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

RANCHHOD ZINA
V/S
PATANKAR, COLLECTOR, BROACH

Date of Decision: 30 November 1965

Citation: 1965 LawSuit(Guj) 99

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

Eq. Citations: 1966 AIR(Guj) 248, 1966 GLR 341

Case Type: Special Civil Application

Case No: 513 of 1962

Head Note:

Regarding Constitution of wards order has been passed by collector Under S.10 of village panchayat act - Various stages of election notified whether subsequent notification reconstituting wards etc. validity of notification - Power might be exercised from time to time when occasion arose unless a contrary intention appeared -Definite allegation of mala fides to allegation not denied by filing affidavit in reply - The order mist be held to have been passed for extraneous reason.

In pursuance of the power conferred by sec 10 of the Bombay Village Panchayats Act 1958 the Collector by notifications dated April 24 1962 published rules for reservation of seats constitution of wards etc. Thereafter on May 3 1962 the Block Development Officer issued his order under the Village Panchayat Election Rules setting out therein various stages of the election. On May 29 1962 the Collector issued the impugned notification directing the reconstitution of wards and revised allocation of reserved seats. The petitioner a voter Finding the possibility to get prejudiced in the impending election challenged the validity of the

notification dated May 29 1962 on the ground that the impugned notification was without jurisdiction and that even otherwise it was issued by the Collector mala fide with an oblique motive to prejudice the petitioner in impending election. Held that on a correct interpretation of sec. 10 of the Bombay Village Panchayats Act 1958 read with the rule of interpretation embodied in sec. 21 of the Bombay General Clauses Act 1904 the power to constitute wards would also include the power to rescind an order passed by the Collector and thereafter to issue a fresh order constituting the wards and allocating reserved seats under that section(Para 6). It is a well known rule of construction that when a power was conferred by a statute that power might be exercised from time to time when occasion arose unless a contrary intention appeared in the statute concerning such power. Sec. 10 of the Bombay Village Panchayats Act 1958 read in the light of the rule of interpretation in sec. 21 of the Bombay General Clauses Act 1904 must be held to include power which can be exercised by the Collector from time to time as and when occasion arises and cannot be held to be so limited as to be capable of exercise only once. (Para 7). Lavjibhai Naranbhai v. Ramjibhai Hetabhai overruled. National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. referred to. Further held that though definite allegations of mala fides on the part of the Collector were made with certain details and though the respondents had ample time to file their affidavits in reply none of them had chosen to deny those allegations. It was necessary that the person against whom such allegations were made should come out with an answer refuting or denying such allegations for otherwise such allegations remained unrebutted and the Court would in such a case be construed to accept the allegations so remaining unrebutted and unanswered No answer to these allegations having been made the order of the Collector must be held to have been passed for extraneous reasons and the order cannot be said to have been passed in exercise of the power under sec. 10 of the Act. (Para 9). C. S. Rowjee v. The State of Andhra Pradesh referred to.

Acts Referred:

Bombay Village Panchayats Act, 1958 Sec 10

Bombay General Clauses Act, 1904 Sec 21

Final Decision: Rule made absolute

Advocates: K S Nanavati, I M Nanavati, A D Desai, K L Talsania

Reference Cases:

Cases Cited in (+): **6**

Cases Referred in (+): **3**

Judgement Text:-

Shelat C J

[1] Two contentions have been raised in this petition (1) challenging the validity of the notification dated May 29, 1962 issued by the Collector, Broach District under sec. 10 of the Bombay Village Panchayats Act, 1958 on the ground that the Collector had no authority to issue a fresh order under that section once he had already issued a previous order, thereby exhausting his power under the provisions of sec. 10, and (2) that assuming that he had such power, the impugned notification and the order which it notified were issued mala fide for an oblique purpose extraneous to the purpose envisaged by sec. 10 of the Act. In order to appreciate these two contentions raised by Mr. Nanavati on behalf of the petitioner, it is necessary to state a few relevant facts.

