the present petition challenging the validity of the entire election and the right of respondents Nos. 5 to 32 to hold the of fice of a Councillor in the Municipality. During the pendency of the petition respondent No. 12 died and his name was accordingly ordered to be struck of f the record and the petition proceeded against the remaining respondents.

[3] The main ground on which the petitioner assailed the validity of the election was that the election Mas held in defiance of the provisions of the Act resulting in a part of the municipal district not being represented at all in the Municipality and the voters in that part not having any opportunity to express their views or to stand as candidates at the election and the election was, therefore, bad and liable to be set aside. The argument urged on behalf of the petitioner was that an election to a Municipality under the provisions of the Act could not be held unless the State Government first determined the number of Councillors of the Municipality under sec. 11 sub-sec. (1) clause (a) and made rules under sec. 11 sub-sec. (1) clause (c) prescribing inter alia the number and extent of the wards to be constituted in the municipal district and the number of Councillors to be elected by each ward and since in the present case the election was held without constituting wards comprising the whole of the municipal district as it stood after the extension of its limits the election was wholly invalidated. The petitioner agreed that under the rules made by the State Government by the Resolution dated 4th August 1953, the municipal district as it then existed was divided into seven wards but his grievance was that after the extension of the limits of the municipal district by the addition of the newly added area, no reconstitution of the wards was made with the result that the newly added area was not constituted into any ward or wards nor did it

form part of any ward or wards and it could not, therefore, be said that there were wards constituted for the whole of the municipal district as it existed at the date of the election and since the whole of the municipal district existing at the date of the election was not divided into wards by the State Government as required by sec. 11 sub-sec. (1) clause (c) and the election was held on the basis of the existing wards which left out of account the newly added area which formed part of the municipal district at the date of the election, the election was contrary to the provisions of the Act and was no election at all. Respondents Nos. 1 to 3 submitted to the orders of the Court, but the other respondents joined issue with the petitioner as regards the validity of this contention urged on behalf of the petitioner. They contended that so long as the election was held on the basis of the existing wards prescribed by the State Government under sec. 11 sub-sec. (1) clause (c) by its resolution dated 4th August 1953, the election was a valid election and no complaint in regard to the validity of such election could be made by the petitioner who was resident in the newly added area which did not form part of any of the existing wards. It was also urged by the fourth respondent Municipality that in any event the provision requiring the State Government to prescribe the number and extent of the wards to be constituted in each municipal district was a directory and not a mandatory provision and did not have the effect of nullifying the election held in breach of it. These were the two main contentions urged on behalf of respondents Nos. 4 to 32 on merits, but in addition to these contentions certain contentions of a preliminary nature were raised on their behalf and we will first proceed to examine the validity of these preliminary contentions and then turn to consider the contentions on merits.

[4] The first preliminary contention urged on behalf of respondents Nos. 4 to 32 was that the petitioner had an alternative remedy by way of an election petition to the District Judge under sec. 22 and the petitioner not having exhausted that remedy, this Court in the exercise of its discretion should not entertain the petition and grant relief to the petitioner even if the contentions of the petitioner on merits be well-founded. Now it is undoubtedly true that when an alternative and equally efficacious remedy is open to a petitioner, he should ordinarily pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ, but this rule requiring exhaustion of the statutory remedy is a rule of policy, convenience and discretion rather than a rule of law and does not bar the jurisdiction of the High Court to grant relief to the petitioner in the exercise of its extraordinary jurisdiction under Article 226 where there are good grounds for doing so. The rule is not an inexorable rule which must be applied regardless of the facts and circumstances of each case. There may be cases where the Court may think it fit and proper to intervene in the exercise of its extraordinary power

