

Gujarat High Court

Visnagar Municipality vs State Of Gujarat on 5 August, 1999

Author: M Calla

Bench: M Calla

JUDGMENT M.R. Calla, J.

1. It is not an unusual practice in Courts to entertain a request made by a learned counsel to call for the papers of any case from the Registry even when it is not on the Board for passing appropriate orders *ex parte* or otherwise to take up the matter in presence of both the parties, if the situation so warrants or it is shown that a matter is sought to be withdrawn or an order agreeable to both the sides or a consent order is required to be passed. However, the facts of the present case do teach a lesson to avoid such a practice and further that the Court should not be unassuming while entertaining such requests and the same should be entertained after stricter scrutiny and screening and that too with extra care and caution.

2. In the instant case, through this Misc. Civil Application an order passed by this court in the Special Civil Application No.5334/97 on 22.6.99 whereby the Special Civil Application was dismissed as withdrawn, has been sought to be recalled. The aforesaid order dt.22.6.99 dismissing the main Special Civil Application as withdrawn was passed when Civil Application No.5625/99 in Special Civil Application No.5334/97 was moved praying for the withdrawal of the main Special Civil Application. The Civil Application No.5625/99 seeking the withdrawal of the Special Civil Application was not on the board but a mention was made by learned counsel Mr. B.R. Kyada before this Court in presence of the other side on 21.6.99 to call for the papers from the Registry. The request appeared to be innocuous as the prayer was made that the petition was sought to be withdrawn and the other side has no objection to it. The papers were, therefore, called from the Registry but on that date the orders could not be passed as the Court's time was over and, therefore, on a mention being made again on 22.6.99 by Mr. Kyada, the order was passed dismissing the main Special Civil Application as withdrawn. The order, as was passed on 22.6.99, is reproduced as under:-

"Order:

Mr. B.R. Kyada for the petitioner. Mr. Mukesh Patel, learned AGP for the respondents.

Learned Counsel for the petitioner seeks to withdraw this Special Civil Application unconditionally. Mr. Mukesh Patel has no objection. This Special Civil Application is therefore, dismissed as withdrawn. Rule is hereby discharged. Interim order passed in this case, ceases to be operative and automatically stands vacated. No order as to costs. Direct service is permitted.

Dt: 22.6.1999 (M.R. Calla, J.)"

3. On the very same date i.e. 22.6.99 Civil Application No.5625/99, through which the main petition was sought to be withdrawn, was also disposed of in view of the order passed in the main Special Civil Application dismissing the same as withdrawn.

4. Thereafter, the present Misc. Civil Application was filed before this court on 29.6.99 with the prayer that the order dt.22.6.99 passed in the main Special Civil Application be recalled and that pending the admission and final disposal of the petition, be pleased to stay the implementation, execution and operation of the impugned order passed by the State Government dt.28.6.99 directing the Sub-Divisional Officer, Mehsana Sub-Division to take over the charge of the Municipality with the further direction restraining the respondents , their agents, servants, including the Sub-Divisional Officer, Mehsana Sub-Division, Mehsana from interfering and/or restraining the applicants and the Chair Person from functioning as the Chair Person and Councillor of the Municipality and all other Councillors. This Application came up before the court on 5.7.99 and it was submitted that the main Special Civil Application had been surreptitiously withdrawn and, therefore, the following order was passed on 5.7.99 and the matter was fixed for 9.7.99:

"ORAL ORDER:

Mr. Mangukia for the applicants submits that learned Counsel Mr. B.R. Kyada has surreptitiously withdrawn the petition. Issue notice to Mr. B.R. Kyada, Advocate. Address of Mr. Kyada be furnished by Mr. Mangukia. Notice is made returnable on 9th July 1999. Mr. Y.N. Oza has appeared on his own and submits that he is appearing for Devyaniben Majmudar. He also supports the case of Mr. Mangukia on behalf of the petitioners. Mr. Oza may also remain present when the matter is heard on 9th July 1999. Direct service is permitted.

5th July 1999 (M.R. Calla, J.)"

5. This Misc. Civil Application then came up before this court on 13.7.99 on which date the following order was passed:-

"ORAL ORDER Mr. N.D. Nanavati, Senior Counsel with Mr. B.M. Mangukia for the applicants.

