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BABUBHAI MULJIBHAI PATEL

v.

NANDLAL KHODIDAS BAROT & ORS.

September 17, 1974

B [H. R. KHANNA, M. H. BEG AND V. R. KRISHNA IYER, JJ.]

Constitution of India, 1950—Art. 226—Nature and scope of jurisdiction of the High Court—Whether the High Court could decide writ petitions on affidavits—Whether the High Court should call all the deponents for cross-examination—Difference between a motion of no confidence and censure motion.

C A vote of no confidence was moved by respondent no. 1 against the appellant who was the elected President of a Municipality. The appellant's party claimed that the motion was lost while the respondent no. 1 claimed that it was carried. Since the appellant did not vacate his office respondent no. 1 filed a writ petition under article 226 of the Constitution. Before the High Court a number of affidavits had been filed on behalf of the appellant and the respondent. After cross-examining six persons for respondent and two for the appellant the High Court held that the appellant had ceased to be the President.

D On appeal to this Court it was contended (1) that as the dispute between the parties involved questions of fact the High Court should have referred the parties to a separate suit, (2) that the High Court should have permitted cross-examination of all deponents, (3) that as the cross-examination of only a few of the deponents had been permitted the affidavits of others who were not cross-examined could not be taken into consideration; (4) that the High Court was wrong in relying upon the version of respondent no. 1 that one of the councillors who was a supporter of the appellant had supported the motion of no confidence; (5) that the councillors had to stick to the ground specified in the notice and E could not depart from it in passing the motion of no confidence.

Dismissing the appeal,

HELD : (1)(a) The appellant could not be heard to say that the Court should have relegated respondent no. 1 to the remedy of a suit. Had the respondent no. 1 been directed to seek his remedy by way of a suit the relief secured by him would have been wholly illusory because by F the time he would succeed in the litigation, the term of the office of the President would have either already expired or be about to expire. The appellant in that event would have continued as the President of the Municipality even though he had ceased to enjoy the confidence of the requisite number of councillors. The entire concept of a democratic institution would thus have been set at naught. [79H; 80B-C]

G (b) In a petition under Art. 226 the High Court has jurisdiction to try issues both of fact and law. The words "as far as it can be made applicable" occurring in s. 141 of the Code of Civil Procedure make it clear that in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief sought. The object of article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue orders or writs. If the procedure of a suit had also to be adhered to in the case of writ petitions the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under article 226 is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit H into the proceedings of a petition under article 226. The High Court is not deprived of this jurisdiction to entertain a petition under article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. [80D-G]

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Gunwant Kaur v. *Bhatinda Municipality* A.I.R. 1970 SC 802 relied on.

(2) It is difficult to accede to this contention. Normally writ petitions are decided on the basis of affidavits. In some cases, however, where it is not possible for a court to arrive at a definite conclusion on account of there being affidavits of either side containing allegations and counter-allegations it would not only be desirable but in the interest of justice, it is the duty also of the court to summon a deponent for cross-examination in order to arrive at the truth. The fact that the court permits cross-examination of some of the deponents in a petition does not warrant the proposition that the court is bound to permit cross-examination of each and everyone of the deponents whom a party wishes to cross-examine. [81C-D]

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Barium Chemicals Ltd. & Anr. v. *The Company Law Board & Ors.* [1966] Supp. S.C.R. 311 on p. 353, referred to.

In the present case the discretion exercised by the High Court in selecting for cross-examination those deponents whom it considered to be crucial was proper and judicious. No prejudice was caused to any of the parties by the procedure adopted by the High Court. [82A-B]

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(3) From the fact that the High Court had permitted cross-examination of only some deponents it did not follow that the High Court was precluded from taking into consideration the affidavits of other deponents. Order permitting cross-examination of some of the deponents did not have the effect of obliterating from record the affidavits of other deponents. There is nothing wrong in the approach of the High Court in relying upon the affidavits of deponents who were not cross-examined on a conspectus of the entire circumstances of the case. [82H]

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(4) The submission must be rejected. It may be a matter of mournful reflection but all the same it is the acknowledgment of a stark reality that there has been in recent years in the case of some elected representatives so much erosion of moral values that they feel no compunction in repeatedly changing their loyalty and shifting their allegiance from one party leader to the other. Such representatives have a pliable conscience plainly because they succumb to all kinds of pressures and yield to all kinds of temptations. They bring a touch of melodrama and the kaleidoscopic nature of the local political scene is quite often a reflection of the sombre activities of these representatives. Against the backdrop of such activities there is nothing surprising or unusual in the conduct of the Councillor. [83H]

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(5) There is no imperative requirement in the case of a motion of no confidence that it should be passed on some particular ground. There is nothing in the language of s. 36 of the Gujarat Municipalities Act which makes it necessary to specify a ground when passing a motion of no confidence against the President. Though according to the form prescribed the ground has to be mentioned, it does not follow that the ground must also be specified when a motion of no confidence is actually passed against a President. [86A-B]

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There is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. [86C]

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Practice & Procedure of Parliament 2nd Edition, by Kaul and Shakdher, p. 591 referred to.

