Khambalia Municilpality & Anr vs State Of Gujarat on 16 February, 1967

Equivalent citations: 1967 AIR 1048, 1967 SCR (2) 631, AIR 1967 SUPREME COURT 1048

Author: R.S. Bachawat

Bench: R.S. Bachawat, K.N. Wanchoo, J.M. Shelat

PETITIONER:
KHAMBALIA MUNICILPALITY & ANR.

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT:
16/02/1967

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
WANCHOO, K.N.
SHELAT, J.M.

CITATION:
1967 AIR 1048 1967 SCR (2) 631

ACT:
Gujarat Panchayats Act, 1961 (Guj. Act No. 6 of 1962), s. 9(1) and (2)-inquiry, if delegated-Applicability to municipal district-section 9 if suffers from excessive delegation.

HEADNOTE:
The respondent-State authorised its Development Commissioner to exercise powers exercisable by the Government under s. 9(1) of the Gujarat Panchayats Act 1961. After making the prescribed inquiry under s. 9(1) of the Act the Development Commissioner issued a notiftation under s. 9(1) of the Act decal the whole area of the existing limits of the appellant cipality to be a nagar. The appellants field a writ petition for- quashing the notification and

declaring s. 9 of the Act as ultra vires and unconstitutional, which the High Court dismissed. In appeal to this Court, the appellants contended that (i) the power to make enquiry under s. 9(1) was not delegated to the Development Commission; (ii) s. 9 of the Act did not apply to a municipal district as it was not a local area or such other administrative unit or part thereof; (iii) the notification was issued 'in mala fide exercise of power as it was imbued after the municipality indicated its unwillingness to accept the of the Government to include within its limits certain vadi areas; and (iv) s. 9 of the Act was ultra vires by reasons of excessive delegation of legis native power in favour of the State Government.

HELD:(per Full Court) (i) The power to make the declaration necessarily carries with it the power to make the inquiry preliminary to the declaration. There can be no declaration without an inquiry. The Development Commissioner was sufficiently authorised to issue the declaration after making the prescribed inquiry.- [635 G-H]

(ii)Section 307 of the Act shows that a local area co-extensive 'with or included within the limits of a municipal district or a municipal borough ma be declared to be a gram or nagar under s. 9 and on such a declaration the Municipality functioning within the local area or part thereof ceases to exist. On a combined reading of ss. 9 and 307, it would appear that a municipal borough is an administrative unit within the of s. 9(1) and a local area co-extensive with or included in a municipal borough may be declared to be a gram or nagar. [636 B-C]

(iii) Therewas no mala fide in the issuance of the notification. Under s. 4(1)(b) of the Gujarat Municipalities Act, 1963, the State Govern has the power to alter the funits of the municipal borough after consulting the municipality. The State Government had duty consulted the municipality. If the Government wanted to exercise its powers under the aforesaid s.- 4(1)(b), it could do so without the consent of the municipality. For the purpose of imposing its opinion, it was not necessary for the government to take recourse to the device of a declaration under s. 9(1) of the Gujarat Pandora Act, 1961. Nor was the surrounding vadi area included in the nagar declared by the notification under s. 9(1). [636 F, G]

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(iv)(Per Wanchoo and Bachawat, JJ.) Section 9(1) does not suffer from the vice of excessive delegation. An essential legislative function consists in the determination of a legislative policy and its formulation as a binding rule of conduct. Having laid down the legislative policy, the legislature may confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of the policy. [637 B-C]

It is the policy of the Act that panchayats should be

established within a seasonable time in all local areas with population not exceeding 30,000 and not included in a notified area or a cantonment. This policy guides and controls the discretionary power of the State Government under S. 9(1). Having regard to the policy of the Act, it is plain that the discretionary power under S. 9(2)is vested in the State Government for the purpose of reorganising the local areas into new units of local self-Government. [638 C-D]

It is not correct to say that even a municipal borough with a population of over 30,000 is at the mercy of the State Government under s. 9(1). Under S. 9(1) read with s. 307, the government has no power to declare a municipal borough with a population exceeding 30,000 as a gram or nagar. It will be an abuse of the power under s. 9(1) if by declaring small fragments of such municipal borough into separate grams or nagars, the government seeks to achieve indirectly what it cannot do directly. But S. 9(1) at be held unconstitutional because of the possibility that it may be unfaithfully administered by those who are charged with its execution. [,638 H-639 B]

In re Delhi Laws Act [1951] S.C.R. 747 and Rai Narain Singh v. The Chairman, Patna Administration Committee, [1955] 1 S.C.R. 290, referred to.

(Per Shelat, J. dissenting) : Section 9 suffers from the vice of excessive delegation.