(i) The main Special Civil Application No. 5334 of 1997 filed by Visnagar Municipality through one of its counsellors Chandubhai Parshottambhai Patel who was authorised to file and prosecute this petition in terms of the Resolution No. 2 passed by Visnagar Municipality on 17.6.1997 in which stay order against the impugned order passed on 25.7.97 was still operative, was sought to be withdrawn through Civil Application No. 5625 of 1999 dt. 14.6.99 duly signed by Chandubhai Parshottambhai Patel and learned advocate Mr. B.R. Kyada, and was in fact, dismissed as withdrawn unconditionally as prayed after recording No Objection given by Mr. Mukesh Patel, learned Assistant Government Pleader on 22.6.1999. In fact, the main Special Civil Application or the Application for withdrawal were not listed on board but it is given out by Mr. Kyada who is present before this court even today that the matters were called from the registry on a mention being made for urgent orders on 21.6.99 but on that day, orders could not be passed as the court's time was over and therefore, on a mention being made again on 22.6.1999 by Mr. Kyada, the order dismissing the main Special Civil Application as withdrawn was passed on 22.6.1999 on which day, Rule was also discharged and in the same order passed in the main Special Civil Application, it was also recorded that interim order passed in this case ceases to be operative and automatically stands vacated and in view of the order passed in the main matter, the C.A. No. 5625 of 1999 for withdrawal of Special Civil Application was

disposed of by a separate order recorded in the said C.A. on 22.6.1999 itself. There is no dispute about these facts and Mr. B.R. Kyada who is present in the court also admits that in fact the petitioner Visnagar Municipality in this case was represented through Mr. B.S. Patel Advocate and that he had filed his power on 14.6.99 only along with the Application for withdrawal and that was his first appearance and he has also stated that Mr. B.S. Patel was out of station on that date.

(ii) Thereafter on 29.6.1999, present Misc. Civil Application No. 1170 of 1999 has been moved in the main Special Civil Application No. 5334 of 1997 which was dismissed as withdrawn on 22.6.1999, through Mr. B.M. Mangukia on behalf of Visnagar Municipality and another i.e. Chair person of the municipality along with a note addressed to Mr. B.M. Mangukia, Advocate by Mr. B.S. Patel, Advocate at Annexure. A, copy of the order dated 22.6.1999 at Annexure B passed by this court dismissing the petition as withdrawn and the copy of the order dated 28.6.1999 at Annexure. C passed by the Urban Development and Urban Housing Department under the signature of Deputy Secretary and, the order passed by this Court permitting withdrawal of the main Special Civil Application has been sought to be recalled. A prayer has also been made for interim relief during the pendency of this Misc. Civil Application. Whereas it was alleged that the main petition has been withdrawn surreptitiously by Mr. B.R. Kyada, Advocate, notice was issued to Mr. Kyada, learned advocate returnable on 9.7.99. Mr. Kyada has filed his affidavit dated 13.7.99 in this Misc. Civil Application and Mr. Kyada, learned advocate is also present before this court when this Misc. Civil Application is heard and present order is being dictated. This affidavit shall remain on the record.

(iii) Issue Rule of this Misc. Civil Application No.1170 of 1999 to the Respondents and copy of the affidavit dated 13.7.99 as has been filed by Mr. Kyada be also sent along with the Notice of Rule of this application to the respondents. Mr. A.J. Patel appears for respondent no.3 and therefore, notice of Rule of this Misc. Civil Application shall go only to respondents Nos. 1 and 2. The Rule is made returnable on 22.7.1999. Notice may also be issued for the prayer made in this Misc. Civil Application for interim relief and the same is also made returnable on 22.7.1999.

(iv) During the course of the arguments of this case Mr. A.J. Patel who has appeared on his own submitted that he has moved a Civil Application on behalf of 16 municipal councillors for impleading them as parties who were the signatories to the letter by which Chandubhai Parshottambhai Patel was requested/authorised to withdraw the main Special Civil Application. However, said application which is said to have been filed by Mr. A.J. Patel is not listed before this Court today. It is submitted that said Civil Application was filed by Mr. A.J. Patel on 5.7.99. When the papers of this application preferred by Mr. A.J. Patel were called for from the Registry, it is reported to be not traceable.

(v) In the facts and circumstances of this case, this Misc. Civil Application will be listed before the Court on the next returnable date i.e. 22.7.1999 but it is ordered that in case the papers of the Civil Application filed by Mr. A.J. Patel are traceable in the office, said Civil Application may be listed immediately before this Court, may be even before 22.7.1999.

Direct Service.

(M.R. Calla, J)"

6. Thereafter, the matter came up again before the court on 26.7.99 on which date the arguments were heard and the matter was posted for dictation of order. It may also be pointed out that an amendment had been moved in this Misc. Civil Application on 30.6.99 and this amendment was also allowed on the said date i.e. 26.7.99. On this very date a Civil Application No.6394/99 moved in this Misc. Civil Application was also decided whereby the 16 applicants, who are elected members of the Visnagar Municipal Council, were directed to be heard as interveners in this Misc. Civil Application No.1170/99 and accordingly they too were heard.