under Article 226 even where it finds that the petitioner had other remedy available to him, but he did not pursue the same. Each case must ultimately depend on its peculiar facts and circumstances and the exercise of the discretion must be governed not by any hard and fast rule or any straight-jacket formula but by the facts and circumstances of the case. Now in the first place we do not think that in the present case the remedy under sec. 22 could have been available to the petitioner. Section 22 provides for the filing of an election petition for bringing in question the validity of any election of a Councillor. But where the validity of the entire election is sought to be challenged on the ground that it has been held contrary to the provisions of the Act without taking an essential step necessary to be taken, we do not think that an election petition under sec. 22 would be the proper remedy. Secondly, the defect in the election alleged in the present case is a defect which has resulted in a part of the municipal district not being represented at all in the Municipality and the voters in that part not having had an opportunity to express their views and to stand as candidates at the election. The entire election is contrary to well established democratic principles and if there is any case where we should interfere in the exercise of our discretion under Article 226 without the slightest hesitation it is the present one, for we cannot allow a Municipality to continue to govern a part of the municipal district when that part has been denied representation on the Municipality and the voters in that part have had no opportunity to stand as candidates or even as much as to express their views on the question as to who should be elected.

[5] The next preliminary contention was that the petitioner had no right to vote and was, therefore, not entitled to challenge the validity of the election. This contention disputed the locus of the petitioner to maintain the petition. Now it is undoubtedly true as pointed out by a Division Bench of the Bombay High Court in Manilal v. Union of India, (1959) 61 Bom. L. R. 976 that where an institution is created by a statute, a right to vote at an election to such institution is dependent on the statute it can be asserted only to the extent and subject to the conditions specified in the statute creating it and we must, therefore, find the right of the petitioner to vote in some provision of the Act. But when we turn to the Act we find that that right is given to the petitioner under sec. 12. Section 12 sub-section (1) enacts that the electoral roll of the Gujarat Legislative Assembly for the time being in force on such day as the State Government may by general or special order notify in that behalf for such part of the Constituency of the Assembly as is included in a ward of a municipal district shall, for purposes of the Act, be deemed to be the list of voters for such ward and sec. 12 subsection (2) provides that the of ficer designated by the Collector in this behalf in respect of a municipal district shall maintain

a list of voters in respect of each ward of such municipal district. It is, therefore, clear that there is to be a list of voters for each ward but that list is to be taken verbatim from the electoral roll of the Gujarat Legislative Assembly for such part of the Constituency of the Assembly as is included in the ward. This provision is obviously enacted in order to avoid duplication of the work in connection with the preparation of the list of voters and provides for adoption of the electoral roll of the Gujarat Legislative Assembly for such part of the constituency as is included in the ward as the list of voters for the ward. If the name of a person appears in the electoral roll of the Gujarat Legislative Assembly for that part of the constituency which is included in the ward, he would be in the list of voters for the ward and he would be qualified to vote at the election of a member for the ward under sec. 13 sub-section (1) and be qualified to be elected at the election for any ward under sec. 13 sub-sec. (2). The right of a person to vote and to stand as a candidate at the election, therefore, depends upon whether his name appears in the electoral roll of the Gujarat Legislative Assembly for such part of the constituency as is included in the ward. Now the case of the petitioner was - and the factual part of the case was not disputed - that his name appeared in the electoral roll of the Gujarat Legislative Assembly for that part of the constituency of Petlad which was included in the newly added area but the argument of the contesting respondents was that the newly added area was not constituted into any ward or wards and the petitioner was, therefore, not entitled either to a right to vote or to stand as a candidate at the election. Now it is undoubtedly true that since the newly added area was not constituted into a ward or wards, the petitioner, though on the roll of the Gujarat Legislative Assembly for that part of the Petlad constituency which was included in the newly added area, could not exercise the right to vote or to stand as a candidate at the election but that was precisely the grievance of the petitioner in the petition. The whole complaint of the petitioner was that the State Government had failed to carry out its mandatory duty of reconstituting the wards so as to cover the newly added area under sec. 11 sub-sec. (1) clause (c) before holding the election and this had resulted in disenfranchisement of the petitioner and other voters in the newly added area and consequent invalidation of the election and it is no answer to this complaint to say that the petitioner was not entitled to challenge the election because the newly added area was not constituted into a ward or wards and the petitioner had accordingly no right to vote or to stand as a candidate at the election. The case of the petitioner was that he was wrongfully deprived of the right to vote and stand as a candidate at the election by the failure of the State Government to carry out its mandatory duty under section 11 sub-sec. (1) clause (c) to constitute the newly added area into a ward or wards and the petitioner was certainly entitled to make out this case which if established would have the effect of invalidating the election. We