Even if a policy is declared by a statute it may be couched in such vague terms that it may not set down a definite standard or criterion for the guidance of the delegate. [644 D-E]

In spite of the avowed policy of the Art to set up Panchayat Raj throughout the State the Government, by virtue of the power to declare being discretionary under S. 9(1), may or may not declare a local area to be nagar or a gram. The only fetter is that where it desires to make a declaration in respect of any particular local area it can do so after making an inquiry as prescribed. But neither s. 9 nor any other proviSion in the Act lays down that even if the inquiry ends in a particular conclusion the Government must make the declaration.. What the requisite result of such an inquiry for a declaration should be is also not prescribed ,in the Act and the Government is left to decide its course of action after such an inquiry. [645 D-F]

Sub-section 2 confers a discretionary power on the Government to alter by inclusion or exclusion any area or areas from a nagar or a grain panchayat and convert one into the other, the only restriction on such power being the necessity to consult the district, the taluka, and the nagar or the gram panchayat as the case may be. The restriction is consultation but not the consent of the concerned panchayats. Sub-section 2 does not require even an inquiry as sub-s. 1 does at the time of the declara-

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tion. Nor does it lay down any principle or criterion as to when and in what circumstances the Government can launch upon such alteration of the local limits. Thus the Government can modify at any time the structure and the nature of a panchayat from a nagar to a gram pancbayat and vice versa by simply altering its area after a mere consultation and even if the panchayats concerned are against such alteration. Under this power the Government can also transfer a portion or portions of a nagar or gram panchayat after formally going through the process of consultation and join it-or them with another panchayat even if the people concemed were to be, unwilling to such a transfer. [645 F-646 B]

Rai Narain Singh v. Chairman, Patna Administration Committee, [1955],1 S.C.R. 290, In re Delhi Laws Act [195]1 S.C.R. 747, V Maganbhal v. State of Bombay, [1961] 1 S.C.R. 341 and Mamdard Dawakhands case, [1960] 2 S.C.R.-671, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1340 of 1966. Appeal from the judgment and order dated April 5 and 6. 1966 of the Gujarat High Court in Special Civil Application No. 657 of 1965.

Purshottam Trikamdas, and Ravinder Narain, for the appellants.

N.S. Bindra, K. L. Hathi, S. P. Nayyar and R. H. Dhebar, for the respondents.

The Judgment of WANCHOO and BACHAWAT, JJ. was delivered by BACHAWAT, J. SHELAT, J. delivered a dissenting Opinion Bachawat, J. This appeal arises out of a writ application challenging a notification issued on June 14, 1965, declaring the area of Khaimbalia municipality in Jamnagar district to be a nagar under s. 9(1) of the Gujarat Panchayats Act, 1961 (Gujarat Act No. VI of 1962). The Jamnagar district was formerly a part of the State of Saurashtra which merged in the State of Bombay in 1956. Before the merger, the State of Saurashtra adopted the Bombay District Municipalities Act 1901 under which the town of Khambalia was constituted into a municipality. On the bifurcation of the State of Bombay, the district of Jamnagar became a part of the State of Gujarat. The Gujarat Panchayats Act 1961 was passed on February 24, 1962. The population of Khambalia municipality according to the census of 1961 was 12,249. By a notification dated Aug 17, 1962, issued under s. 9 of the Gujarat Panchayats Act 1961, the local area within the limits of the Khambalia municipality was declared to be a nagar and the municipality ceased to exist. On February 5, 1963, upon the publication of the Gujarat Panchayats (Suspension of Provisions and reconversion of certain local areas into municipal districts) Act, 1962 the Khambaha municipality and other municipalities converted into nagar panchayats by notifications under s. 9(1) of the Nagar Panchayats Act 1961 stood revived. On February 7, 1963, the Gujarat Panchayat Laws (Amendment) Ordinance 1963 repealed s. 3 of the Gujarat Panchayats (suspension of provisions and reconversion

of certain local areas into municipal districts) Act 1962 and all the provisions of the Gujarat Panchayats Act 1961 became again operative. In April 1962, the State Government converted some of the revived municipalities into nagar or gram Panchayats, but the Khambalia municipality. was not then so converted. Meanwhile, the State Government started proceedings for the supersession of the Khambalia municipality under s. 179 of the Bombay District. Municipal Act, 1901 and in this connection there was litigation between the Government and the municipality. On December 23, 1964, the Gujarat Municipalities Act 1963 (Act No. XXXIV of 1964) was passed, and the Khambalia municipality became a municipality constituted under this Act for the Khambalia municipal borough. On June 14, 1965,' the Development Commissioner, Gujarat State, issued a notification under s. 9 (1) of the Gujarat Panchayats Act, 1961, declaring "the whole area of the existing limits of the Khambalia municipality in Jamnagar district" to be a nagar with effect from the date of the issue of the notification. This notification was issued by the Development Commissioner after making the prescribed enquiry under s. 9(1). The effect of the notification was that the entire local area included within the limits of the municipal borough for which the Khambalia municipality was constituted became a nagar. On June 22, 1965, the appellants filed a writ petition in the High Court of Gujarat, praying for an order quashing the notification dated June 14, 1965 and declaring s. 9 of the Gujarat Panchayats Act, 1961 as ultra wires and unconstitutional, and for other reliefs. The High Court dismissed this application. The appellants now appeal to this Court under a certificate granted by the High Court.

To appreciate the contentions raised by learned counsel for the appellants, it is necessary to read s. 9 of the Gujarat Panchayats Act, 1961. That section is in these terms:-

> "9. (1) After making such inquiries as may be prescribed, the State Government may, by notification in the Official Gazette, declare any local area, comprising a revenuevillage, or a group of revenue villages or hamlets formingpart of a revenue village, or such other administrative unit or part thereof,-
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> (a) to be a nagar, if the population of such local area "exceeds 10,000 but does not exceed 30,000, and
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> (b) to be a gram, if the population of such local area does not exceed 10,000. (2) After consultation with. the taluka panchayat, the district panchayat and the nagar or gram panchayat concerned (if already constituted) the State Government may, by like notification, at any time-
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> (a)include within, or exclude from any nagar or gram, any local area or otherwise alter the limits of any nagar or gram; or
>
> (b)declare that any local area shall cease to be a nagar or gram;

and thereupon the local area shall be so included or excluded, or the limits of the nagar or gram so altered or, as the case may be, the local area shall cease to be a nagar or gram."

