IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10459 of 1999
with
SPECIAL CIVIL APPLICATION NO.390 OF 2000
WITH
CIVIL APPLICATION NO.420 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI HARIBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10459 of 1999
MR JAYANT PATEL for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 4
MR MUKUND M DESAI for Respondent No. 6

2. Special Civil ApplicationNo 390 of 2000
MR Tushar Mehta for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 4
MR MUKUND M DESAI for Respondent No. 6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/10/2000

C.A.V JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners have challenged the Government decision dated 22.12.1999 abolishing Vagadod taluka in Patan District and placing all the villages comprised in the said taluka into Patan taluka. By ad-interim order dated 28.12.1999 this Court had directed the respondents to maintain status quo regarding abolition of Vagadod talukas. In view of the above ad-interim relief, the Government had not issued any notification under section 7 of the Bombay Land Revenue Code, 1879.

2. The first petition in Special Civil Application No. 10459/99 is the Sarpanch of the Vagadod Gram Panchayat. The other petitioners are residents of villages which are part of the Vagadod taluka. Prior to 15.10.1997 the villages in Vagadod taluka were part of Patan taluka and by Government notification dated 15.10.1997 erstwhile Mehsana District was bifurcated into Mehsana District and Patan District. Vagadod taluka was constituted as a new taluka with 39 villages and placed in Patan District. In December, 1997 the State Government had undertaken the exercise of reconstituting talukas, but Vagadod taluka continued as such without any change. Thereafter, the Government took impugned decision on 22.12.1999 to abolish Vagadod taluka and to make it a part of Patan taluka, but before the said decision could be converted into a Government notification when the State Government issued notifications in respect of other talukas on 31.12.1999, the petitioners approached this Court and this Court granted interim relief dated 28.12.1999 for maintenance of status quo as already stated above.

3. Thereafter, on 25.1.2000 another petition being Special Civil Application No.390/2000 came to be filed where also the petitioners challenged the decision to abolish Vagadod taluka and they raised additional plea that the headquarters of Vagadod taluka should be at Jangral and prayed for a writ of mandamus declaring the action of the State Government in fixing Vagadod as taluka headquarters as illegal, arbitrary and irrational and to direct the State Government to declare Jangral as taluka headquarters of Vagadod taluka.

4. Civil Application No. 420 of 2000 in Special Civil Application No. 10459/99 is filed by 5 villagers in Vagadod taluka contending that their villages originally situate in Patan taluka and other villages are also desirous of continuing in Patan taluka and, therefore, they support the Government decision to abolish Vagadod taluka and for placing all these villages in Patan taluka.

5. Since all these proceedings pertain to Vagadod taluka and the outcome of Special C.A.No.10459/99 would also be applicable to Special Civil Application 390/2000, with the consent of learned counsel for parties both the petitions have been heard together and are being disposed of by this common judgment.

6. Mr.Jayant Patel, learned counsel for the petitioners raised the following contentions:

(i) That the impugned decision is illegal because the Government has committed breach of the provisions of the Bombay Land Revenue Code, 1879, the Gujarat Panchayats Act, 1994 and the principle of natural justice by not providing opportunity of being heard to the residents or gram panchayats of 39 villages which constitute Vagadod taluka, although they are vitally affected by and suffer serious adverse civil consequences on account of the impugned decision.

(ii) The impugned decision is arbitrary and unreasonable as out of 39 villages in Vagadod taluka 35 villages are situate at a distance of only 10 to 15 Kms from Vagadod whereas Patan is situate at a distance of 35 to 40 Kms. Villages are well connected with Vagadod.

(iii) The impugned decision is also malafide because the Cabinet Sub Committee appointed to review the constitution of talukas had not recommended for abolition of Vagadod taluka. Merely because respondent No. 6 MLA had addressed a letter for abolishing Vagadod taluka on the basis of purported resolutions of the gram panchayats, the Government had taken the decision on that basis. Thereafter, the Collector reported that no such resolutions were found on the record of the respective gram Panchayats. The petitioners have produced letters of sarpanches of 32 out of 37

villages stating that the said 32 villages want to remain as part of Vagadod taluka.