Krishna Iyer, J:

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It acts enormously to inconvenience, expense and delay to insist on oral evidence for proof of every little relevant fact in judicial proceedings by suit or writ. Faith in viva voce examination tested by severe cross-examination has sometimes

A been reduced to a legal superstitution. While screening the veracity of glib versions on vital matters of controversy by telling cross-examination in court is necessary, many facts, either formal, non-controversial or well-established otherwise, may well be proved by affidavit evidence. In a civil case reliance upon statements made before the police is not merely irrelevant but throws up suspicion because the police had no business to record any statement, as the High Court has itself pointed out. [89E-F; 90A]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1707 of 1973.

Appeal by Special Leave from the Judgment and Order dated 9th October 1973 of the Gujarat High Court in Spl. C. Appl. No. 808 of 1973.

C *M. P. Amin, Piyush Amin, P. H. Parekh, S. Bhandare, Manju Jaitley* and *Bhandare Parekh & Co.* for the appellant.

Respondent No. 1 *appeared in person.*

Vimal Dave and *Kailash Mehta* for respondent No. 2.

R. H. Dhebar and *M. N. Shroff* for respondent No. 3.

D The Judgment of the Court was delivered by Khanna J. Krishna Iyer J. gave a separate Opinion.

KHANNA, J. On a petition under article 226 of the Constitution of India filed by Nandlal Khodidas Barot respondent No. 1 the Gujarat High Court issued a writ of *certiorari* and quashed order E dated June 9, 1973 of the Collector Mehsana, respondent No. 3, whereby it had been held that the no confidence motion against Babubhai Muljibhai Patel appellant as the President of Kalol Municipality had not been validly passed. The High Court further held that the appellant had ceased to be President of that municipality since May 10, 1973 and that since that date he was usurper of that office. A writ of *mandamus* was also issued directing the appellant F to refrain from functioning as the President of the Kalol Municipality. Direction was further issued to the Collector to hold fresh elections to the post of the President of Kalol Municipality. The appellant has filed this appeal by special leave against the above judgment of the Gujarat High Court.

Kalol Municipality in district Mehsana has 25 councillors. The G appellant was elected President of the said municipality with effect from November 1, 1970. The term of the President is for a period of five years. On November 1, 1972 respondent No. 1 moved a motion of no confidence against the appellant. Sixteen councillors belonging to the group of respondent No. 1 voted for the motion and two councillors belonging to the group of the appellant voted against H it. The Vice President of the municipality who was in the chair declared that the no confidence motion had failed for want of two-thirds majority of the total number of councillors. In this view 17 councillors out of 25 constituted the requisite two-thirds majority

contemplated by section 36 of the Gujarat Municipalities Act, 1963 (Gujarat Act No. 34 of 1964) which reads as under :

> "36. Motion of no confidence. (1) Any councillor of a municipality who intends to move a motion of no confidence against its president or vice-president may give a notice thereof, in such form as may be prescribed by the State Government, to the municipality. If the notice is supported by not less than one third of the total number of the then councillors of the municipality, the motion may be moved.
>
> (2) If the motion is carried by a majority of not less than two thirds of the total number of the then councillors of the municipality, the president or, as the case may be, the vice-president shall cease to hold office after a period of three days from the date on which the motion is carried unless he has earlier resigned; and thereupon the office held by him shall be declared to be vacant.
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> (3) Notwithstanding anything contained in this Act or the rules made thereunder, the president, or as the case may be, the vice-president shall not preside over a meeting in which a motion of no confidence against him is discussed; but he shall have the right to speak in or otherwise take part in the proceedings of such meeting (including the right to vote)."

A writ petition was then filed by respondent No. 1 in the Gujarat High Court to challenge the above ruling. A Division Bench of the High Court after referring to section 36 of the Act held as per judgment dated April 2, 1973 that a motion of no confidence could be said to have been carried in case of a municipality consisting of 25 councillors if at least 17 councillors voted for such a motion.