Rule 2 of the Gujarat Panchayats (Declaration of nagar or gram) Inquiry Rules, 1962, prescribes the inquiry to be made by the State Government under s. 9 (1) it reads:

> "2. Inquiry by' State Government.-(1) Before declaring any local area to be a nagar or gram under subsection (1) of section 9 of the Act, the State Government shall make inquiries as to:-
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> (1)the population and the ordinary land revenue of the revenue village or each of the revenue villages or hamlets,, or as the case may be, any other administrative unit or part thereof, comprised in the local area, (2)whether the revenue villages or ham lets or other administrative units or parts thereof can be conveniently grouped so as to form a gram or nagar, as the case may be, (3)for the purpose of sub-rule (1), the District Development Officer or where there is no such officer the Collector when so required by the state Government, shall submit to the State Government a statement in the form appended hereto".

Sec. 321 of the Gujarat Panchayats Act empowers the State Government to authorise by notification in the official gazette any officer of the government to exercise any of the powers exercisable by the government under the Act. By a notification dated June 13 1963, as amended by a notification dated May 5, 1964, the State: government authorised the development commissioner, Gujarat State, to exercise the powers exercisable by the government under s. 9(1) "declaring a local area to be a gram or nagar". Counsel contends that the power to make the inquiry under s. 9(1) was not. delegated by the. State government to the development commissioner. There is no force in this contention. The power to make the

-declaration necessarily carries-with it the power to make the inquiry Preliminary to the declaration. There can be no declaration without any inquiry. The relevant notification sufficiently authorised the development commissioner to issue the declaration after making the prescribed inquiry. The next contention is that the local area of a municipal borough is not "any local area, comprising a revenue village, or a group of revenue villages or hamlets forming part of a revenue village, or such other administrative unit or part thereof" within the meaning of s. 9 of the Gujarat Panchayats Act 1961, and that consequently the local area of the municipal borough for which the Khambalia municipality was constituted could not be declared to be a nagar. We cannot accept this contention. Section 307 of the Act shows that a local area co-extensive with or included within the limits of a municipal district or a municipal borough may be declared to be a gram or nagar under s. 9 and on such a declaration, the municipality functioning within the local area or part thereof ceases to exist. On a combined reading of ss. 9 and 307, it would appear that a municipal borough is an administrative unit within the meaning of s. 9(1) and a local area co-extensive with or included in a municipal borough may be declared to be a gram or nagar. The next contention is that the notification under s. 9(1) dated June 14, 1965, was made mala fide. Before the notification was issued, there was some correspondence in course of which the State Government on the representation of Shri Haribhai Nakum MLA, inquired of the Khambalia municipality whether it was willing to include the surrounding vadi areas within its limits. It was after the municipality indicated its unwillingness to include the vadi areas within its limits that the Development

Commissioner issued a notification under s. 9(1). The suggestion is that the State government having failed to impose its opinion regarding the inclusion of the vadi areas upon the municipality, adopted the device of the declaration under s. 9(1) for imposing its opinion at the instance of Shri Nakum as the ruling Congress party was hostile to the majority ,- group in control of the municipality. The High Court rightly rejected this suggestion. Under s. 4(1) (b) of the Gujarat Municipalities Act, 1963, the State government had the power to alter the limits of the municipal borough after consulting the municipality. The State government had duly consulted the municipality' If the Government wanted to exercise its powers under the aforesaid s. 4(1) (b), it could do so without the consent of the municipality. For the purpose of imposing its opinion, it was not necessary for the ,government total recourse to the device of a declaration under s. 9(1) of the Gujarat Panchayats Act, 1961. Nor was the surrounding vadi area included in the Khambalia nagar declared by the notification under s. 9(1). It is not shown how Shri Nakum ,or the ruling party would stand to gain by this notification. The allegation of mala fides was categorically denied in the affidavit filed on behalf of the State government. The next contention is that s. 9(1) of the Gujarat Panchayats Act, 1961 is ultra vires and unconstitutional on the ground of excessive delegation of legislative power to the State government. It is said that the legislature has not sufficiently indicated the policy which is to guide the State government in declaring a local area to be a gram or nagar or in the matter of making an inquiry preliminary to the declaration and the framing of the rules for the inquiry and has given a naked and arbitrary discretion to the State government to declare or not to declare a local area to be a gram or nagar or alter the limits of any nagar or gram or declare that any local area shall cease to be a nagar or a gram. We think that this contention has no merit. The legislature cannot delegate its essential legislative functions to an administrative agency, see In re. Delhi Laws Act(1) and Raj Narain Singh v. The Chairman, Patna Administration Committee(2). An essential legislative function consists in the determination of a legislative policy and its formulation as a binding rule of conduct. Having laid down the legislative policy, the legislature may confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of the policy. Judged by this test, we think that s. 9(1) does not suffer from the vice of excessive delegation.