(iv) The Union of India had issued instructions not to make any changes in talukas till 31.3.2000 in view of impending elections. The Government had committed breach of the said instructions by taking the impugned decision.

(v) The State Government has already held elections to the Vagadod taluka Panchayat as per the election notification dated 28.8.2000. Elections have already been held actually and therefore dismissing the petition would result into setting aside the elections already held and also requiring re-elections to Patan Taluka Panchayat.

7. On the other hand, Mr.S.N.Shelat, learned Additional Advocate General with Mr.A.D.Oza, learned Government Pleader for respondents have opposed the petitions and have made following submissions:

(i) Neither the provisions of Gujarat Panchayats Act nor the provisions of Bombay Land Revenue Code impose any obligation on the State Government to afford any opportunity of hearing to any villager or to any gram panchayat before taking any decision of shifting the village from one taluka to another taluka.

(ii) The principles of natural justice are not applicable while reconstituting talukas or abolishing talukas. Strong reliance is placed on the decision of the Division Bench of this Court dated 24.4.97 in Special Civil Application No.7240/97 (Gujarat Panchayat Parishad vs State of Gujarat) and on the decision of this Court in Patel Baldevbhai Ambalal vs. State of Gujarat, 1998 (1) GLH 1932.

(iii) The decision was taken bonafide. Even provisions of Article 243C (3)(c) require consultation with Minister/MLA from the concerned area before taking such decision.

(iv) On factual aspect, it is submitted that geographical situation of many villages is such that they are not directly connected with Vagadod but they have to go to Vagadod via Patan. Hence, the actual distance to reach Vagadod taluka

headquarters is more than the distance to reach Patan. Patan is not merely headquarters of Patan taluka but is also the headquarters of Patan district. Most of the villages of Vagadod taluka have easy access to Patan, because Patan is so geographically situated. There is police station, school and Mamlatdar office in Vagadod. But all institutes of higher education and technical education, hospitals and Railway facilities are available at Patan headquarters. Patan is also having Agricultural Produce Market Committee whereas Vagadod does not have APMC. After due deliberation, consultation, considering all aspects, resolutions of many gram panchayats cabinet at its meeting held on 22.12.1999 has taken the decision to abolish Vagadod taluka and villages of Vagadod taluka are included in Patan taluka.

8. Before considering the legal contentions, the relevant constitutional and statutory provisions are required to be considered. They read as under :-

Constitution of India

Art. 243. Definitions.- In this Part unless the context otherwise requires, -

(a) "district" means a district in a State;

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

(c) "intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;

(d) "panchayat" means an institution (by whatever name called) of self-government constituted under Article 243-B, for the rural areas;

(e) "Panchayat area" means the territorial area of a Panchayat;

Art 243-B. Constitution of Panchayats.- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) ... ...

Art.243-C. Composition of Panchayats.- (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions not exceeding twenty lakhs.

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) ... ...

(3) The Legislature of a State may, by law, provide for the representation -

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

Bombay Land Revenue Code, 1879

4. Chief Controlling authority in revenue matters.-(1) The chief controlling authority in all matters connected with the land revenue shall vest in the State Government.

(2) The State Government may, by notification in the Official Gazette, prescribe the territories in the State which shall form a division and may by a like notification alter the limits of the division so formed.

7. Division to be divided into district.- Each division shall be divided into such districts with such limits as may from time to time be prescribed by a duly published order of the State Government.

A district to consist of talukas comprising such mahals and villages as State Government may direct.- And each such district shall consists of such talukas, and each taluka shall consist of such mahals and villages, as may from time to time be prescribed in a duly published order of the State Government.

And each such mahal shall consist of such villages as may from time to time be prescribed by a duly published order of the State Government.

7A. Power of State Government to alter limits of or to amalgamate or constitute villages.- The State Government may from time to time by a duly published order alter or add to the limits of any village or amalgamate two or more villages or constitute a new village.

Gujarat Panchayats Act, 1993

2. Definitions.- In this Act, unless the context otherwise requires -

(5) "district" means a district constituted from time to time under the Land Revenue Code; except the area over which a district panchayat has no authority under Section 6.