[2] The petitioner at the material time was a resident of village Tankari in Broach District. The local area of Tankari Bunder was declared to be village under sec. 4 of the Act. At all material times, the petitioner on the electoral roll of the Legislative Assembly and was, therefore, the provisions of sec. 12, qualified to vote at the election of a of the Tankari Gram Panchayat. In pursuance of the power by sec. 10, the Collector by a notification dated April 24, 1962 rules for reservation of seats for scheduled castes and scheduled total number of seats and the seats reserved for scheduled scheduled tribes as therein set out. The notification also declared was given nine seats out of which two seats were reserved one each for scheduled castes and scheduled tribes. On Collector passed another order, again under sec. 10 of the Act constituting thereby wards in the said village. By that order, the Collector constituted three wards and also defined the extent of each of those three wards and ordered that there should be a reserved seat for women in ward No. 1 called Vohorawad Ward, one seat for scheduled tribes in ward No. 2 called Undi-Khadki Ward and two reserved seats one each for scheduled castes and women in the third ward called Hindulatta Ward. The order also declared that there would be in all nine seats, each ward having three seats. Thereafter on May 3, 1962 the Block Development Officer, Jambusar issued his order under the Village Panchayats

Election Rules, 1959, setting out therein the various stages of the election. Under that order he fixed June 4, 1962 as the date for submitting nomination papers, June 6, 1962 as the date for scrutiny of the nomination papers, June 7 as the date for filing an appeal against the order on nomination papers, June 12 as the date for withdrawing nomination papers and July 6, 1962 as the date for the election. On May 29, 1962 the Collector issued the impugned notification directing the reconstitution of the wards for the election and ordering that the village should be divided into three wards for the purpose of the said election and laying down therein revised boundaries of each of the three wards and the allocation of reserved seats for each of those wards. By this notification, the Collector directed that there would be two reserved seats, one for women and one for scheduled tribes, out of the three seats in ward No. 1. One reserved seat for women was allocated to ward No. 2 and one reserved seat for scheduled castes was allocated to ward No. 3. The position which emerged as a result of this notification was that not only the extent of each of wards Nos. 1 and 2 was altered but the original allocation of reserved seats to each of the three wards was considerably modified. Under the notification dated April 24,1962 ward No. 1 contained houses Nos. 1 to 108 and ward No. 2 was comprised of houses Nos 109 to 225. The notification dated May 29, 1962 altered the extent of these two wards inasmuch as ward No. 1 now was comprised of houses Nos. 1 to 71, 94 to 108 and 110 to 134 while ward No. 2 was now comprised of houses Nos. 72 to 93, 135 to 156, 157 to 182, 183 to 225 and 345 to 364. So far as the allocation of reserved seats was concerned, that also was considerably modified in that whereas under the order dated April 24, 1962 ward No. 1 was allocated only one reserved seat for women, under the impugned notification dated May 29, 1962 the Collector allocated two reserved seats, one each for women and scheduled castes, with the result that there was only one general seat left in that ward. Similar change also took place in so far as the other two wards were concerned. Under the order dated April 24, 1962 one reserved seat for scheduled castes was allocated to ward No. 2 but under the notification dated May 29, 1962 that allocation was altered and instead of a reserved seat for scheduled castes, a reserved seat for women was allocated to that ward. Similarly, though under the order dated April 24, 1962 two seats were allocated to the third ward, one for women and the other for scheduled castes, only one reserved seat for scheduled castes was allocated to that ward. It is obvious that by the redetermination of the extent of the three wards and the reallocation of reserved seats to these wards, there was a clear possibility of a person Standing for the impending election to get prejudiced and that appears to be the case of the petitioner. According to the petitioner, after the first notification dated April 24, 1962 was issued, he decided to contest the election from ward No. 1 where only one reserved seat for women was allocated and

which then consisted of houses Nos. 1 to 108, that by the change effected by the notification dated May 29, 1962 not only were houses Nos. 72 to 93 taken out of that ward and added to ward No. 2, but now houses numbering from 110 to 134 were taken out of ward No. 2 and added to ward No. 1 and further more by allocating two reserved seats to ward No. 1 only one general seat was left to that ward. As already stated, the petition has been filed challenging the validity of the impugned notification dated May 29, 1962 on the ground that the impugned notification was without jurisdiction and that even if it was issued with jurisdiction, it was issued by the Collector mala fide with an oblique motive to prejudice the petitioner in the impending election.