7. Before I deal with this Misc. Civil Application, so as to consider as to whether the order dt.22.6.99 deserves to be recalled or not, it may be pointed out that the main Special Civil Application No.5334/97 had been moved by Visnagar Municipality through its authorised Municipal Councillor Chandubhai Parshottamdas Patel against an order dt.19.7.97 filed with the main petition as Annexure 'A' whereby the Visnagar Municipality was superseded and a decision was taken to appoint the Administrator. When the petition came up before the court on 25.7.97 Rule was issued and the ad interim relief was granted against the impugned order. This stay order dt.25.7.97 in favour of petitioner Visnagar Municipality was in force and operative through-out. While the said order was operative, Civil Application No.5625/99, referred to as above, was moved on 17.6.99 on the basis of which the order dt.22.6.99, as aforesaid, dismissing the main Special Civil Application as withdrawn had been passed.

8. Now Visnagar Municipality and its Chair person Shantaben Bholabhai Patel have moved the present Application for recalling the order dt.22.6.99 impleading Chandubhai Parshottamdas Patel as non applicant No.3 in this Misc. Civil Application and it is rather interesting to note that said Chandubhai Parshottamdas Patel is the person through whom Visnagar Municipality had filed the main Special Civil Application challenging the order of the supersession, enclosing the copy of the Resolution No.87 dt.17.6.97 passed by the Municipality, the relevant part of the Resolution being No.87(7). Now the very person, namely, Chandubhai Parsottamdas Patel, who was one of the elected members of the Municipality and through whom the petition had been filed and the Visnagar Municipality as such was being represented in the main petition through its advocate Shri B.S. Patel, moved the Civil Application No.5625/99 seeking withdrawal of the Special Civil Application through another advocate, namely, Mr. B.R. Kyada. This Application bears the date 14.6.99 and the affidavit has been sworn by Chadubhai Parsottamdas Patel and a copy of letter dt.12.6.99 has been enclosed with this Civil Application. This letter dt.12.6.99 addressed to said Chandubhai Parsottamdas Patel is said to have been signed by 16 other Municipal Councillors requesting him to withdraw the Special Civil Application and a copy of a Resolution purporting to be dt.12.3.99 was enclosed to show that Budget of the Municipality for 1999-2000 had not been passed. In this Application said Chandubhai Parsottamdas Patel has specifically stated at the very outset of the application that he was an elected member of the Visnagar Municipality and that he in his personal capacity had filed the above mentioned Special Civil Application against the powers exercised by respondent No.1 under S. 263 of the Gujarat Municipalities Act for passing the order dt.19.7.97 dissolving the Municipality. It has been stated in Para 2 that the Municipality by its resolution dt.17.6.97 stated that the present applicant was empowered to initiate action against the alleged action under S. 263

of the Gujarat Municipalities Act by the Government, but no special Resolution had been passed to that effect, but the same had been mentioned in para 7 of the Resolution No.87 dt.17.6.97. It has been then stated that the Municipality was not in a position to deliver the goods to the public and even Budget had not been passed and, therefore, the people were suffering due to inaction on the part of the Municipality and, therefore, it was in the interest of the public at large and of the Municipality to withdraw the present petition and hence majority amongst the Councillors urged upon him to withdraw the petition and, therefore, he was withdrawing the petition.

9. In the present Misc. Civil Application No.1170/99 on behalf of applicants it has been submitted before the Court that at the time when the writ petition was filed, one Mr. Varvaji Talaji Thakore was the President of the Municipality. Said Shri Thakore had resigned and, therefore, new election had become necessary for the office of the President of the Municipality and thereupon one Mr. Prahladbhai Patel was elected as Chairman. Said Shri Prahladbhai Patel was not a member of the Legislative Assembly at the relevant time but lately and recently he contested the election from Visnagar Constituency as the official candidate of Bharatiya Janata Party and he has been elected. It has been pointed out that said Shri Prahladbhai Patel continued for the remaining term on account of the resignation of Shri Thakore and, thereafter, Smt. Shantaben Bholabhai Patel, who is the Chair Person at present, was elected as the President of the Municipality and she is continuing as such, even uptill now on the basis of her re-election for the second time. It has also been submitted that efforts were made by Shri Prahladbhai Patel to dislodge present Chair person Smt. Shantaben and although Budget had been passed, an attempt was made to create confusion by concoction of the proceedings of the meeting with regard to Budget, that the Budget had not been passed. It has been stated that the present Chair Person holds the confidence of the House and, therefore, it is not possible for the concerned M.L.A. to dislodge her from the office and, therefore, a clandestine design was executed so as to dislodge the present Chair person from the office by adopting a dubious device of withdrawing the petition. It is also the case of the present applicants that while the Counsel of the Visnagar Municipality in the main Special Civil Application No.5334/97 was Shri B.S. Patel, the said petition was withdrawn on 22.6.99 by an advocate other than Mr. B.S. Patel (who was sick on that date) and even the associate of Mr. Patel had not been mentioned about the application for withdrawal of the petition and when the Chairperson of the Municipality came to know about the order dt.22.6.99, she approached Mr. Patel, who informed her that he was not able to speak as he was having throat infection and, therefore, Mr. Mangukiya was instructed by him as per Annexure 'A'. It is the case of the applicants that the Municipality had not passed any Resolution to withdraw the petition, no meeting of the Municipality had been called or held to change the advocate and, therefore, the withdrawal of the petition was unauthorised and malafide, that the Application for withdrawal had been filed through another advocate without taking any no objection from Mr. B.S. Patel and the result is that on account of the withdrawal of the said petition, the Government passed an order on 28.6.99 directing the Sub-Divisional Officer to take over the charge of the Municipality and thus an elected body has suffered and existing Chairperson stands deprived of her position and the Municipality is facing premature termination. The Municipal body was elected in December 1994 and it is stated that the due date of the expiry of the term is in January 2000.