(7) "district panchayat" means a district panchayat constituted under the Act.

(25) "taluka" means a taluka constituted from time to time under the Land Revenue Code, except the area over which a taluka panchayat has no authority under section 6.

(27) "taluka panchayat" means a taluka panchayat constituted under this Act.

(33) the words "gram sabha", "panchayat area", "population" and "village" shall have the meanings respectively assigned to them in Part IX of the Constitution.

3. Establishment of Panchayats of different tiers.-

For the purpose of this Act, there shall be in each district -

(1) a village panchayat for each village.
(2) a taluka panchayat for each taluka, and
(3) a district panchayat for each district.

7. Recommendation of specification of village.(1) After making such inquiries as may be prescribed, the competent authority may recommend any local area comprising a revenue village, or a group of revenue villages, or hamlets forming part of a revenue village, for being specified a village under clause (g) of article 243 of the Constitution, if the population of such local area does not exceed fifteen thousand.

(2) After consultation with the taluka panchayat, the district panchayat and village panchayat concerned (if already constituted), the competent authority may at any time recommend inclusion with or exclusion from any village or any local area or otherwise alteration of limits of any village, or recommend cesser or any local area to be a village, to the Governor for exercise of his powers under clause (g) of article 243 of the Constitution.

9. Several decisions have been cited on behalf of the petitioners in support of the contention that before shifting one taluka or village from one taluka to another taluka or before abolishing any taluka or in other words before reconstituting any taluka the State Government is required to provide opportunity of being heard at least to the gram panchayats which are to be affected by such

exercise. The said decisions are:

(1) AIR 1987 SC 1239
(2) AIR 1988 SC 1681
(3) AIR 1992 SC 836
(4) AIR 1995 SC 1512
(5) 1986 (1) GLR 247-377
(6) 2000 (2) GLR 1263

10. Mr.S.N.Shelat, learned Additional Advocate General has submitted that it has already been held by this Court in Patel Baldevbhai Ambalal vs State of Gujarat & ors 1998(1) GLH 932 decided on 12.3.1998 and by the Division Bench of this Court in the judgment dated 24.4.1998 in SCA No.7240/97 (Gujarat Panchayat Parishad vs. State) that before exercising its powers under Section 7 of the Bombay Land Revenue Code, the Government is not bound to issue a notice to the concerned gram panchayats or a general notice to residents of the concerned villages.

11. Having perused the aforesaid decisions this Court is of the view that the contention raised on behalf of the petitioner that the principles of natural justice are required to be followed before exercising powers under Section 7 of the Bombay Land Revenue Code for reconstitution of talukas has already been negatived by this Court in the aforesaid decisions cited by Mr Shelat. The learned counsel for the petitioners made an attempt to persuade the Court to reconsider the view taken in Baldevbhai's case in view of two judgments of the Apex Court which were not cited before this Court while deciding the case of Baldevbhai, more particularly strong reliance was placed on the decisions of the Apex Court in Baldevsingh vs. State of H.P., AIR 1987 SC 1239 and in State of UP & Ors. vs. Pradan Sangh Kshettra Samiti & Ors., AIR 1995 SC 1512.

In baldevsingh's case (supra), 4 villages inhibited by agriculturists and having a rural set up and forming parts of gram panchayats under the relevant statute were sought to constituted as a notified area under Section 256 of the Himachal Pradesh Municipal Act. The Apex Court came to the conclusion that the requirements indicated in the section were not considered. Then the Court observed as under :-

"Citizens of India have a right to decide, what should be the nature of their society in which

they live - agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidences of tax and the like."

It was in this backgroud that the Apex Court held that before the notified area was constituted, the people of the 4 villages should have been afforded an opportunity of being heard and the decision should have been taken after considering the views of the residents.

In the facts of the present case as well as in other petitions being disposed of today, the nature of the society in which the concerned villages are being shifted does not change. Their administration is being shifted from one taluka panchayat to another taluka panchayat.