[3] Mr. Nanavati contended that once the Collector had exercised his power under sec. 10 and constituted thereunder the wards and allocated the reserved seats, he had gone through a stage in the process of election and had thereafter no power, express or implied, under sec. 10 to retrace that step and issue another order or notification containing such order reconstituting the wards, their extent and reallocating the reserved seats to any of the three wards. He also contended that even if it were to be held that the Collector had such power, the exercise of that power was mala fide as it was for oblique reasons to prejudice the petitioner in his candidature for the election from ward No. 1 and with the intention of favouring the changes of one Bhukhar Sursang, a leading Congress worker of the village and his followers. He argued that therefore such an order could not be said to have been passed in exercise of the power under sec. 10 and was not an order passed under that section and was liable consequently to be set aside. Mr. Qureshi who appears for the third respondent, on the other hand, argued that though sec. 10 in express terms did not provide that the Collector could pass orders thereunder as occasion arose, there was such a power implied in that section and that therefore the Collector was competent to cancel the order dated April 24, 1962 and pass in its place and stead the fresh order notified under the notification dated May 29, 1962. He also contended that the Collector being competent to pass such an order under power reserved to him under sec. 10, the validity of the notification dated May 29, 1962 could not be challenged and the order, therefore, should be held as a valid order.

[4] Before we proceed to consider these rival contentions, we may first refer to certain provisions of the Act. Clause (25) of sec. 3 defines a "ward" as meaning an area into which a village is divided under clause (b) of sub-sec. (1) of sec. 10 for the purpose specified therein. Section 4 of the Act provides for the declaration by the State Government by notification in the official gazette to be a village, and sec. 5 provides that

in every village so declared under sec. 4 there should be, a panchayat. Section 10, with which we are immediately concerned, deals with the constitution of panchayats. Sub-section (1) of that section provides that subject to any general or special order which the State Government may make in this behalf (a) a panchayat shall consist of such number of members, not being less than 7 and more than 15, as the Collector may determine and (b) each village shall be divided into such number of wards and the number of members of a panchayat to be elected from each ward shall be such, as may be determined by the Collector. Section 176 confers rule making power on the State Government and clause (iii) of sub-sec. (2) of that section expressly empowers the State Government to make rules under sub-sec. (2) of sec. 10 prescribing the number of seats to be reserved for the scheduled castes and scheduled tribes in each panchayat. It is thus clear that under sec. 176 it is for the State Government to determine the total number of seats to be reserved for the scheduled castes and scheduled tribes while under clause (b) of sub-sec. (1) of sec. 10 it is the Collector who has to determine the number of seats of a panchayat to be elected from each ward and to divide each such number of wards as he may think proper. Under rule 4 of the Village Panchayats Election Rules, 1959 it is for the Collector to allocate reserved seats for women, scheduled castes and scheduled tribes to such of the wards as he may think proper. Rule 7 of those rules provides that after it is decided to hold an election, the Mamlatdar shall, by notification in the village or villages concerned, appoint the dates, the hours and place or places for the various stages of the election.