cannot, therefore, accept the contention of the contesting respondents that the petitioner was not entitled to challenge the election as he had no right to stand as a candidate at the date when the election took place. Before we part with this point we must also refer briefly to one other contention raised on behalf of some of the respondents, namely, that the name of the petitioner appeared in the electoral roll of the Gujarat Legislative Assembly at S. No. 351 in Unit No. 36 of Baroda constituency being Assembly constituency No. 76 and since no person can be on the electoral roll from more than one constituency, the petitioner could not be validly on the electoral roll of the Gujarat Legislative Assembly for that part of the Petlad constituency which was included in the newly added area and, therefore, even if the newly added area had been constituted into a ward before the election, the petitioner would not have been entitled to vote or stand as a candidate at the election and consequently no right of the petitioner was affected by the State Government holding the election without recon-stituting the wards so as to cover the newly added area. Now this contention in effect and substance seeks to challenge the inclusion of the name of the petitioner in the electoral roll of the Gujarat Legislative Assembly for the Petlad constituency but that is not a matter into which we can inquire. If the name of the petitioner was wrongly included in the electoral roll of the Gujarat Legislative Assembly for the Petlad constituency in breach of the provisions of the Representation of People Act, 1951, the contesting respondents should have got such name deleted by adopting appropriate proceeding under the Act. But so long as the name of the petitioner stood in the electoral roll of the Gujarat Legislative Assembly for the Petlad constituency-and it was not disputed that it did so stand at the date of the election-we must take notice of it and hold that if the State Government had carried out its mandatory duty under sec. 11 sub-sec. (1) clause (c) and reconstituted the wards so as to cover the newly added area before holding the election, the petitioner would have been entitled to vote and stand as a candidate at the election by reason of the combined effect of Secs.. 12 and 13 but he was deprived of this right by the State Government holding the election without carrying out this mandatory duty.

[6] That takes us to the merits of the dispute between the parties. Now in order to appreciate the contentions that have been raised before us, it is necessary to refer to a few provisions of the Act. Sec. 9 provides that in every municipal district there shall be a Municipality and under sec. 10 the Municipality is to consist of elected Councillors. The number of Councillors and how they are to be elected is provided in sec. 11. That section, omitting portions immaterial, is in the following terms: -

"11. (1) The State Government shall from time to time, generally or specially

for each Municipality-

(a) determine the number of Councillors;

(c) make rules consistent with this Act, for

(i) fixing the dates, the time and manner of holding elections, general or casual, of Councillors to be elected;

(ii) prescribing the number and the extent of the wards to be constituted in each municipal district, the number of councillors to be elected by each ward and the number of seats, if any, to be reserved for the representation of women, Scheduled Castes and Schedules Tribes; and the qualifications of candidates other than as hereinafter provided. "

It is obvious that there can be no elected Councillors in the Municipality unless the number of Councillors to be elected to the Municipality is determined and the State Government is, therefore, required under sec. 11 sub-sec. (1) clause (a) to determine the number of councillors for each Municipality. It may be that the State Government having once determined the number of Councillors for a particular Municipality may find it necessary to increase or decrease the number for a variety of reasons such as increase or decrease in population or extension, contraction or alteration of the limits of the municipal district and, therefore, power is conferred on the State Government to determine the number of Councillors from time to time as and when occasion may arise. But merely fixing the number of Councillors for the Municipality would not be enough It would also have to be laid down how the Councillors should be elected, whether they should be elected by the municipal district as a whole or the municipal district should be divided into wards and each ward should elect a certain number of Councillors so as to make up the total number of Councillors determined for the Municipality. Now the municipal district would ordinarily comprise a fairly large area and convenience would require that instead of the whole municipal district constituting a single constituency, it should be divided into wards for the