The decision of this Court in Chhani Nagar Panchayat vs. State of Gujarat, 2000 (2) GLR 1263 dealt with the case where certain villages were being shifted from panchayat area to a notified area. Therefore, the Court held that the requirement for consultation was mandatory.

So far as the decision of the Apex Court in State of UP vs. Pradan Sangh Kshettra Samiti (Supra) is concerned, this decision was considered by the Division Bench of this Court while delivering the judgment in Special Civil Application No. 7240/97. The Division bench rejected the contention about applicability of the principle of natural justice for the following reasons :-

(i) The institution of self-government should not be interfered with. By reconstitution of the Panchayat area, if any portion of that area falls outside the jurisdiction of an institution of self-government, that will violate the Constitutional mandate. If no part of the Panchayat area, on reconstitution or reorganization falls outside the institution of self-Government, such reconstitution or

reorganization can not be faulted. The area, which thus becomes attached to the new District Panchayat/Taluka Panchayat will continue to be under an institution of self-government.

(ii) The Bombay Land Revenue Code authorizes Government to reorganize Districts and Talukas. The boundaries of the taluka have to be specified by the State Government and can be changed by the State Government. After the amendment of the Constitution by the Seventy Third Amendment, Gujarat Panchayats Act 18 of 1993,was enacted. That defines "Panchayat" to mean "a village panchayat, taluka panchayat or district panchayat". Similarly, "district" has been defined in that Act as "a district constituted from time to time under the Land Revenue Code". Similarly, "taluka" has been defined as one "constituted from time to time under the Land Revenue Code". "Village Panchayat" is defined as one "constituted under the Act". It is clear that the Taluka Panchayat or District Panchayat should be in relation to the Taluka or District as constituted by the Government from time to time under the Bombay Land Revenue Code. Thus, in the case of State of U.P vs Pradhan Sangh Kshettra Samiti, AIR 1995 SC 1512, it is held that the State Government has power to change the boundaries of the Districts and Talukas.

(iii) Section 9(2) of the Panchayats Act, as it stood prior to the amendment of 1993, provided for consultation with Taluka Panchayat, District Panchayat and the Nagar or Gram Panchayat before deciding on the question as to whether a local area shall be included or excluded to any Nagar or Gram. Such provision has been specifically excluded when Act 18 was enacted in 1993. The exclusion of this provision shows that the Legislature wanted to exclude the provision for consultation. In other words, Legislature specifically excluded the application of principles of natural justice in the case of reorganization or delimitation of Panchayats of other local self-government. Looking into this legislative history, it can safely be taken that the Legislature expressly excluded the application of rule of natural justice. In such a situation, this Court can not read into the provision of Section 7 of the Bombay Land Revenue Code principles of natural justice (vide Dr.Rash

Lal Yadav v State of Bihar & Ors, JHT 1994 (7) SC 62).

12. Mr KG Vakharia, learned counsel appearing for the petitioners in Special Civil Application No. 390 of 2000 and Mr Jayant Patel, learned counsel appearing for the petitioners in Special Civil Application No. 10459/99, however, vehemently urged that the aforesaid decision of the Division Bench requires reconsideration and the matter may be referred to a Larger Bench as the Division Bench drew the inference of exclusion of principle of natural justice on the ground of deletion of such principle while enacting Gujarat Panchayats Act, 1993. It was submitted that the contents of sub-section (2) of Section 9 of Gujarat Panchayats Act, 1961 are now reproduced in sub-section (2) of section 7 of the Gujarat Panchayats Act, 1993 and, therefore, the Division Bench decision requires reconsideration. Section 9 of the Panchayats Act of 1961 in so far as the same is relevant for the purpose of these petitions reads as under :-

"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 :-

(a) to be a nagar, if the population of such local area does not exceeds 10,000 but does not exceed 25,000, and

(b) to be a gram, if the population of such local area does not exceed 10,000;

... ...

(2) After consulation 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; or having regard

to clauses (a) and (b) of sub-section (1), declare the whole area comprised in a gram or the party thereof to be a nagar or two or more grams or the whole area comprised in a nagar to be a gram or split up the area comprised in the nagar into a nagar and a gram or into two or more grams;

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

Section 7(2) of the Gujarat Panchayats Act, 1993 reads as under :-

"7. Recommendation of specification of village.(1) ... ...