[5] In support of his contention that the Collector had no power under sec. 10 to issue the impugned notification dated May 29, 1962 once he had already passed his order under that section dividing the village into wards and allocating reserved seats to those wards, Mr. Nanavati mainly relied upon a decision of Raju and Bakshi JJ. in Lavjibhai Naranbhai v. Ramjibhai Hetabhai, (1962) 3 G. L. R. 56. In that case the Government had issued a notification declaring Tavadiya as a village under sec. 4 of the Act and it further issued a notification ordering that election to the village panchayat should be held. In August 1960 the Collector issued an order forming three wards for village Tavadiya with 2, 2 and 3 members respectively, the first ward consisting of houses Nos. 1 to 48, the second of houses Nos. 49 to 96 and the third of houses Nos. 97 to 166. Certain representations were thereafter made to the Collector by the villagers complaining that the fixation of wards had not been duly published in the village, that the voters' lists were not separately prepared for each ward, and, what is relevant for our purposes, that the wards were not formed on the basis of population but merely on the basis of the number of houses. The Collector, however, rejected this representation but

further representations were made to him, in consequence of which he visited the village and then passed the impugned order dated March 29, 1961 holding that the distribution of the wards and the seats would cause disturbance in the village and predominance of one party over the other. He therefore decided that the wards and the number of seats allotted to the wards should be changed and that there should be three seats in the first ward, two seats in wards No. 2 and two seats in ward No. 3. He therefore directed that the wards should be re-formed after adjusting the population and in pursuance of this order a notification was issued by the Collector dated June 15, 1961 in which it was notified that there should be three wards in Tavadiya village with 3, 2 and 2 members respectively and it was also notified that ward No. 1 should consist of houses Nos. 1 to 68, ward No. 2 of houses Nos. 69 to 122 and ward No. 3 of houses Nos. 123 to 166. It was that notification which was challenged in that petition on the contention that the Collector having formed the ward having published the notification forming the wards, the second order and the second notification dated June 15, 1961 re-forming the wards in a different manner and allotting different number of seats to each ward, although keeping the total number of wards the same and keeping the total number of seats the same, was illegal and void. The learned Judges accepted the petitioner's contention observing that it was clear from the provisions of the Act and the Election Rules that the formation of the wards by the Collector and the fixing of number of seats for each ward was one of the important steps in the process of an election of members to the panchayat. The voters list was to be prepared for each ward separately and it depended on the number of wards and their geographical distribution in the village. They then observed :

> "The Collector having determined the formation of the wards under sec. 10(1)(b), that step in the process of election cannot be varied again in the course of the same election. Once that step has been taken by the Collector, the election procedure will have to run through the subsequent stages according to the programme laid down in the Act and the Rules. The programme fixed by the Act and the procedure laid down in the Act for the conduct of election cannot be varied and cannot be retraced by the Collector or by any authority. The Collector formed the wards as provided in sec. 10(l)(b) of the Act in August 1960 and a notification was published in the Government Gazette accordingly. This having been done, the same step in the election procedure cannot be taken again nor can the step once taken be varied in a different manner for the same election. It is, therefore, clear that the action on the part of the Collector in re-forming the wards in June 1961 is

not authorised or permitted by the Act and is contrary to the provisions of the Act."

It appears from the report that reliance was placed by the respondent in that case on sec. 14 of the Bombay General Clauses Act, 1904 in support of the submission that the Collector, by virtue of power reserved to him under sec. 10, could pass his orders thereunder as occasion arose from time to time. The learned Judges, however, rejected that contention on the ground that sec. 14 would apply only where power was conferred on the Government and if it was a case of power having been conferred on the Government then the rule of interpretation embodied in sec. 14 would apply to such a case and in that event such power could be exercised from time to time by Government as the occasion required. The learned Judges observed that sec. 14 did not help the Collector as the power to form wards was not conferred on the Government. They also observed that the Collector could exercise the power to form wards from time to time as occasion required but that power was subject to the rule that the election to the Village panchayat must be conducted in the manner prescribed. Two of the integral steps in the conduct of the election in the prescribed manner were the formation of the wards, and the preparation of voters' list according to such wards and that these two steps could not be altered in the course of the same election. Mr. Nanavati leaned heavily on this decision and argued that the programme in the process of election, namely, the constitution of the wards, the determination of the total number of reserved seats and the allocation of reserved seats to each of such wards, was fixed under the Act and the rules made thereunder and once such a programme in the process of an election was fixed, the various stages so formed could not be varied or altered. Therefore once a step in the process of election was taken by the Collector by dividing the village into wards defining their exent and allocating reserved seats to such wards, there was no provision either in sec. 10 or any of the other provisions of the Act whereunder the Collector could retrace such a step already taken by him and that it was obligatory upon him to go to the next stage of the election prescribed under the Act and the rules made thereunder. Mr. Nanavati also argued that once the Collector had exercised the power under sec. 10(1)(b) of the Act that power was exhausted and therefore he could not issue, at any subsequent time, another order re-