purpose of election. The State Government is, therefore, required to make rules prescribing the number and extent of the wards to be constituted in each municipal district and the number of Councillors to be elected by each ward. It is evident that the whole of the municipal district must be divided into wards and no part of the municipal district should be left out in the constitution of the wards. The wards are merely divisions of the municipal district made for the purpose of facilitating the election of the representatives of the people in the municipal district and instead of the total number of Councillors being elected by the whole of the municipal district, the total number of Councillors is apportioned amongst the wards and each ward elects the number of Councillors allocated to it. Therefore, by its very nature the constitution of the wards must comprise the whole of the municipal district for otherwise, if any part of the municipal district is left out in the constitution of the wards, there would be no Councillors elected by that part of the municipal district and that part of the municipal district would not be represented on the Municipality. It is only after these essential steps have been taken namely the total number of Councillors for the Municipality is determined, the number and the extent of the wards to be constituted in the municipal district are prescribed and the number of Councillors to be elected by each ward is laid down that the Stat6 Government can proceed to hold the election. Then again in order to be able to hold an election there must be a list of voters and it must be known who are the persons entitled to vote and who are entitled to stand as candidate at the election. Now as we have pointed out above, Secs.. 12 and 13 contemplate a list of voters for each ward and unless the name of a person is in the list of voters for a ward, he cannot vote nor can he stand as a candidate at the election. It is therefore essential that the municipal district must be divided into wards for unless the division of the municipal district into wards is made, there cannot be a list of voters for any part of the municipal district and without a list or lists of voters, election obviously cannot take place. It must follow logically and inevitably from this proposition that the constitution of wards dividing the whole of the municipal district is a sine qua non of a valid election. If no wards at all are constituted in the municipal district, the machinery of election cannot go through and equally the machinery of election cannot go through if wards are constituted in respect of a part of the municipal district and the other part is not divided into any ward or wards. In such a case there would be lists of voters for the wards which are constituted out of a part of the municipal

district but there would be no lists of voters so far as the other part of the municipal district is concerned and no one from that part would be qualified to vote or to stand as a candidate for the election and no Councillors being elected by that part, there would be no representation of that part on the Municipality. Where such a situation arises, it is difficult to see how the Municipality can be said to be a Municipality for the whole of the municipal district within the meaning of sec. 9. It would thus be seen that the holding of an election without the division of the whole of the municipal district into wards would not only be contrary to the plain language of sec. 11 sub-sec. (1) clause (c), but would also result in the constitution of a municipality which would not be representative of the whole municipal district and would not really be a Municipality for the whole municipal district. Such a Municipality would have the governance of the whole of the municipal district without the representatives of the whole municipal district being on the Municipality and that would be a totally undemocratic result which we should certainly be loath to reach unless the language of the statute compels us to do so. But fortunately we find that the language of the sections does not require us to reach such a conclusion and on the contrary leads us to the opposite conclusion namely, that if the whole of municipal district is not divided into wards and any part of the municipal district is left out in the constitution of the wards, the election to the Municipality cannot be held at all and any such election held without the division of the whole of the municipal district into wards would be null and void. It is also not possible to uphold the contention urged on behalf of the fourth respondent Municipality that the provision in sec. 11 sub-sec. (1) clause (c) which requires the State Government to prescribe the number and extent of the wards to be constituted in each municipal district is a directory and not a mandatory provision. The constitution of wards in a municipal district is, as we have pointed out above, an essential step to be taken in the process of election for otherwise it would not be possible to have lists of voters for the election: it would not be possible to know who are the persons qualified to vote at the election and who are the persons qualified to stand for election at the election and without these things it would not be possible to hold the election at all. The requirement of constitution of wards in a municipal district is, therefore, clearly a mandatory requirement and the breach of it must be held to have the consequence of nullifying the election. We also cannot accept the