(2) After consultation with the taluka panchayat, the district panchayat and village panchayat concerned (if already constituted), the competent authority may at any time recommend inclusion with or exclusion from any village or any local area or otherwise alteration of limits of any village, or recommend cesser or any local area to be a village, to the Governor for exercise of his powers under clause (g) of article 243 of the Constitution."

While this Court agrees that the inference drawn by the Division Bench about legislative intent may not be borne out by the provisions of the Panchayats Act of 1993, nevertheless this Court is not inclined to refer the matter to a Larger Bench because the Division bench did not base its decision solely on the said legislative intent. As already pointed out, the Division bench gave three reasons for not accepting the contention that the village panchayats have a right of hearing before the State Government can exercise its powers under Section 7 of the Bombay Land Revenue Code. The first two two reasons as well as the reasons already given by this Court in the case of Patel Baldevbhai Ambalal vs. State of Gujarat, 1998 (1) GLH 923 are sufficient to follow the view taken earlier that village people/gram panchayats have no legal right to be heard before the Government exercises its powers under Section 7 of the Bombay Land

Revenue Code, in view of the undisputed fact in these petitions and other petitions being disposed of today that even if the impugned decisions are implemented, the concerned villages will continue to be under an institution of self government. Such right would be available only when the State Government exercises its powers under Section 7A of the Bombay Land Revenue Code in view of the provisions of Section 7(2) of the Gujarat Panchayats Act, 1993.

It is true that in State of U.P. vs. Pradhan Sangh Kshettra Samiti, AIR 1995 SC 1512, the Apex Court observed that a reasonable opportunity for raising objections and hearing ought to be given to the village people when the change in areas of the local boundaries results in civil consequences. It was not disputed before the Apex Court that the action of bringing more villages than one under one gram panchayat when they were earlier under separate gram panchayats did involve civil consequences.

In the facts of the present case, the petitioners have not, however, brought any such facts on record to show as to how the abolition of Vagadod taluka would involve civil consequences. Of course, one civil consequence has been pointed out that upon abolition of Vagadod taluka, the representatives of the taluka panchayats sitting as members of the Patan District Panchayat would lose their right to represent the Vagadod taluka. In the first place, there is nothing on record to show that upon formation of Patan District and Vagadod Taluka in October, 1997, any panchayats were constituted for Patan District and Vagadod Taluka. In any case, no person claiming to be a member of Vagadod Taluka Panchayat and also a member of the Patan District Panchayat has challenged the impugned decision. Even otherwise, this argument would have been of avail to the petitioners if Patan District Panchayat had continued in existence as formed earlier with representatives from all talukas other than Vagadod. However, apart from the fact that on account of the ad-interim relief granted by this Court, the Government decision dated 22.12.1999 to abolish Vagadod taluka has not come into existence through any Government notification under Section 7 of the Bombay Land Revenue Code, the fact remains that the terms of all the taluka panchayats have lapsed by efflux of time and elections have recently been held in September, 2000 to Vagadod taluka panchayat also as per the State Election Commission notification dated 28.8.2000. Hence, the aforesaid grievance does not survive.