forming the wards or reallocating reserved seats in these wards. Once the process of election had started, he argued, and a step was taken in that process, there was no retracing and therefore there was no possibility of the same process being repeated again. He also contended that there was no power in express terms under sec. 10 enabling the Collector to re-form the wards once they were constituted by him and there was also no indication in sec. 10 that there was any such power by implication.

[6] It appears that though sec. 14 of the Bombay General Clauses Act, 1904 was relied upon before the learned Judges in Lavjibhai 's case (supra), sec. 21 of that Act was not pointed out to them and it seems that no argument was put forward upon the provisions of sec. 21 to show that that section laid down a rule of interpretation according to which the power conferred by the Act has to be construed in the manner laid down therein. Mr. Nanavati also in raising the contentions already referred to did not seem to take into consideration the provisions of sec. 21 of the Bombay General Clauses Act. It is true that sec. 14 lays down a rule of interpretation with regard to a power conferred on Government by any Bombay Act enacted after the commencement of the Bombay General Clauses Act and therefore the rule of interpretation laid down therein would only apply to cases where the construction of a provision confering power on the Government by any Bombay Act is in question. But sec. 21 provides that where, by any Bombay Act, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye laws so issued. It will be noticed that this section is exactly in terms similar to the terms of sec. 32(3) of the English Interpretation Act of 1889. Mr. Nanavati, however, argued that under the provisions of sec. 21, apowerto issue notifications, orders, rules or bye laws conferred by a Bombay Act would at most include a power to add to, amend, vary or rescind any notifications, orders, rules or bye-laws but it would not include power to issue a fresh order in place and stead of an original order rescinded by the authority under the section. In our view, that contention cannot be sustained, for it does not take into account the legal consequences of the rescission of an order passed by an authority under power reserved to it under a statute and true connotation of the power of rescission. Black's Law Dictionary, Fourth Edition at page 1471 defines the word "rescind" as meaning "to abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. To declare a contract void in its inception and to put an end to it as though it never were. Not merely to

terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made. " The power to rescind as provided in sec. 21 of the General Clauses Act, if exercised, would thus mean abrogating the thing rescinded from the beginning and restoring the status quo, that is to say, the position which prevailed before the passing of the order rescinded. Since by virtue of the provisions of sec. 21 of the General Clauses Act read with sec. 10(1)(b) of the Act the Collector was competent to rescind the order dated April 24, 1962 the cancellation of that order must be held to be a valid cancellation. Once such a cancellation was made, the order dated April 24, 1962 was eradicated and the status quo prevailed as if no such order was ever passed. The position, therefore, as a result of the rescission was that there was no order in operation constituting or forming the wards in the village, nor was there any outstanding order allocating reserved seats to the three wards in that village. It must, therefore, follow that the position was as if the Collector had never exercised his power under sec. 10. Once he rescinded his order dated April 24, 1962 in order that he must discharge his duty or power under sub-sec. (1)(b) to constitute wards in the village, he must repair to his principal power contained in sec. 10 and in exercise of that power must pass a fresh order. If we were to uphold the construction contended by Mr. Nanavati that even after the rescission of the order dated April 24, 1962 the Collector had no power to pass a fresh order, that construction would mean that there would not only be a vacuum but it would mean that he would be precluded from performing the duty cast upon him by the Legislature under sec. 10 of constituting wards and allocating reserved seats in such wards. We may observe that in sec. 21 of the Bombay General Clauses Act there are no words, such as, "unless there is anything repugnant in the subject or context" as one finds in sec. 13 of that Act, nor are there words such as "unless a different intention appears" as in sec. 12. Therefore, the power to rescind embodied in the rule of interpretation in sec. 21 must be held to be without any limitations or conditions. In our view, on a correct interpretation of sec. 10 read with the rule of interpretation embodied in sec. 21 of the Bombay General Clauses Act, 1904 the power to constitute wards would also include the power to rescind an order passed by the Collector and thereafter to issue a fresh order constituting the wards and allocating reserved seats under that section.