10. The allegations made in the application seeking to recall the order dt.22.6.99 have been sought to be traversed by the respondent No.3 through the affidavit in reply dt.19.7.99. In this reply the

author of the application for withdrawal, namely, Chandubhai Parshottamdas Patel has taken an absolutely new stand than the one, which was there in the application for withdrawal, as such. In this reply he says that a meeting was convened by issuing an agenda under the signature of Smt. Shantaben Patel, President of the Municipality, on 29.4.99 and by the said Agenda Municipal Councillors were required to remain present at the meeting scheduled to be held on 30.4.99. It has been further stated that in pursuance to the said agenda, meeting was held on 30.4.99 and it was attended by all the Councillors. A true copy of the said Agenda and the abstract of the Attendance Register have also been enclosed. He further says that the meeting was held as scheduled and business was transacted at the said meeting as per the items of agenda and after the normal agenda items were transacted, as per Item No.11 (Any other item with the permission of Chair) on a proposal signed by majority of the Councillors, the same was placed before the general body presided over by Smt. Shantaben Patel and a copy of the same has been enclosed as Annexure 'III'. He has further stated that the said proposal was debated upon at the said meeting and at the conclusion of the debate, the proposal was put to vote and ultimately by majority the said proposal was approved and it was decided to withdraw the aforesaid petition. It is further stated that he was authorised to take appropriate action for the purpose of withdrawal of the petition. A copy of the said Resolution has been annexed as Annexure IV. In para 6 of the reply he says that the majority of the Councillors, who had voted in favour of the aforesaid proposal, had given in writing authorising him to withdraw the said petition. A true copy of the same had been annexed as Annexure V. It has also been stated in para 11 that out of 36 elected Councillors, 35 Councillors were independent and one Councillor belongs to the BJP and majority of the Councillors had passed the said Resolution on 30.4.99 and it has been stated in para 12 that now the opponent No.2 (while he means applicant No.2 Shantaben) had opposed the aforesaid Resolution to do away with the said Resolution. In nut shell according to this reply, the main petition was sought to be withdrawn on the basis of the Resolution passed by the Municipality, which was passed under the Chairmanship of Chairperson Smt. Shantaben on 30.4.99 and it is his allegation that since this Resolution was not in her favour, she has done away with the same.

11. Thus there are claims and counter claims as to whether such a Resolution had been passed or not and as to whether said Chandubhai Parshottamdas Patel had any authority to withdraw the main Special Civil Application or not. Apart from the pleadings, to which reference has been made hereinabove, there is an affidavit-in-rejoinder dt.21.7.99 filed by the Chairperson of the Municipality, namely, Smt. Shantaben and an affidavit in sur-rejoinder dt.24.7.99 filed by one Shri R.I. Patel, one of the Councillors, who was signatory to the alleged Resolution for withdrawal of the petition and with this affidavit, a zerox copy of daily issue dt.4.5.99 of a news paper 'Lokmanya' which is a news paper from Visnagar Road, Mehsana, has been enclosed, which contains a news item that in the general body meeting of the Municipality after heated discussion the writ petition of the Visnagar Municipality was decided to be withdrawn on 30.4.99 and 17 voted in favour of withdrawing the petition and 14 against it and further that said meeting was presided over by Smt. Shantaben.