13. This Court respectfully follows the principle laid down by the Division Bench of this Court in the judgment in the case of Gujarat Panchayat Parishad vs. State (Supra) and holds that no fault can be found with the impugned decision of the Government on the ground that opportunity of hearing was not given to the villagers or Gram Panchayats of 39 villages which formed Vagadod taluka. Even while holding that under law, the village people or the gram panchayats of the concerned area have no right to be heard before the State Government can exercise its powers under Section 7 of the Bombay Land Revenue Code, this does not mean that the wishes of the people/gram panchayat are an absolutely irrelevant factor in the matter of formation/reconstitution/abolition of talukas. Even though section 9(2) of the Panchayats Act of 1961 and Section 7(2) of the Panchayats Act of 1993 pertain to alteration of geographical limits of a gram panchayat, the observations made by this Court in Bhalod Gram Panchayat vs. State of Gujarat, 1986 (1) GLR, 247 and in Bavabhai Sukhabhai Patel vs. State of Gujarat, 1986 (1) GLR 377 are required to be kept in mind. This Court has observed in the case of Bavabhai (Supra) that while considering the convenience of the revenue administration in such matters, the convenience of bureaucracy alone cannot be taken into consideration. The convenience of the subjects i.e. the people who are coming within the revenue limits of a particular unit, has also got to be taken into consideration. Hence, the wishes of the village people acting through the gram panchayat have to be considered as a relevant factor through that cannot be the sole determining factor. In other words, though the State Government, while exercising its powers under Section 7 of the Bombay Land Revenue Code, is not bound to issue a notice to the gram panchayats likely to be affected by the constitution/abolition/reconsideration of taluka panchayat, if such gram panchayats make representations on such issue, the State Government is bound to consider them as a relevant factor and weigh them alongwith the other relevant administrative factors. It would always depend on the facts and circumstances of each case as to how much weightage should be given to a particular factor vis-a-vis another factor but the wishes of the village people as reflected through the gram panchayat cannot be said to be irrelevant.

14. Before considering the aforesaid discussion and before dealing with the contentions arising from the factual aspects, it is necessary to refer to the

background leading to the decisions which are impugned in the present petitions and in other petitions being disposed of today by separate judgments. These facts are stated in the affidavit in reply filed on behalf of the State Government in a cognate petition i.e. Special Civil Application No. 14/2000.

14.1 In exercise of powers under Section 7 of the Bombay Land Revenue Code, 1879, the State of Gujarat by virtue of its Revenue Department Government resolution dated 24th September 1997 No. PFR-1097-L divided and reconstituted the various districts and talukas. 6 new districts were constituted, and in all (19+6) 25 district were formed. Accordingly mainly by notifications dated 15th October 1997, 46 new talukas were constituted. In all (184+46) 230 talukas came into existence.

14.2 It was found necessary and proper to review the decisions regarding bifurcation of districts/talukas taken by the erstwhile Government, therefore, the Cabinet at its meeting dated 1st April 1998 decided to constitute a Committee headed by the Chief Secretary. The Committee was accordingly constituted by the Government Resolution (the Revenue Department) dated 7th April 1998. 1998. Four other Secretaries were appointed as members of the said Committee. Furthermore, by another Government Resolution dated 4th April 1998 of the General Administration Department, a Cabinet Sub-committee consisting of five Cabinet ministers was constituted.

1. Shri Sureshbhai Mehta, Minister of Industries.
2. Minister of Revenue
3. Minister of Narmada
4. Minister of Health
5. Minister of State Home

14.3 The Committee headed by the Chief Secretary time and again held meetings and studied the question of division of districts/talukas/villages and submitted a report in this regard to the Minister for Industries who is the Chief Member of Cabinet sub-committee. The Committee headed by the Chief Secretary examined the administrative difficulties created by formation of districts and talukas in 1997 and made the following general observations :-

"There were certain talukas, inter alia, created for the purpose of reducing the administrative load on certain bigger talukas. However, even after bifurcation of such old talukas and

creation of new talukas, the distribution of the villages was not done properly with the result that the administrative machinery in some of the old bigger talukas was still overburdened while the administrative infrastructure created in the new talukas remained unutilized or underutilized."

The Committee then laid down the following general broad norms :-

(i) A taluka should have a population of between 1 lac to 1.5 lacs people and 50 to 70 villages. There cannot be any hard and fast rule, but the above general yardstick was required to be kept in mind as a general yardstick so that the administrative machinery can properly respond to people's expectations and solve their problems.

(ii) If the distribution of talukas was not properly done while creating new talukas, the villages on the borders of the smaller talukas with less population may be considered for their being included in such small talukas. The concerned villages should be contiguous to be border of smaller talukas. If there is a group of villages, such a group may be placed in one taluka.

(iii) There should be road facilities for approaching the taluka headquarters. The commercial and social relations of the village people should be with the concerned taluka headquarters. The desire of the village people should also be taken into consideration.