[7] We find some support in the interpretation we are inclined to place on sec. 10(1)(b) in National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. (1953) 4 S. C. R. 1028. In that case the respondents, a company registered in England, manufactured sewing threads with the device of an Eagle with widespread wings known as "Eagle

Mark" as their trade mark, and since 1896 that thread was being sold in the Indian markets on an extensive scale. The appellants, a company registered in India, began in 1940 to sell sewing thread with the device of a bird resembling an eagle with wings fully spread out with the words "Eagle Brand" as their mark. On the objection of the respondent the appellants subsequently changed the name to "Vulture Brand" without changing the mark in other respects. The respondents instituted an action against the appellants for passing off but that was dismissed. The appellants subsequently applied for registration of their trade mark but their application was dismissed by the Registrar on the ground that the appellants' mark so nearly resembled the respondents' mark as to be likely to deceive the public and cause confusion. That order was reversed by a single Judge of the High Court of Bombay but restored on appeal by a Division Bench. The question raised was whether the High Court could exercise appellate jurisdiction conferred on it by sec. 108 of the Government of India Act, 1915 in respect of a matter arising under the Trade Marks Act, 1940 which by sec. 76(1) provided for an appeal to High Court from a decision of the Registrar under the Act or the rules made thereunder. The contention was that the judgment delivered by the learned single Judge was in an appeal under sec. 76 of the Trade Marks Act and was not delivered pursuant to sec. 108 of the Government of India Act and therefore was not appealable under clause 15 of the Letters Patent to the Division Bench of the High Court. These contentions were rejected by the Supreme Court. The Supreme Court held that the power conferred by sec. 108 of the Government of India Act on the High Courts, of making rules for the exercise of their jurisdiction by Single Judges or by Division Courts could be exercised not only in respect to such jurisdiction as the High Courts possessed when the Act of 1915 came into force but also in respect of jurisdictions conferred on the High Court by subsequent legislation such as sec. 76 of the Trade Marks Act, and that the High Court had to exercise its appellate jurisdiction under sec. 76 of the Act in the same manner as it exercised its other appellate jurisdiction. Therefore when such jurisdiction was exercised by a Single Judge his judgment was appealable under clause 15 of the Letters Patent. At page 1035 of the report, the Supreme Court observed that it was not possible to accept the argument that the power vested in the High Court under sec. 108(1) of the Government of India Act, 1915 was a limited one and could only be exercised in respect of such jurisdiction as the High Court possessed on the date when the Act of 1915 came into force. The words of sub-sec. (1) of sec. 108 "vested in the court" could not be read as meaning "now vested in the court". The Supreme Court stated that it was a well-known rule of construction that when a power was conferred by a statute that power might be exercised from time to time when occasion arose unless a contrary intention appeared in the statute conferring such power. Though the facts in

that case were different and the Supreme Court was concerned with a different statute, the principle of construction enunciated there was one of general application and has therefore application to the contentions raised in this petition.