The preamble to the Gujarat Panchayats Act, 1961 shows that it is an Act to consolidate and amend the law relating to village panchayats and district local authorities in the State of Gujarat with a view to reorganize the administration pertaining to local government in furtherance of the object of the democratic decentralisation of powers in favour of different classes of panchayats. The Act extends to the whole of the State of Gujarat (S. 1(2).) It makes special provision for the district of Dang having regard to the sparsity of its population and other peculiar features (ss. 311 to 314). In other districts the Act seeks to introduce a three tier panchayat organization in the State for the purpose of securing a greater measure of participation by the people of the State in local and governmental functions (ss. 3, 8 and 287). At the summit of the panchayat organization is the district panchayat. Below the district panchayat and subordinate to it is the taluka panchyat. For each district as constituted from time to time under the Land Revenue Code, there is a district panchayat, and for each taluka or a mahal as constituted from time to time under the Land Revenue Code, there is a taluka panchayat (ss. 3 and 10). A district panchayat and subject to the authority of the district panchayat, a taluka panchayat has authority over the area for which it is constituted except that portion of the area which for the time (1) [1951] S.C.R. 747.

(2) [1955] 1 S.C.R. 290.

being is within the limits of a city municipal borough, municipal district, notified area or cantonment constituted under any law for the time being in force. Below the taluka panchayat and the district panchayat and subordinate to them are the gram and nagar panchayats. For each gram, there is a gram panchayat and for each nagar there is a nagar panchayat. Sec. 9(1) provides for the constitution of grams and nagars. The State government may declare a local area comprising a group of revenue villages or a revenue village or part of it or such other administrative unit or part of it to be a gram if the population does not exceed 10,000 or a nagar if the population exceeds 10,000 but does not exceed 30,000. Before making the declaration it is necessary to find out whether the local area can be conveniently constituted into a gram or nagar. The necessary inquiries to be made are prescribed by the Gujarat Panchayats (declaration of nagar or gram) Inquiry Rules, 1962. Obviously the State legislature cannot make the necessary inquiry as to whether a village or a part of it or two or more villages grouped together or an administrative unit or part of it is a viable unit fit to be constituted as a separate gram or nagar: The inquiry and the framing of proper rules with regard to the inquiry are subordinate or ancillary matters which were properly left to an administrative agency. It is the policy of the Act that panchayats should be establish within a reasonable time in all local areas with populations not exceeding 30,000 and not included in a notified area or a cantonment. This policy guides and controls the discretionary power of the State government under s. 9(1). Having regard to this policy s. 9(1) cannot be said to suffer from the vice of excessive delegation of legislative power to, the State government. Pursuant to this policy the Gujarat government has established panchayats in all villages within the State. The table at p. 4 of the "Panchayat Raj at a glance as on March 31, 1966" published by the Ministry of Food, Agriculture, Community Development and Cooperation (Department of Community Development) Government of India, New Delhi, shows that in the State of Gujarat there are 11,785 Panchayats, covering 18,247 villages and that 100 per cent of the villages and all the rural population are now included in the panchayats.

Section 9 (1) read with s. 307 shows that a local area co extensive with or included within the limits of a municipal borough or a municipal district with a population not exceeding 30,000 may be declared to a gram or nagar. The democratic decentra lisation committe set up under the government resolution dated July 15, 1960 recommended in paragraph 4 6 of its report that the life of towns with populations over 30, 000 is different from that of villages They are better served by municipalities. For this reason they are excluded from the purview of S. 9(1). On behalf of the appellant, it is contended that even a municipal borough with a population over 30,000 is at the mercy of the State

639. government under s. 9(1). It is said that out of such a municipal borough, small fragments with populations less than 30,000 may be carved out and may be separately declared to be grams and nagars and by adopting this method, the government may convert the entire municipal borough into several grams and nagars. We are not impressed with this argument. Under s. 9(1) read with s. 307, the government has no power to declare a municipal borough with a population exceeding 30,000 as a gram or nagar. It will be an abuse of the power under s. 9(1) if by declaring small fragments of such a municipal borough into separate grams or nagars, the government seeks to achieve indirectly

what it cannot do directly. If the government abuses the power vested in it by s. 9(1), its action will be struck down. But s. 9(1) cannot be held unconstitutional bemuse of the possibility that it may be unfaithfully administered by those who are charged with its execution.

envisages that gram and nagar panchayats should be 'The Act envisages that gram and nagar panchayats should be established in all local areas having population not exceeding 30,000. But it appears that on February 12, 1963, the Gujarat government arrived at the following policy decision:

> "(a) The Municipalities whose population does not exceed 10,000 may be converted into Gram Panchaytas.
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> (b)Those with a population exceeding 10,000 but not exceeding 20,000 may be converted into Nagar Panchayat.
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> (c)Municipalities having a population exceeding 20,000 but not exceeding 25,000 may be given option to be converted into Nagar Panchayats.
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> (d)There are certain Muncipalities in respect of which disciplinary and such other actions are either pending or is proposed to be initiated. To enable such actions to' proceed legally uninterrupted, under the relevant Municipal Act it is decided that such Municipalities should not be converted either into Gram or Nagar Panchayats, irrespective of their population. The question of converting such Muncipalities may be considered only after the of such disciplinary 'or other proceedings under the Municipal Act."