On April 21, 1973 a requisition signed by 16 councillors, including respondent No. 1, was sent to the President Kalol Municipality for convening a special general meeting of the municipality to consider a motion of no confidence against the appellant as the President of that municipality on the following ground :

> "Your act of writing false and concocted proceedings of the meeting dated 27-3-73 amounts to the crime of forgery and is highly unbefitting your status as President of the Municipality."

In accordance with the above requisition, a meeting of the Kalol Municipality was convened for May 6, 1973 at 6 p.m. There are conflicting versions of what transpired in that meeting. According to the appellant, 13 councillors were present in that meeting. One of them was the appellant and the other was Chandulal Chhotalal Barot, Vice President of the municipality, who also belongs to the

A group of the appellant. Eleven others belonging to the opposite group were present in that meeting. As the meeting was to consider a motion of no confidence against the President, Chandulal Chhotalal Barot Vice President presided over the meeting. The Vice President in the course of his ruling observed that the ground which had been given in support of the motion of no confidence was fabricated, false B and without truth. It was further observed in that ruling :

> "I, therefore, rule out the cause contained in this motion and declare that they are not relevant to the present motion. However, I place this for voting without there being existence of any cause."

After reading out the ruling, the Vice President recorded a note in C respect of the minutes of that meeting and the same reads as under :

> "The aforesaid ruling was read over in the meeting and in taking votes on the motion without the aforesaid point, no body showed hand in favour of the motion and there were two votes against the motion, viz., (1) Shri B. M. D Patel and (2) C. C. Barot. As there were not legally sufficient number of votes, i.e., 17 votes in favour of the motion, the said no confidence motion is not passed and is declared to have been rejected.
>
> Dated 6-5-1973 time 6.15 p.m.
>
> On today's business of the meeting being over as above, E the meeting is dissolved and having declared accordingly in the Board, the members dispersed.
>
> Date : 6-5-1973
> Time : 6.15 p.m.
>
> Sd/- Barot Chandulal F Chhotalal, Vice-President, Kalol Municipality."

As against the above version, according to respondent No. 1, 19 councillors were present in that meeting. They included the appellant, Vice President Barot and two councillors Kantilal Chhaganlal Shah G and Vithalbhai Somabhai Patel, to whom reference would be made hereafter. What transpired in that meeting according to respondent No. 1 was given in the note of councillor N.S. Parmar who was alleged to have presided over the meeting after the walk out of the appellant and the Vice President. The note of N. S. Parmar reads as under :

> "Today a Special General Meeting was called to discuss H a motion of no confidence against the President Shri B. M. Patel. As the no confidence motion was to be discussed against the President Shri B. M. Patel, the Vice President, Shri C. C. Barot had presided over the meeting. He (the

Vice-President) directed the Chief Officer Shri R. D. Barot as well as the Secretary Shri Thakkar not to write the proceedings of today's meeting in the proceeding book.

'I shall make a note in the rough sheet myself'.

The member raised a protest against this and the protest having become severe and there being circumstances enabling the meeting to pass a motion of no confidence as per the required legal two-thirds majority, by the Chairman, Shri C. C. Barot, and the President Shri B. M. Patel have walked out of the Council Hall. The other remaining members are present. The chairman of today's meeting Shri C. C. Barot has not taken on hand the motion of no confidence for discussion in today's meeting. He has also not taken votes of the members as per law on the motion. There being a position of the motion of no confidence being carried by the required legal majority, I propose the name of Shri Narayanbhai Sadabhai Parmar to preside over the meeting and to go ahead with the business of the meeting.

Proposed by Girish M. Bhatt

and

Seconded by Shah Rameshchandra Ramanlal.

The above motion being supported by unanimously 17 members. I preside over today's meeting and take on hand the business of the agenda.

Sd.

N. S. PARMAR,
Presiding Authority,
KALOL MUNICIPALITY."

Later on May 6, 1973 Vice President Barot sent a telegram to the Collector giving his version of the meeting. Report was also sent on the same day, i.e. May 6, 1973 by R. D. Barot, Chief Officer Kalol Municipality to the Collector stating that a resolution had been passed against the appellant as President of the municipality. It was stated that a vacancy in the office of the President of the municipality had arisen and election to that office be held.