[8] Sec. 10 of the Bombay Village Panchayats Act, 1958 read in the light of the rule of interpretation incorporated in sec. 21 of the Bombay General Clauses Act, 1904 and the observations of the Supreme Court just referred to enunciating the principle of construction of general application must be held to include power which can be exercised by the Collector from time to time as and when occasion arises and cannot be held to be so limited as to be capable of exercise only once as contended by Mr. Nanavati. In our view, the interpretation placed by the Division Bench on sec. 10(1)(b) in Lavjibhai's case (supra) was not a correct interpretation as the decision did not take into account the provisions of sec. 21 of the General Clauses Act under which power under sec. 10 must include the power to rescind the order passed by the Collector, and once such a rescission took place the position would be as if the Collector had not exercised his power and was entitled to pass an order constituting the wards and allocating reserved seats to such wards. We have, therefore, to reject the first contention of Mr. Nanavati and hold that the impugned order was a valid order passed under the power conferred on the Collector by sec. 10 of the Act.

[9] Though we reject the first contention urged by Mr. Nanavati, it appears that Mr. Nanavati is on firmer ground so far as his second con tention is concerned. That contention, as already stated, was that the impugned order in any event cannot be said to be one passed in exercise of power under sec. 10 as it was passed mala fide and for oblique reasons extraneous to the provisions of sec. 10. In para 9 of the petition the petitioner has alleged that he was desirous of contesting the election from ward No. 1 as notified by the order of the Collector dated April 24, 1962 and was likely to be elected from that ward as it was then constituted by the Collector. According to this paragraph, there were two parties in the village, one under the petitioner and another under the said Bhukhar Sursang, a leading Congress Worker. The petitioner has alleged that in order to see that the petitioner was not elected from ward No. 1 as then constituted, the said Bhukhar Sursang or his followers had applied to the Collector to alter the wards and without giving an opportunity to the petitioner the Collector had suddenly directed the proposed election to be postponed and had then reconstituted the said ward in such a manner that the petitioner was shifted as a voter from ward No. 1 to ward No. 2 and instead of there being one reserved seat in ward No. 1 two reserved seats were allocated to ward No. 1 leaving only one general seat in that ward On this ground the

petitioner alleged that the impugned order was mala fide, capricious and calculated to effect the petitioner prejudicially in the said election to the panchayat. It is strange that though definite allegations of mala fides on the part of the Collector were thus made with certain details and though the respondents had ample time to file their affidavits in reply, none of them has chosen to deny these allegations. Even the third respondent who applied to be made a party to this petition has not chosen to file any affidavit rebutting or denying the aforesaid allegations expressly made in the petition. The result, therefore, is that there is no evidence before us to counteract the allegations or to show that they are not well founded on facts. Consequently these allegatioas stand unrebutted. In these circumstances, there is nothing on record before us to show why these allegations should not be accepted. In C. S. Rowjee v. The State of Andhra Pradesh, A. I. R. 1964 S. C. 962, the Supreme Court in a matter arising under the Motor Vehicles Act, 1939 had occasion to issue a warning that where mala fides were alleged it was necessary that the person against whom such allegations were made should come out with an answer refuting or denying such allegations, for otherwise such allegations remained unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered. That precisely is the position in the present case in the absence of any counter-affidavit by any one of the respondents. There is nothing before us from which we can say that the allegations contained in paragraph 9 of the petition are not well founded on facts. It was, in our view, incumbent upon the Collector to come out with an affidavit in reply unless the Collector had nothing by way of an answer to the allegations made by the petitioner. No answer to these allegations having been made, we must uphold the petitioner's case as set out in paragraph 9 of the petition. The order, therefore, must be held to have been passed for extraneous reasons set out in para 9 of the petition. Consequently it is not possible for us to say that it was passed in exercise of the power under sec. 20 or for the purpose of that section and the order must, therefore, be set aside.

[10] We, therefore, make the rule absolute and set aside the Collector's order dated May 29, 1962 whereby the Collector purported to reconstitute the wards of Tankari village panchayat and to reallocate the reserved seats therein. Respondents Nos. 1 and 2 will pay to the petitioner the costs of this petition.

Rule made absolute.