Now the classification of municipalities on the basis of population between 10,000 and 20,000, 20,000 and 25,000 and 25,000 and 30,000 is not justified by s. 9(1) which places all local areas with population between 10,000 and 30,000 on the same footing. Counsel for the respondent was unable to justify the classification. The policy decision in so far as it makes this classification is not lawful and is liable to be struck down. From the statement filed by counsel for the State of Gujarat before us it appears that the State government has so far not converted into grams or nagars eight municipalities in Saurashtra and thirteen municipalities in Gujarat, having populations between 20,000 and 30,000. If and in so far this non-conversion is based solely on the policy decision, it cannot be justified and it will be the duty of the State government to establish panchayats in those municipalities as soon as possible. The appellant particularly complained in the writ petition that the State had not converted the municipalities of Bagasra and Wadhawan into nagar panchayats. Counsel for the State conceded that their non-conversion could not be supported on the ground that their population was between 20000 and 30,000. It appears, however, that on July 12, 1965, during the pendency of the writ petition, the Bagasra area was declared to be a nagar. With regard to Wadhawan municipality, counsel for the State stated that the question of its amalgamation with Surendra nagar municipality was under consideration by the State government and that is the reason why the Wadhawan municipality was not so far converted into a nagar panchayat. We have no reason to doubt that appropriate steps will be taken by the State government with regard to the Wadhawan area. But the non- conversion of any of these municipalities into nagar panchayats does

not vitiate the notification of June 14, 1965. This notification is lawful and is justified by s. 9(1). Khambalia has a population of 12,249 and was rightly declared to be a nagar. Having regard to the policy of the Act, it was the duty of the State government to declare it to be a nagar and the government has carried out its duty. Counsel for the appellant contended that s. 9(2) also suffers from the vice of excessive delegation. We are unable to accept this contention. For the purpose of reorganizing the local areas, it may be necessary to include within or exclude from any nagar or gram any local area or otherwise alter the limits of any nagar or gram or to declare that any local area shall cease to be a nagar or gram, and this is provided by s. 9(2) of the Act. Action under s. 9(2) can be taken only after consultation with the taluka panchayat, the district panchayat and the nagar or gram panchayat concerned (if already constituted). The Act makes incidental provisions for the establishment and reconstitution of the panchayats consequential upon the alteration of the area of a gram or nagar (ss. 298, 299), for amalgamation or division of grams consequential upon an area ceasing to be a gram (ss. 309, 310), and for special cases where an area excluded from a gram or nagar ceasing to be a gram or nagar is not merged in an area having local self-government (ss. 300, 301). Having regard to the policy of the Act, it is plain that the discretionary power under s. 9(2) is vested in the State government for the purpose of reorganizing the local areas into new units of local self- government. For such purposes, it may be necessary to establish new panchayats, reconstitute old panchayats, amalgamate or divide existing grams and pending such reorganization it may sometimes be even necessary that an area should cease to be a gram or nagar. It is impossible to visualise all the contingencies when action under s. 9(2) should be taken and the necessary discretion was properly left to the State government. We are satisfied that s. 9(2) cannot be held unconstitutional on the ground of excessive delegation. We may add that no action has been taken against the appellant under s. 9(2).

In the result the appeal is dismissed without cost. Shelat, J. The appellant municipality of Khambalia is in Jamnagar District which prior to 1956 formed part of the then State of Saurashtra. The State had adopted the Bombay District Municipal Act, 1901 and had thereunder constituted the appellant municipality. On the merger of Saurashtra with the State of Bombay in 1956, Jamnagar District became part of the then Bombay State. But on bifurcation of the Bombay State the District of Jamnagar became part of the new State of Gujarat.

The Gujarat Panchayats Act,1961 was enacted on November 24 1962. At that time the population of Khambaliam municipality according to the census report of 1961 stood at 12,249. By a notification dated August 17, 1962 issued under section 9 of the Panchayats Act the Government of Gujarat declared the local area comprised in Khambalia municipality as a nagar. Consequently the appellant municipality ceased to exist and a Nagar Panchayat was set up in its stead. On account of emergency declared by the President the State Legislature passed the Gujarat Panchayats (Suspension of Provisions and Reconversion of certain local areas into municipal districts) Act, 1962, which was published on February 5, 1963. The effect of this Act was that the appellant municipality and certain other municipalities which were converted into nagar Panchayats stood revived. This result was however short lived because on. February 7, 1963 the State Government promulgated the Gujarat Panchayat Laws (Amendment) Ordinance, 1963 repealing s. 3 of the Suspension Act. In April 1963 the Government once again converted some of 'the municipalities into nagar or gram panchayats. Not so the appellant, municipality as the Government, it is said, desired to supersede it under

section 179 of the Bombay District Municipal Act, 1901. As soon as the Government took action under that Act the appellant municipality filed a suit challenging that action. On December 23, 1964 the Gujarat Municipalities Act, 1963 (Act XXXIV of 1964) was enacted and under its provisions the appellant municipality was deemed to be a municipality constituted thereunder. On June 14, 1965 the Development Commissioner

-under powers delegated to him under sec. 321 of the Panchayats Act issued the impugned notification under sec. 9(1) thereof declaring the area comprised in the appellant municipality to be a nagar. Counsel for the Municipality challenged the legality of this notification under five heads, viz., (1)that sec. 9 of the Panchayats Act did not apply to a municipal district as it is not a local area or such other administrative unit or part thereof,:

> (2)that the notification was invalid as no inquiry as prescribed by Rule 2 of the Gujarat Panchayats (declaration of nagar or gram) Inquiry Rules, 1962 was in fact made :
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> (3)that the inquiry, if any, could be held by the State Government and not by the Development Commissioner because though the Government's power under sec. 9 was delegated the obligation to hold such an inquiry was not and could not be delegated;
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> (4) that the notification was issued in mala fide exercise of power; and (5) that sec. 9 of the Act is ultra vires by reason of excessive delegation of legislative power in favour of the State Government.