12. In view of such rival claims as to whether such a Resolution had been passed at the said meeting dt.30.4.99 or not, the Court wanted to look into the original Minutes Book and the surprise is that two Minutes book have been produced. On behalf of the Chairperson, a Minute Book has been

produced before this Court in which the Resolutions Nos.1 to 10 passed on 30.4.99 are recorded. This Minute Book at page 175 thereof shows that it was issued by concerned Clerk on 31.3.99 and the number at which it was issued are also mentioned. Page 175 is the last marked page in this Minute Book and the Resolution No.10 is at page 6 thereof. The Chief Officer of the Municipality also did not dispute the number, date and signatures of concerned clerk. As against it, the Chief Officer of the Municipality, namely, Mr. Dabhi has produced another Minute Book for the minutes of the meeting of the concerned date i.e. 30.4.99 in which Resolution No.11 is recorded at page 6 and 7 and below this Resolution there are 16 signatures and one thumb impression of the Members of the Municipality. This Minute Book also contains the proceedings dated 28.6.99, 29.6.99 and 8.7.99. However, this Minute Book does not appear to have been issued by the office of the Municipality and it is admitted by the Chief Officer himself before this Court that it does not bear either the number or date of issuance of the same or any signature of the concerned Clerk. There is no pagination in this Minutes Book after Page No.146 and on the last but one leaf in the end there is a blank seal without any entry or signatures.

13. Now one party says that such a Resolution was not passed, other party says that such a Resolution was passed. One Minute Book does not show any thing beyond Resolution No.10 implying that against the residuary item of the Agenda Item No.11 i.e. 'Any other item with the permission of the Chair' nothing was taken up. Other Minutes book shows that against this residuary item of Agenda, the question as to whether the petition was to be withdrawn or not was taken up and that Resolution No.11 to this effect is recorded. I called upon the learned counsel for the said Chandubhai Parshottamdas Patel as to whether he has the certified copy of such a Resolution No.11 dt.30.4.99 on which he now seeks to place reliance. In answer to it, it has been submitted that an Application had been moved before the Chief Officer for obtaining the certified copy of this Resolution and a copy has been made available to him under the signatures of the Chief Officer. However, it is admitted before this Court by the Chief Officer himself that such an application was never inwarded and he has submitted that if the members of the Council ask for the copies, the copies are supplied free of costs. That may be so, but in the instant case, the copy, as has been produced by the learned counsel for the said Chandubhai Parshottamdas Patel, does not even show as to on which date the copy of the Resolution was signed or issued by the Chief Officer to him. The Minute Book, which has been produced on behalf of said Chair Person, which had been issued in normal course by concerned clerk with issue Number, does not contain the Resolution No.11 and it has also been submitted and pointed out that copies of such Resolutions passed by the Municipality are required to be sent to the concerned Collector in normal course. Such copies were sent to the Collector, as per the case of the applicant, as has been stated in the affidavit in rejoinder dt.21.7.99, with which the xerox copy of a covering letter dt.25.5.99 sent to the Collector by the Chairman, Visnagar Municipality had been enclosed and the copies of the Resolutions enclosed therein do not contain any Resolution No.11. Now this is a letter which was sent way back on 25.5.99 to the Collector by Chairperson. Obviously at that time there was no dispute before the Court as to whether any such Resolution at Item No.11 had been passed or not. Besides this, I find that at the time when the application dt.14.6.99 seeking the withdrawal of the petition was moved on 17.6.99 no such case was mentioned by the applicant Chandubhai Parshottamdas Patel in Civil Application No.5625/99 that any Resolution No.11 had been passed by the Municipality and that he was seeking to withdraw this Special Civil Application on the basis of such a Resolution passed by the

Municipality on 30.4.99. In this Civil Application No.5625/99 there is not even a whisper about such a Resolution No.11 dt. 30.4.99 against residuary Agenda Item No.11. Not only this, even in the letter dt.12.6.99, which appears to have been signed by 16 elected members of the Municipality and which is addressed to Chandubhai Parshottamdas Patel for withdrawing this Special Civil Application, there is no mention that any such Resolution No.11 had been passed. In this context it may also be mentioned that in case said Chandubhai Parshottamdas Patel had applied for the certified copy of the Resolution No.11 dt.30.4.99, either on 7.5.99 or on 2.6.99, as has been claimed by him now and if at all such certified copy was made available to him by the Chief Officer on any date prior to 14.6.99, i.e. the date on which the present Application for withdrawing the petition was signed, nothing prevented him from annexing that copy with this Application. The copy of this Resolution No.11 which has been placed for the perusal of this Court across the table during the course of hearing, does not bear any date even under the signatures of the Chief Officer. The Chief Officer has failed to give any explanation as to why he has not marked the date of issue on it. Thus it appears that this copy of the alleged Resolution No.11 dt.30.4.99, on which reliance is now sought to be placed by Chandubhai Parshottamdas Patel was not available with him at least till 14.6.99 and that it has been obtained only after 14.6.99 i.e. the date on which the application seeking withdrawal of the Special Civil Application was moved. Further the very absence of any reference to such a Resolution either in the Application seeking withdrawal of Special Civil Application or in any of the documents annexed therewith and the absence of such a copy of Resolution alongwith the Application the fact that the application for withdrawal of Special Civil Application was moved through a lawyer other than the one who had been engaged by the Municipality and who was regularly appearing in the main case read with Chandubhai's own averment in the Application for withdrawal of Special Civil Application that he had filed the petition in his personal capacity are sufficient to show that he himself knew that he had no authority to withdraw the petition. The stand now taken by him in reply to this application for recalling the order dt.22.6.99 does not inspire any confidence so as to believe that he had the authority on behalf of Visnagar Municipality to withdraw the petition or that any such Resolution dt.30.4.99 had in fact been passed. The averment made in the Application for withdrawal that he had filed the Special Civil Application in his personal capacity runs counter to the very title of the main Special Civil Application which is as under:-