All the aforesaid factors should be taken into consideration."

Accordingly, the said Committee recommended reconstitution/abolition of certain talukas by either enlarging smaller talukas by including of adjoining villages in such talukas or by abolishing very small talukas and making certain alternative suggestions to reduce the administrative burden old bigger talukas. The Committee divided the 46 talukas created in 1997 in the following three broad categories :-

(i) Talukas which were properly constituted as per the norms.

(ii) Talukas which were by and large constituted as per the norms, but all the relevant aspects were required to be considered before making smaller talukas more adequate size and population.

(iii) Talukas whose creation was not in accordance with the norms.

14.4 The Cabinet sub-committee in its meeting held on 17th December 1998 and 16th February 1999 studied the report of the Committee headed by the Chief Secretary as well as the reports of the concerned Collectors and placed the same before the Cabinet in its meeting held on 15th September, 1999. Upon discussions taking place in the cabinet in this regard, it was decided that a committee consisting of the Minister for Industries and the Minister for Revenue should discuss and consider the same and place the same before the Cabinet. The Committee consisting of the aforesaid two Ministers held meetings on 27th October 1999, 1st November 1999, 2nd November 1999, 26th November 1999 and 29th November 1999 and discussed the said issue at length. The aforesaid Committee after personally hearing the Ministers in Charge of the districts and as far as possible the concerned members of the Legislative Assembly, made recommendations to the Cabinet for making changes wherever it found it necessary to make changes in the Talukas/villages. The Cabinet at its meeting held on 1st December 1999 discussed the recommendations made by the aforesaid committee and took necessary decision. Thereafter, the Cabinet sub-committee at its meetings held on 7th December 1999 and 8th December 1999 considered the remaining issues pertaining to division of Districts/Talukas and made recommendations. After discussing the same with the Minister in charge of the respective districts recommendations were made for change wherever it was found proper. The Cabinet at its meeting held on 22nd December 1999 discussed the same and took the necessary decisions."

15. As regards the contention that the impugned decision has been taken malafide at the instance of respondent No.6 herein who is the sitting MLA from the area it can not be said that consultation with MLA of the area or the Minister from the area, per se, would make the decision malafide. There is considerable substance

in the submission of the learned Additional Advocate General that in view of the provisions of Article 243-C(3) of the Constitution consultation with the Minister or the MLA from the concerned area before taking decision in such matters cannot be said to be illegal or improper. When the Constitution itself provides that the sitting MLA from the area can, by law, be made by law a member of the taluka panchayat or district panchayat, there is no reason why the State Government, while taking decision for constitution/reconstitution or abolition of talukas/districts cannot consult the concerned Minister/MLA of the concerned area. Hence, consultation with the concerned Minister/MLA of the area, per se, does not make the decision mala fide.

16. Having gone through the reports of the Committee presided over by the Chief Secretary and also the report of the Ministers Committee, it appears that while the said committees had recommended abolition of certain talukas like Panthwada, Gojaria, Detroj, Rampura, Barwale, Satlasan in different districts, the Chief Secretary's Committee did not recommend abolition of Vagadod taluka. On the contrary, the Chief Secretary's Committee had stated in its report that the creation of Vagadod taluka in Patan District was by and large in accordance with the norms. Hence, the impugned decision dated 22.12.1999 to abolish Vagadod taluka in Patan District and to include all the villages in the erstwhile Patan district appears to have been taken mainly on the basis of the letter of respondent No. 6 alongwith which, he had forwarded, the resolutions purportedly passed by 24 out of 39 village gram panchayats. According to the said resolutions of 24 gram panchayats, they wanted Vagadod taluka to be abolished and all the said villages to be placed in Patan taluka.