The appellant as the President of Kalol Municipality convened a meeting of the municipality for May 18, 1973. A day before that on May 17, 1973 respondent No. 1 filed the present petition under article 226 of the Constitution in the Gujarat High Court praying for the issue of a writ of *quo warranto* for ousting the appellant from the office of the President of the Kalol Municipality and for declaring that the said office had fallen vacant in view of the motion of no confidence having been passed on May 6, 1973. Prayer was also made that the appellant be directed not to preside over the meeting fixed for May 18, 1973.

A During the pendency of the petition before the High Court, the Collector of Mehsana to whom conflicting versions of the proceedings of the meeting of May 6, 1973 had been sent held an inquiry and, as per order dated June 9, 1973, came to the conclusion that Councillor Vithalbhai Somabhai Patel was not present in the meeting held on May 6, 1973. Reliance in this connection was placed upon the affidavit filed by Patel that he was not present in that meeting. The Collector also took into account the fact that the signatures of the 17 councillors who were alleged to be present in that meeting had not been obtained. It was further observed that after the meeting presided over by the Vice President had terminated, no meeting could be legally held under the chairmanship of N. S. Parmar. The concluding part of the order of the Collector reads as under :

> "In view of what is discussed above I come to the conclusion that the alleged no confidence motion against the President Shri B. M. Patel has not been validly passed. The very validity of the meeting held under the chairmanship of Shri N. S. Parmar is doubtful and it is beyond doubt that Shri V. S. Patel did not attend and vote for no confidence motion and thus the alleged motion was not supported and voted by more than 2/3rd of the total number of councillors of Kalol Municipality, the office of the President has not, therefore, fallen vacant and hence no action requires to be taken on communication of Shri R. D. Barot."

After the Collector had made the above order, the writ petition filed by respondent No. 1 was amended so as to include also a prayer for the quashing of the above order.

The above writ petition was resisted by the appellant. During the pendency of the writ petition, a number of affidavits were filed on behalf of respondent No. 1 as well as on behalf of the appellant. The number of persons who filed affidavits on behalf of the appellant has been stated to be 27 and of those who did so on behalf of respondent No. 1 to be 40. The affidavits filed on behalf of respondent No. 1 included those of 16 councillors of Kalol Municipality, while those filed on behalf of the appellant included those of nine councillors Respondent No. 1 also filed the affidavit of Babubhai Dahyabhai Khamar, local correspondent of Gujarat Samachar, a daily of Ahmedabad. Khamar, according to respondent No. 1, was also present in that meeting. On September 19, 1973 the learned Judges of the High Court passed an interlocutory order for the production of six persons who had filed affidavits on behalf of respondent No. 1 and two persons who had filed affidavits on behalf of the appellant for cross-examination. The material part of that order reads as under :

> "We have heard this petition which runs into about 700 pages. We have noticed from the affidavits on record that there are sharp divisions amongst the councillors of the Kalol Municipality, amongst the citizens of Kalol, amongst the employees of the Kalol Municipality and even amongst the

press reporters. In order therefore that the situation may be cleared and more elucidation of the problem with which we are concerned may be had on record it is necessary that some of the principal deponents who have made affidavits in this case on either side should be cross-examined by the opposite party. (1) Husseinmiya Hasammiya Sayed, (2) Revabhai Lalabhai Parmar, (3) Babulal Somchand Shah, (4) Shantiben Ramchandra Barot, (5) Kantilal Chhaganlal Shah and (6) Babubhai Dahyabhai Khamar have made affidavits in favour of the petitioner. The first five persons are the councillors of the Kalol Municipality who, according to the petitioner, were present at the meeting of the Municipality held on 6th May 1973 when motion of the Municipality against the Chairman respondent No. 1 was moved. According to the petitioner, they had voted for the no confidence motion. According to the respondent No. 1, they were absent and, therefore, they could not vote for the no confidence motion. It is, therefore, necessary to subject those five witnesses to cross-examination by the respondent No. 1. The sixth person Babubhai Dahyabhai Khamar, the local correspondent of 'Gujarat Samachar' daily of Ahmedabad, claims in his affidavit to have entered the Council Hall of the Kalol Municipality and to have watched the proceedings. He is an independent man. Affidavits have been made on behalf of the respondent No. 1 to show that he was not allowed by the police to enter the Municipal Hall and to watch the proceedings. If he had really watched the proceedings of the meeting of the Kalol Municipality on 6th May 1973, his evidence would go a long way in helping us to decide the issue before us. It is, therefore, necessary that he should be subjected to cross-examination by the respondent No. 1. We, therefore, direct that the petitioner shall produce the aforesaid six persons before this Court at 11 O'clock on 20-9-1973 for cross-examination by the respondent No. 1.