"Visnagar Municipality, through its authorised Municipal Councillor Mr. Chandubhai Purshottamdas Patel r/o Visnagar, Distt. Mehsana."

14. Even the first sentence in para no.1 of the main petition is as under:

"The petitioner is a Municipality constituted under the Gujarat Municipalities Act, 1963."

15. Yet taking a stand now in the affidavit in reply as respondent No.3 in this Application for recalling the order dt.22.6.99 that he had withdrawn it on the basis of the Resolution passed at Item No.11 on 30.4.99, proves a case of self confessed lie against said Shri Chandubhai. In case, the Resolution No.11 dt.30.4.99 had in fact been passed, nothing prevented him from making a statement in the application seeking withdrawal of the main Special Civil Application that he was withdrawing the Special Civil Application on the basis of this Resolution and that on the strength of this Resolution 16 Councillors had authorised him to withdraw the petition. Even if a letter was

written by majority of the members, such as the letter dt.12.6.99, on which he is placing reliance and even if such signatures are of the majority of the Members, it could not undo the authorisation, which had been given to him as resolved in a meeting of the Visnagar Municipality for the purpose of filing the present petition at the time when Resolution No.87 (7) was passed when the Municipality was superseded. An elected Councillor may change his loyalties, may change sides, may have differences with the head of an elected body but for such reasons alone it is not open for him to take recourse to such action which may dupe the elected body itself and put its very existence to an end. Even if such a member feels that lately the body is not functioning properly or that according to him the budget is not passed, there are ways and means according to the democratic process or in all fairness he himself could have opted out after due notice to the elected body or its head i.e. the Chairperson/President, but he is not supposed to act against the interest of such body by withdrawing the case which had been filed by such body through him, more particularly when an order was operative in favour of such a body, knowingly well that such withdrawal would thwart the judicial remedy which such elected body had resorted to and the authorisation as given to such a member by such a body to file the petition could not be used so as to withdraw the petition itself and that too without informing the head of such elected body. It is therefore a case of betrayal of faith and confidence, which was reposed by the Municipality as a body, in one of its members, namely, Shri Chandubhai. In the facts and circumstances, which have been narrated hereinabove in the earlier part of this order, it is also transparently visible that the petition was sought to be withdrawn in a manner, which cannot but be said to be unwarranted, deplorable and unbecoming of the conduct of an elected member of a body like Municipality. In case the Resolution had been passed way back on 30.4.99, what for he had been waiting for all this time till 14.6.99 and 17.6.99 to move such an Application? In that case, he could have moved the Court immediately. Vacations had commenced on 14.5.99 i.e. after the date of alleged Resolution at No.11 dt.30.4.99 and therefore he could have moved application for withdrawal of Special Civil Application even before 14.5.99. The Court had re-opened on 14.6.99 and it is found that the Application dt.14.6.99 was actually moved in the Court on 17.6.99 and it has been given out by Mr. Kyada (the learned counsel through whom the application for withdrawal of Special Civil Application was moved by Shri Chandubhai) himself that Mr. B.S. Patel, the advocate who was appearing as the lawyer of Municipality in the main case was sick and, therefore, he appeared and filed this Application for withdrawal. Mr. Kyada was not the counsel appearing in the main petition on behalf of the Municipality and the lawyer of the Municipality Shri B.S. Patel had never requested Mr. Kyada to appear for him and file the Application for withdrawal of the petition and to get the same dismissed as withdrawn. He (Mr. Kyada) had not been authorised by the Municipality also, but Chandubhai Parshottamdas Patel himself engaged Mr. Kyada by representing to him that he had filed the main petition in his personal capacity or else Mr. Kyada would have certainly asked him as to what authority he had for the purpose of withdrawing the petition filed by the Municipality through him. It appears that even this information was withheld from Mr. Kyada that the main petition had been filed on the basis of a Resolution passed at a formal meeting of such Municipality. It appears that said Shri Chandubhai Parshottamdas Patel did not even inform or post the learned counsel Mr. Kyada about the alleged Resolution No.11 dt.30.4.99 or else it would have certainly found some mention somewhere in the Application. Without commenting upon the conduct of any of the parties or the Chief Officer of the Municipality, namely, Shri K.V. Dabhi as to whether he has acted in collusion with Shri Chandubhai or not, keeping in view the totality of facts, the judicial conscience of this Court does not find it safe