I have had the advantage of perusing the judgment prepared by my brother Bachawat J. and while I am prepared to go along with him so far as his conclusions on contentions 1 to 4 are concerned, I regret I cannot concur with his conclusion as regards the fifth contention which challenges the validity of sec. 9 and the notification. To appreciate the challenge to sec. 9 it is necessary to recite that section. The section reads as follows:-

> "(9) (1) After making such inquiries as may be prescribed, the State Government may by notification in the Official Gazette, declare any local area, comprising a revenue village, or a group of revenue villages or hamlets forming part of a revenue village, or such other administrative unit or part thereof,-
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> (a) to be a nagar, if the population of such local area-exceeds10,000 but does not exceed 30,000 and
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> (b) to be a gram, if the population of such local area does not exceed 10,000. (2)After consultation with the taluka panchayat, the district panchayat and the nagar or gram panchayat ,concerned (if already constituted) the State Government may, by like notification, at any time-

(a)include within, or exclude from, any nagar or gram, any local area or otherwise alter the limits of any nagar or gram; or

(b)declare that any local area shall cease to be a nagar or gram;

and thereupon the local area shall be so included or excluded or the limits of the nagar or gram so altered or as the case may be, the local area shall cease to be a nagar or gram."

The inquiries to be made under the section are dealt with by Rule 2 of the Inquiry Rules, 1962. Rule 2 is as follows:-

"2. Inquiry by State Government.-(1) Before declaring any local area to be a nagar or gram under sub-sec. (1) of sec. 9 of the Act, the State Government shall make inquiries as to-

(1)the population and the ordinary land revenue of the revenue village or each of the revenue villages or hamlets, or as the case may be, any other administrative unit or part thereof, comprised in the local area. (2)whether the revenue villages or hamlets or other administrative units or parts thereof can be conveniently grouped so as to form a gram or nagar, as the case may be."

Thus the inquiry involves consideration of two factors only; (1) population and the ordinary land revenue and (2) whether the revenue villages or hamlets or other units or parts thereof can be conveniently grouped together to form a gram or a nagar.

Now it is clear from the preamble of the Act that the object of the Act is to. set up a Panchayat Raj throughout the State of Gujarat with a three-tiered' Organisation ranging from the 'Village to the district level. To achieve this the Act provides for a gram or a nagar panchayat, a taluk a panchayat and a district panchayat in each of the districts. It is also clear from several provisions of the Act that though the policy was to set up such a Panchayat Raj it was considered that a panchayat would not be suitable for local areas with populations exceeding 30,000 and that such areas would be best served by municialities. Therefore the Act leaves out certain urban areas and their municipalities untouched. Indeed it was because the legislature knew that such urban areas, should be left out from the scope of the Act that it passed a comprehensive statute, the Gujarat Municipalities Act, 1963, which governs all municipalities including the existing ones constituted either under the Bombay District Municipal Act 1901 or the Bombay M2Sup. C. 1/67-12 Municipal Boroughs Act, 1925. Though the policy was that it is only local areas with, populations exceeding 30,000 which should be left out from the purview of the Act and all the areas with populations below 30,000 should be brought under the panchayat system, the Gujarat Municipalities Act, 1963 curiously enough does not lay down any minimum limit as to population for a municipality to be set up. Prima facie the State Government under that Act can constitute or permit an existing municipality to continue even if its population is less than 30,000. The effect of this gap in the imple- mentation of the avowed legislative policy in the Panchayats Act will be easily perceived hereafter.

A declaration under sec. 9(1) that a local area shall be a nagar or a gram is a legislative function. As stated on several occasions by this Court an essential legislative function consists in the determination of the legislative policy and its formulation as a binding rule of conduct. (Cf. Raj Narain Singh v. Chairman, Patna Administration Committee(1) and Delhi Laws Act case.(2)). Such a function cannot be surrendered or delegated in favour of another authority or agency for the Constitution entrusts the legislative function to the legislatures. In view however of the diverse activities of a modern state it is recognised that a legislature cannot be expected to work out all the details of a complex statute such as the instant Act. It is therefore competent for a legislature to delegate in suitable cases some of its ancillary legislative powers to the executive or any other authority to work out such details. But there is an inherent danger in such delegation. As observed in Vasantlal Maganbhai v. State of Bombay(3)-

> " although the power of delegation is a constituent element of the legislative power, it is well settled that the legislature cannot delegate its essential legislative functions in any case and before it can delegate any subsidiary or ancillary power, to a delegate of its choice, it must lay down the legis- lative policy and principles so as to afford the delegate proper guidance in implementing the same."

If, therefore, a statute is challenged on the ground of excessive delegation it has to be established that the legislature has delegated its essential legislative power or function and that it has not laid down its policy or principle for the guidance of its delegate. Even if a policy is declared it may, however, be couched in such vague terms that it may not set down a definite standard or criterion for the guidance of the delegate. The consequence would be to confer an arbitrary or uncanalised power to change or modify the declared policy without reserving to itself any control over the subordinate legislation. Such an effacement or abdication of power in favour (1) [1955] 1 S.C.R. 290.