A B C D E F

It is the case of the petitioner that Vithalbhai Somabhai Patel, a councillor of Kalol Municipality, was present at the said meeting of the Kalol Municipality and had voted for the no confidence motion. Vithalbhai Somabhai Patel denies that fact and also denies his presence at that meeting altogether.

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Chandulal Chhotalal Barot, Vice-Chairman of the Kalol Municipality had presided over the aforesaid meeting of the Kalol Municipality and, according to him, no confidence motion was not carried because two votes were cast against it and none had voted in its favour. He is a material witness. He has made affidavit in favour of the respondent No. 1. Interests of justice require that Vithalbhai Somabhai Patel and Chandulal Chhotalal Barot who have made affidavits in favour of the respondent No. 1 should be offered by

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A the respondent No. 1 for cross-examination by the petitioner. We, therefore, direct that the respondent No. 1 shall produce these witnesses at 11 O'clock on 20th September, 1973, for being cross-examined by the petitioner."

As mentioned earlier, the petition filed by respondent No. 1 was ultimately accepted by the High Court. The High Court in the course of its judgment first went into the question whether the Collector had jurisdiction to hold the inquiry to find out whether the no confidence motion had been carried against the appellant and whether vacancy in the post of the President of the Kalol Municipality had arisen. It was held that the Collector had no jurisdiction to make such inquiry and record the impugned order. Order dated June 9, 1973 was, therefore, held to be void and liable to be quashed. The High Court then went into the question whether the order of the Collector was void on the ground that it had been made in violation of the principles of natural justice. The finding of the High Court in this respect was that there was not even a semblance of natural justice in the inquiry which had been conducted by the Collector and the same was vitiated by flagrant breach of all principles of natural justice as the interested persons had not been heard. The High Court then considered the material which had been brought on the file, including the evidence of deponents who had been cross-examined, and came to the conclusion that 17 councillors had voted for the no confidence motion against the appellant in the meeting held on May 6, 1973. In the result the writ petition was accepted and directions were given as mentioned above.

It may be mentioned that this Court initially stayed the operation of the order of the High Court pending notice of motion. Subsequently, as per order dated November 19, 1973 the interim stay order was vacated. It was, however, made clear that fresh election to the office of the President of the municipality would be held subject to the result of this appeal. A meeting was thereafter held and respondent No. 1 was elected President of the municipality. At present respondent No. 1 is acting as the President of the municipality subject to the result of this appeal.

On behalf of the appellant his learned counsel, Mr. Amin, has at the outset contended that as the dispute between the parties in this case involved questions of fact, the High Court should not have entertained the writ petition filed by respondent No. 1 but should have referred the parties to a separate suit. This contention, in our opinion, is not well founded. No plea was admittedly taken in the return filed on behalf of the appellant in reply to the writ petition that respondent No. 1 should be directed to seek his remedy by means of a suit because of disputed questions of fact. In the absence of such a plea, the appellant, in our opinion, cannot be heard to say that the High Court should have relegated respondent No. 1 to the remedy of a suit. Apart from that we find that the term of the appellant as the President of the municipality would have expired in 1975. The trial of a suit, in the very nature of things, would have taken considerable time. Appeal and second appeal would have also been filed by the

unsuccessful party in the case. Had respondent No. 1 been directed to seek his remedy by way of a suit, the relief secured by respondent No. 1 even if he had succeeded in the suit would have been wholly illusory because by the time respondent No. 1 would succeed in the litigation, the term of the office of the President would have either already expired or be about to expire. The appellant in that event would have continued as the President of the municipality even though he had ceased to enjoy the confidence of the requisite number of councillors and they had passed a motion of no confidence against him. The entire concept of a democratic institution would thus have been set at naught. We agree with the observations of the High Court that the purpose underlying the petition would have been completely defeated in case respondent No. 1 had been relegated to the ordinary remedy of a suit and that such remedy was neither adequate nor efficacious.

It is not necessary for this case to express an opinion on the point as whether the various provisions of the Code of Civil Procedure apply to petitions under article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief sought. The object of article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under article 226. The High Court is not deprived of its jurisdiction to entertain a petition under article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (*see Gunwant Kaur* v. *Bhatinda Municipality*(1). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it

(1) A.I.R. 1970 S. C. 802.

A should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.