contention urged on behalf of some of the respondents that whatever might be the position in the case of a new municipal district if the whole of it was not divided into wards, the position here was materially different since there were Rules made by the State Government by its resolution dated 4th August 1953 which prescribed the number and the extent of the wards to be constituted for the municipal district of Petlad and the number of Councillors to be elected by each ward and so long as these rules were not superseded by other Rules made by the State Government under sec. 11 sub-sec. (1) clause (c), they continued to be binding and if election was held in accordance with them, the election could not be challenged as invalid. This contention overlooks the fact that the Rules made by the State Government by its resolution dated 4th August 1953 prescribed the number and the extent of the wards to be constituted in the municipal district of Petlad as it existed at that time and the wards so prescribed comprised the entire municipal district as then existing, but after the extension of the limits of the municipal district by the addition of newly added area, the wards prescribed by the resolution dated 4th August 1953 ceased to cover the whole of the extended municipal district and the newly added area which formed part of the municipal district was left out and did not form part of any ward or wards. It could not therefore be said any longer that there were wards constituted for the whole of the municipal district and the State Government was accordingly bound to prescribe the number and the extent of the wards to be constituted for the whole of the municipal district before it could proceed to hold an election to the Municipality. There was a change in the limits of the municipal district and that change clearly necessitated fresh action on the part of the State Government under sec. 11 sub-sec. (1) clause (c) and the State Government had power to take such action as is evident from the use of the words "from time to time" occurring at the commencement of the section. Unless the State Government constituted wards for the whole of the municipal district which came into being as a result of the extension of its limits, no valid election could be held to elect Councillors to the Municipality and inasmuch as the impugned election was held on the basis of the existing wards which comprised only a part of the municipal district leaving out the newly added area, it was clearly null and void and liable to be set aside.

[7] It was, however, urged on behalf of the contesting respondents that we should not in

the exercise of our discretion set aside the impugned election as the consequence of our doing so would be that considerable expense incurred by the contesting respondents in the election would be wasted and a new election would have to be held which in the present circumstances may not be possible and the result would be that the munici-pal district of Petlad might not be able to have a municipality for some time. Now it is undoubtedly true that a writ of mandamus or quo warranto is not issued as a matter of right. It is a discretionary relief and the Court has to ask itself whether under the circumstances of each case the petitioners should be given the relief in the nature of mandamus or quo warranto which he seeks. It is also true that the Court should always be reluctant to interfere with elections except on the clearest and strongest of grounds and they should be loath to interfere with elections merely because some technicality has not been observed or some irregularity has been committed. But it would be quite a different matter if the irregularity has resulted in the people not being able to express their views properly or if there was any corrupt practice which has materially affected the result of the election or where the election has been held without any authority of law. Vide Bairulal Chunilal v. State of Bombay, (1953) 55 Bom. L. R. 882: Kalabhai v. Village Panchayat of Patdi, (1962) III G. L. R. 897. The present case clearly falls within the latter category. Here there is no question of non-observance of a technicality or commission of an irregularity. The entire election has been held contrary to the provisions of the Act and the result has been that a part of the municipal district has not been represented on the Municipality and the voters in that part have been deprived of their right to vote and their right to stand as candidates at the election. This unfortunate result has come about entirely because of the inaction of the State Government to carry out its mandatory duty. It is clear from the correspondence to which we have referred above that the President of the Municipality addressed letters after letters to the State Government and the Collector and made repeated requests to them to reconstitute the wards so as to cover the newly added area and pointed out to them that if that was not done, the voters in the newly added area would be deprived of their right to vote and the whole election might be rendered illegal, but even so the State Government declined to take action in the matter and by its letter dated 15th June 1962 refused to postpone the election with the result that the impugned election was held on the basis of the existing wards. The limits of the municipal district were extended on 11th October 1960 and the State Government had, therefore, a period of about a year and a half within which to reconstitute the wards in discharge of its mandatory duty under sec. 11 sub-sec. (1) clause (c), but the State Government did not do anything in the matter and proceeded with the election without reconstituting the wards and the result, we find, is an invalid election which could well have been avoided by the State Government. The election

being contrary to the provisions of the Act and not affording representation to the whole of the municipal district, we are reluctantly compelled to quash and set it aside.

[8] We, therefore, allow the petition and make the rule absolute by issuing a writ of mandamus quashing and setting aside the election to the Municipality of the municipal district of Petlad held on 9th July 1962. The respondents will pay the costs of the petition to the petitioner.

Petition allowed.