to rely upon the Minute Book, which has been placed on record by the Chief Officer, it does not inspire confidence and taking an over all view of the matter it cannot be taken that such a Resolution No.11 dt.30.4.99 had in fact been passed. It appears that after withdrawing the petition, all these things have been pleaded which appear to be after thoughts and there is no contemporaneous evidence on the basis of which it can be said that any such Resolution No.11 dt.30.4.99 had been passed by the Municipality for withdrawing the petition and merely because it is submitted on the basis of the letter dt.12.6.99 (addressed to Shri Chandubhai which appears to have been signed by 16 Councillors which too does not make any mention of the alleged resolution No.11 dt. 30.4.99) that Shri Chandubhai was authorised to withdraw the petition, it cannot be said that the Visnagar Municipality as a body had authorised said Shri Chandubhai Parshottamdas Patel to withdraw this petition.

16. Now remains the question about the reliance on a news paper report contained in the daily issue dt.4.5.99 'Lokmanya' to which reference has been made hereinabove. Mr. A.J. Patel has harped upon this news item and has submitted that had such a Resolution No.11 not been passed on 30.4.99 such a news item would not have been reported in this newspaper, which is of 4.5.99. He has submitted that the date 4.5.99 is in close proximity with the date of the meeting of 30.4.99 and has also submitted that this date of 4.5.99 is much earlier to the date of 25.5.99 on which date the Chairperson had sent the copies of the Resolutions dt.30.4.99 to the Collector and according to him this news paper report readily furnishes a contemporaneous evidence to show that at the meeting held on 30.4.99 such a Resolution No.11 had been passed. In this regard one cannot do better than to quote the Supreme Court decision in the case of Manmohan Kalia v. Shri Yash and others, reported in AIR 1984 SC 1161, in which case while relying upon the earlier decision of the Supreme Court reported in AIR 1969 SC 1201 (S.N. Balakrishna v. Fernandez), the Supreme Court has held in no uncertain terms that such reports in news papers are at the most and at best a second hand secondary evidence. According to the Supreme Court it is very difficult for a court to rely on a news item published on the information given by correspondents because they may not represent the true state of affairs. A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence. It is well know that Reporters collect information and pass it on to the Editor who edits the news item and then publishes it. In this process, the truth may get perveried or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. In para 9 the Court has quoted the observations, which were made to this effect in AIR 1969 SC 1201. In the instant case also the xerox copy of the news paper shows that it is reported by its representative. It is not known as to whether such representative was present at the time of the meeting and what was his source of information for that purpose and in any case, in view of such strong and weighty observations made by Supreme Court, it is not possible for this court to place reliance on this document as a contemporaneous evidence for the purpose of holding that such a Resolution No.11 was passed on 30.4.99 and a decision was taken to withdraw the said Special Civil Application and this Court finds that there is no other reliable evidence what to talk of forcible evidence on the basis of which this Court may come to the conclusion that such a Resolution No.11 had in fact been passed. The facts and circumstances of this case appearing from the pleadings and material placed on record, indicate otherwise i.e. such a Resolution No.11 dt.30.4.99 had not been passed.