17. However, in the facts of the present case, there is a very serious controversy about the basis on which respondent No.6 had recommended the abolition of the Vagadod taluka. According to the State Government respondent No.6 had recommended abolition of Vagadod taluka on the ground that out of 39 villages, as many as 24 villages through their respective gram panchayats had forwarded resolutions requesting the State Government to place them in Patan taluka. Serious and strong exception has been taken to the aforesaid averment made in the reply affidavit, in the affidavit in rejoinder filed on behalf of the petitioners. It is for the first time in the affidavit in reply that the aforesaid stand of the State Government has been disclosed. Civil Application No. 420/2000 has been filed by Sarpanches of five

villages of Patan taluka who want to be included in Patan taluka, but the petitioners' case is that Sarpanches of 32 villages wanted the respective villages to continue in Vagadod taluka.

Resident Deputy Collector, M.D.Modiya filed affidavit in reply dated 30.8.2000 stating that he has verified all the 21 resolutions passed by different village panchayats, ut of which 20 villages have resolved to join in Patan taluka, Mesar village Panchayat has resolved that Vagadod taluka should be abolished. All the above resolutions were shown to the learned counsel for the petitioners and a serious dispute is raised on behalf of the petitioners about the authenticity of the resolution books from which relevant extracts have been shown as resolution of the respective village panchayats which accompanied the letter of the respondent No.6.

18. In view of the fact that the recommendation of respondent No.6 has heavily weighed with the State Government in taking the decision to abolish Vagadod taluka and also considering the fact that a very serious dispute has been raised about the authenticity of the resolution books of 21 village panchayats who have purportedly expressed their desire to be part of Patan Taluka and considering the fact that even some of the village panchayats in Vagadod taluka have expressed their desire for changing headquarters from Vagadod and more particularly considering the fact that the elections have very recently been held in September, 2000 to Vagadod taluka panchayat and as Vagadod taluka has continued to be a taluka in view of the ad-interim relief granted by this Court on 28.12.1999 and further considering the fact that the State Government is enjoined by the Government of India not to make any changes in talukas or districts till 31.3.2001 and also in view of the fact that no notification has been issued under Gujarat Panchayats Act or the Bombay Land Revenue Code abolishing Vagadod Taluka, in view of the ad-interim relief granted by this Court, interests of justice would be served if the gram panchayats of 39 villages in Vagadod taluka are permitted to make representation/s to the State Government by 30th November, 2000 for continuation of Vagadod taluka and if such representation/s is/are made, the State Government shall consider the same without being deterred or influenced by the previous decision dated 22.12.1999. The State Government shall make a detailed enquiry by deputing a senior officer not below the rank of a Collector, Deputy Secretary to enquire into the authenticity of the resolutions which were sent alongwith

the letter of respondent No. 6 for recommending abolition of Vagadod taluka. This enquiry may not be required if the State Government decides to accept the willingness of majority of gram panchayats to continue Vagadod taluka.

While undertaking this exercise, if the State Government decides to continue Vagadod Taluka as a taluka, the Government shall also consider as to which place shall be the headquarters of Vagadod taluka. While making their representations, it will be open to the gram panchayats to indicate their preference for a particular town as headquarters of Vagadod taluka. It is clarified that this liberty granted to gram panchayats for expressing their preference for the headquarters shall not be used by the State Government as a controversial issue for the purpose of rejecting the representation of the gram panchayats to continue Vagadod taluka as a separate taluka, since Mr.Jayant Patel learned counsel for the petitioners in SCA No.10459/99 and Mr.Tushar Mehta, learned counsel for the petitioners in SCA No.390/2000 have submitted that their respective clients are prepared to burry their differences about the headquarters of Vagadod taluka if such a difference of opinion is to be raised as a ground for abolishing Vagadod taluka, and that they would rather prefer the respective gram panchayats to indicate their preference for taluka headquarters, if Vagadod Taluka is continued as a separate taluka.

19. In the facts and circumstances of the case, it will be in the fitness of things if the State Government considers afresh the entire issue about the continuation or otherwise of Vagadod taluka after taking into consideration all the relevant factors latest by 28th February. 2001.

20. In view of the above discussion, both the petitions are disposed of in terms of the aforesaid observations and directions. Rule in each petition is made absolute to the aforesaid extent only. There shall be no order as to costs.

21. Since the main petition is disposed of, Civil Application No.420/000 is disposed of.

20.10.2000 (M.S.Shah,J)