(2) [1951] S.C.R. 747.

(3) [1961] 1 S.C.R. 341 at 346 of another agency either in whole or in part is beyond the permissible limits of delegation. In Hamdard Dawakhana's case,(1) clause (d) of sec. 3 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 which gave power to the Central Government to add to the diseases falling within the mischief of sec. 3 was struck down on the ground of its conferring such uncanalised power to include any disease it thought fit.

Let me now examine the provisions of sec. 9 in the background of these principles. As aforesaid, the object of the Act is to set up the Panchayat system throughout the State except of course in those local areas 'where the population exceeds 30,000. It is to implement this object that the Act provides a three-tier Organisation consisting of a gram or nagar panchayat, a taluka panchayat and a district panchayat in each district. What section 9(1) does is to delegate to the government the power to declare, after making such inquiries as may be prescribed, a local area or a part there-of to be a nagar, if its population is between 10,000 to 30,000 or a gram, if its population is less than 10,000. Sub-section 2 authorises the government after consultation with the taluka, the district and the nagar or gram panchayat concerned to alter the limits of any nagar or gram by including or excluding any area or declare that any local area shall cease to be a nagar or a gram and thereupon

the local area shall be so included or excluded etc. The Government thus is empowered (1) to declare a local area to be a nagar or a gram depending upon its population; (2) after such a nagar or gram has been constituted to alter its area either by including other area or areas or excluding an area or areas therefrom; (3) by doing so to convert a gram into a nagar and vice versa and (4) or to declare any such local area as having ceased to be a nagar or a gram. It will at once be noticed that the word "or" between clauses

(a) and (b) in sub-sec. 2 indicates that the power to declare that a local area has ceased to be a nagar or a gram can be exercised either after such inclusion or exclusion or even without such inclusion or exclusion. It follows therefore that even where a nagar or a gram panchayat is constituted, the government can declare at any time that it shall cease to be a nagar or a gram either as a result of the alteration of its local area or without such alteration. It will also be noticed that sub-section (1) by the use of the word 'may' therein confers an absolute discretion to make the declaration thereunder or not. Indeed, Counsel for the State insisted that the word 'may' there does not mean 'shall' and therefore that provision is not mandatory. It follows therefore that in spite of the avowed policy of the Act to set up Panchayat Raj throughout the State the Government by virtue of the power to declare being discretionary under sub-section (1), may or may not declare a local area to be a nagar or a gram.

(1) [1960]2 S.C.R. 671.

The only fetter is that where it desires to make a declaration in respect of any particular local area it can do so after making an inquiry as prescribed. But neither sec. 9 nor any other provision in the Act lays down that even if the inquiry ends in a particular conclusion the Government must make the declaration. What the requisite result of such an inquiry for a declaration should be is also not prescribed in the Act and the government is left to decide its course of action after such an inquiry. Similarly sub-sec. 2 confers a discretionary power on the government to alter by inclusion or exclusion any area or areas from a nagar or a gram panchayat and convert one from the other. The only restriction on such power is the necessity to consult the district, the taluka, and the nagar or the gram panchayats as the case may be. The restriction is consultation but not the consent of the concerned panchayats. Sub-sec. 2 does not require even an inquiry as sub-section I does at the time of the declaration. Nor does it lay down any principle or criterion as to when and in, what circumstances the Government can launch upon such alteration of the local limits. Thus the Government can modify at any time the structure and the nature of a panchayat from a nagar to a gram panchayat and vice versa by simply altering its area after a mere consultation and even if the panchayats concerned are against such alteration. Under this power the Government can also transfer a portion or portions of a nagar or gram panchayat after formally going through the process of consultation and join it or them with another panchayat even if the people concerned were to be unwilling to such a transfer.

It is true that sec. 9(1) contains one criterion, viz., of population, that is, if the population is between 10,000 to 30,000 the local area would be a nagar and if it is less than 10,000 it would be a gram. Even so, by reason of the absolute discretion left with the government it is not as if it is incumbent on the government to make the declaration under section 9(1) even if the local area has the

necessary population and revenue to make it a viable unit. The government, even in such a case, may decline to make a declaration in the absence of any provision requiring it to do so or under sub-section 2 divide, the area and join such divided portions with other panchayats.

The inquiry under sub-section I is not regulated under the Act but under Rules made by the government. Neither the Act nor the Rules provide that the government has to act under sec. 9(1) if the inquiry ends in a particular result. In other words there is no provision that the government has to act in a particular way after such an inquiry. Consequently, it is not necessary for the government to make a declaration even if it is satisfied as regards the population or the land revenue of the local area. Furthermore, the section does not lay down any principles to guide the Government as to when a single revenue village should be constituted a gram panchayat or when it should be grouped with other such villages to constitute a gram or a nagar panchayat. Neither section 9 nor 'Rule 2 provides as to what should follow after an inquiry is held. Thus neither sec. 9 nor the Rules provide any principle or criterion on the basis of which the power of declaration and alteration under sub-section I or sub-section 2 of sec. 9 is to be exercised and it is left entirely to the sweet will of the government whether a particular area is to be declared a gram or a nagar or not and to alter its area by adding or subtracting therefrom part or parts so that it may be reduced to a gram or augmented into a nagar regardless of the willingness either of the people or the panchayat concerned.