17. In any case, I find that besides the fact that Chandubhai Parshottamdas Patel had no proper authority to withdraw the said Special Civil Application, which had been filed by Visnagar Municipality while reposing faith in him as per the formal Resolution passed by the Municipality itself, he was not at all competent to withdraw this Special Civil Application, which was a petition filed in the interest of the elected body itself as per the Resolution No.87(7) in 1997. In no case, the elected body, which has been superseded by Government order under S. 263 and which has challenged the said order and when a stay order is already operating in their favour as granted by this Court for a very long period of time, would decide to withdraw such a petition so as to commit 'hara-kiri'. All said and done, the very manner in which the petition was sought to be withdrawn, this court simply feels bemoaned about it. When a mention was made by a learned member of the Bar for taking up the case, which was not on the board, for appropriate orders and the Court took it as an innocuous request made by the learned counsel and passed the order dismissing the main petition as withdrawn and vacated the interim order, the Court could never conceive or think that it was in fact sought to be tripped. In the facts and circumstances of this case, this Court actually feels that the elected body and its head were kept in dark and withdrawal of the petition filed by the Visnagar Municipality was sought by one of its members who came before the court with the mask of the Municipality. The face which came up for withdrawal of the petition was not the real face of the petitioner Municipality who had filed the petition. The dismal fact is that the court feels tripped and such cases do teach a lesson to the Courts to be extra careful and cautious, even while entertaining such requests even when the matters are simply sought to be withdrawn, particularly when the matters are not on the board. This Court, firmly believes that even if such a practice is permissible, such practice should not cause any injury to any party. The Principle is that Court cannot do any wrong to any party.

18. In the facts and circumstances of this case, when this Court finds that a party has been wronged on account of some error of taking up a case, when the case is called from the Registry while it is not on the board and the order is passed, which is adverse to the real petitioner and such order is obtained by a party who claims to be the petitioner but is not the real petitioner, the effect of such an order has got to be obviated and such error must obviate its effect.

19. It is, therefore, ordered that the order dt.22.6.99, on the basis of which the main Special Civil Application was dismissed as withdrawn, is hereby recalled. The entire order dt.22.6.99, as was passed on that day i.e. "Learned counsel for the petitioner seeks to withdraw this Special Civil Application unconditionally. Mr. Mukesh Patel has no objection. This Special Civil Application is therefore, dismissed as withdrawn. Rule is hereby discharged. Interim order passed in this case ceases to be operative and automatically stands vacated. No order as to costs. Direct service is permitted." is hereby recalled in toto and it is directed that the ad interim order, as had been passed by this Court on 25.7.97, stands revived and the same continues as if it had never been vacated. Now once the order dismissing the petition as withdrawn and the order that stay order ceases to be operative etc. has been recalled and the ad interim order, as passed by this Court on 25.7.97, stands revived, it must follow all natural consequences because whatever has happened on account of an order, which has been recalled, has got to be undone. This Court, therefore, further orders that the order dt.28.6.99 passed by the Government as a consequence of the order dt.22.6.99 passed by the Court subsequently, on the basis of which the charge was taken over by the Sub-Divisional Officer

from the existing Chair person/President of the Visnagar Municipality, has also to be undone and such charge, even if taken on 28.6.99, and even if such an Administrator i.e. Sub-Divisional Officer has been functioning from and after 28.6.99, he shall restore the charge forthwith to the Chairperson/President of the Visnagar Municipality, namely, Smt.Shantaben B.Patel and the Visnagar Municipality stands relegated to the position where it was before the passing of this order dismissing the Special Civil Application as withdrawn and before passing of the order dt.28.6.99 in pursuance of which the charge had been taken over by the Sub-Divisional Officer as Administrator of the Visnagar Municipality. In the facts and circumstances of this case, it is further ordered that during the pendency of this Special Civil Application, if at all the respondent State of Gujarat and its functionaries decide to pass any other order to the prejudice of the Visnagar Municipality or the Chairperson/President or the members of the said Municipality, such orders shall not be passed without first bringing it to the notice of the Court. The following records and documents, as have been produced before the Court by the parties during the course of arguments, shall be kept in a sealed cover in the safe custody of the Registry with the Registrar of this Court till the final disposal of Special Civil Application No.5334/97:-

1. Minute Book as produced by the President of the Visnagar Municipality.
2. Minute Book as produced by the Chief Officer of the Visnagar Municipality.
3. Original issue dt.4.5.99 of 'Lokmanya' daily.
4. Applications dt.7.5.99 and 2.6.99 addressed to the Chief Officer by Shri Chandubhai for the copy of the Resolution No.11.
5. Application dt.Nil addressed to the President/Chief Officer of Visnagar Municipality by 16 Councillors for taking up the question of withdrawal of pending Spl.C.A.No.5334/97 in the meeting of general body on 30.4.99.
6. Application dt.30.4.99 by 18 Councillors addressed to the President/Chief Officer of Visnagar Municipality in the matter of Resolutions No.296 to 299 and 300 to 347.
7. Copy of the Resolution No.11 bearing undated signatures of the Chief Officer.
8. Copy of Rule 41 in the matter of grant of copies as produced on 29.7.99 by the Chief Officer.
20. In the result the main Special Civil Application No.5334/97 stands restored to its original number with all the proceedings therein prior to the order dt.22.6.99 (which has been recalled) and the same has to proceed further for decision on merits. This Misc. Civil Application is accordingly allowed. Rule is made absolute. No order as to costs.