Another result ensuing from the government's power to alter the limits which can be easily visualised is that even where a local area has a population exceeding 30,000 and has a duly constituted municipality, if the government for one reason or the other desires to do away with such a municipality it has simply to reduce its limits which it can do since a municipal area is a local area within the meaning of sec. 9(1) and convert it into a gram or a nagar depending upon how much of its area is carved out. Since under sub- sec. 2 such a power can be exercised even without an inquiry or consent of the municipality concerned every municipality would be entirely at the mercy of the government for its continuance. The consequences flowing from such a power are far more far reaching than even those from exercise of power of supersession of a municipality under the Gujarat Municipalities Act. If the government supersedes a municipality it does not become extinct. Only the existing body of the members would be superseded but a fresh election has to take place and a new body of members would constitute the municipality. Where government acts under this Act and so alters the local area constituting the municipality as to reduce its population below 30,000 the government can on such 'alteration bring about the extinction of the' municipality and convert it into a nagar or even a gram panchayat. It is easy to perceive in the provisions of Sec. 9 an uncanalised power to do all these things any principle or criterion laid down therein to govern or control the actions of the government.

The, fact that sub-section (1), is not mandatory and confers dicretionary power has also other significance. Inspite of the ,provision in it that where the 'population of a local area is between 10,000 to 30,000 it should be a nagar panchayat the State Government made a policy decision 'on Feb. 12, 1963. That decision was:-

> "(a) The Municipalities whose population does not exceed 10,000 may be converted into gram panchayats.

(b)Those with a population exceeding 10,000 but not exceeding 20,000 may be converted into Nagar Panchayats.

(c)Municipalities having a population exceeding 20,000 but not exceeding-25,000 may be given option to be converted into Nagar Panchayats.

The effect of the decision is that municipalities having a population between 20,000 to 30,000 are left out from the purview of sec. 9(1). Municipalities with populations between 20,000 to 25,000 are given an option whether to convert themselves into nagar panchayats; municipalities with populations between 25,000 to 30,000 are not to be converted into nagar panchayats. It is obvious that the policy decision is defective of the object of the Act. It is also obvious that the government could make such a policy decision only because sec. 9 confers an absolute discretion where under 'it leaves it to the government to declare or not to declare local areas as grams or nagars as the case may be.

The fact that such a policy decision could be made demons- trates that the legislature did not reserve to itself any power to control the implementation by the government of its objective. It is therefore clear that sec. 9 delegates to the Government an uncontrolled power under sub-sec. (1) and sub-sec. 2 both as regards declaration and alteration of local areas without laying down any criterion which should govern and guide the government in the exercise of its power. Such a power leaves every panchayat whether it be a nagar or a gram panchayat or a local area where there is a municipality duly constituted at the mercy of the government for its continuance as such panchayat or municipality. The complaint of the appellant-municipality is that it is because of such an arbitrary power that the government has been able to declare the appellant municipality to be nagar while allow'ing at least two municipalities of Bagasra and Wadhawan though similarly situated to continue as municipalities. It was only after the appellant- municipality filed its writ petition in the High Court that the government declared Bagasra a nagar. Wadhawan Munici- pality however is still allowed to continue. During the course of the hearing of this appeal, we asked Counsel for the State if the government was agreeable to convert Wadhawan into a nagar. He asked for time to obtain instructions and subsequently filed a statement. The only reason given in the statement is that there is a proposal before the government to amalgamate Wadhawan with the nearby Surendera nagar and to have one municipality for both. It is strange that even after nearly four years since the passing of the Act the government has yet not been able to make up its mind and the alleged proposal for amalgamation is still said to be under its consideration. But these are not the only two municipalities to which the government did not apply the Act. In answer to the said statement the appellant municipality has drawn our attention to the fact that the Act has not been applied to eight municipalities in Saurashtra and thirteen municipalities in Gujarat having populations between 20,000 and 30,000 presumably acting, under the said policy decision. The above figures are not disputable as they are taken from a government publication. No doubt the appellant municipality has a population of 12,000 and odd and is therefore liable to be converted into a nagar. But so also the aforesaid twenty one municipalities, under the very same provisions of the Act. The only reason why these other municipalities have not been converted into nagars is the decision of the government based perhaps on a consideration that areas with populations between twenty and thirty thousand are urban, areas which would be better served by municipalities. That can be the

only explanation for the said policy decision. But the decision is contrary to the legislative decision contained in s. 9(1) that such areas are fit to be converted into nagar panchayats. Such a decision became possible because the legislature left an uncontrolled power in the government enabling it to modify and even defeat the legislative policy without reserving to itself any control over the implementation of the Act by its delegate. Such a delegation amounts to an effacement and is not within the permissible limits of delegation.

Realising this difficulty, Counsel for the State conceded that the policy decision was illegal. But such a concession by Counsel cannot be of any assistance, for the simple reason that as Sec. 9 1) stands the power delegated to the government is discretionary and the government can therefore decide whether a particular local area or a class of local areas should be declared as. nagars or grams or not and it is in exercise of that power. that the policy decision was made and implemented, contrary though it is to the aim and object of the Act to set up panchayats in all local areas except those having populations over 30,000. Section 9 in my view suffers from excessive delegation and therefore is invalid. The impugned notification issued there-under must fall along with it.

I would, therefore, allow the appeal with costs.

ORDER In accordance with- the opinion of the majority the appeal is dismissed without costs.

Y.P.