It has next been argued by Mr. Amin that as an order was made B by the High Court permitting cross-examination of some of the persons who had filed affidavits in the proceedings before it, the High Court should not have restricted the right of cross-examination to only eight of the persons mentioned in its order dated September 19, 1973 but should have permitted cross-examination of all such deponents whom any party wanted to cross-examine. We are unable to accede to this contention. Normally writ petitions are decided on the basis of affida- C vits. In some cases, however, where it is not possible for the court to arrive at a definite conclusion on account of there being affidavits of either side containing allegations and counter-allegations, it would not only be desirable but in the interest of justice the duty also of the court to summon a deponent for cross-examination in order to arrive at the truth (*see* observations of Shelat J. in *Barium Chemicals Ltd. & Anr.* v. *The Company Law Board & Ors.*(1). The fact that the D court permits cross-examination of some of the deponents in a writ petition does not warrant the proposition that the court is bound to permit cross-examination of each and every one of the deponents whom a party wishes to cross-examine. In a case like the present where as many as 40 persons filed affidavits in support of one party and 27 persons filed affidavits in support of the opposite party, the High Court, in our opinion, was well justified in the exercise of its discretion in E selecting such persons whom it considered to be really important and crucial for the purpose of cross-examination. The effect of permitting cross-examination was not that the High Court was divested of all discretion and control in the matter and was bound to call for cross-examination each and every deponent who was named by either party. We have reproduced above the material part of order dated September 19, 1973 and it would appear therefrom that the High Court F selected for cross-examination five of those councillors who, according to respondent No. 1, were present in the meeting wherein the motion of no confidence was alleged to have been passed but who, according to the appellant were not present in that meeting. These five councillors had filed affidavits in support of the case of respondent No. 1. In addition to these five councillors, the High Court selected Babubhai Dahyabhai Khamar, local correspondent of Gujarat Sama- G char, who claimed to have been present in the Council Hall at the time of the above meeting and who sent a report about the proceedings of that meeting to the Gujarat Samachar. From amongst the deponents who had filed affidavits in support of the case of the appellant, the High Court selected for cross-examination Chandulal Chhotalal Barot, Vice President of the municipality who, according to the H appellant, presided over that meeting as well as Councillor V. S. Patel, who claimed that he was not present in the above meeting but who,

(1) [1966] Supp. S. C. R. 311 on p. 353.

according to respondent No. 1, was present in that meeting and had supported the motion of no confidence. Looking to all the facts of the case, we are of the opinion that the discretion exercised by the High Court in selecting for cross-examination those deponents whom it considered to be crucial was proper and judicious. No prejudice, in our opinion, was caused to any of the parties by the procedure adopted by the High Court. We would, therefore, hold that order dated September 19, 1973 made by the High Court does not suffer from any infirmity.

Mr. Amin then submits that the deponents called for cross-examination should have been examined-in-chief and thereafter cross-examined. The production of those witnesses simply for cross-examination was not warranted by law. In this respect we find that prayer which was made by the appellant in application dated September 17, 1973 was as under :

> "to order the opponent No. 1 to offer for cross-examination Kantilal Chhaganlal Shah, Lilavatiben Kantilal Shah, Mahmadbhai Badarbhai Chauhan and Naranbhai Sadabhai Parmar and Nusenmiya Hasanmiya Saiyad who have sworn affidavits in support of the petitioner or in the alternative to issue summons to them to attend this Hon'ble Court for being cross-examined on behalf of the petitioner;"

It would appear from the above that all that the appellant himself prayed in his application was that the deponents mentioned by him should be offered for cross-examination and not that those witnesses should be examined-in-chief and thereafter cross-examined. No grievance could, therefore, have been made by the appellant if the deponents had not been examined-in-chief but had been simply cross-examined. As things however are we find that when the deponents concerned were produced in court, they were examined-in-chief and thereafter there was cross-examination. In the course of their examination-in-chief the deponents stated about their having sworn their affidavits and about the correctness of the contents of those affidavits. It might in the circumstances have appeared to be unnecessary duplication to ask those deponents to repeat what had been stated by them in their affidavits.

We are also not impressed by the argument of Mr. Amin that as cross-examination of only 8 deponents had been permitted, the affidavits of others who were not cross-examined could not be taken into consideration. The High Court permitted cross-examination of such of the deponents in respect of whom it came to the conclusion that their cross-examination was essential for arriving at the truth of the matter. It did not, however, follow from that that the High Court was precluded from taking into consideration the affidavits of other deponents. Order permitting cross-examination of some of the deponents did not have the effect of obliterating from record the affidavits of other deponents and we find nothing wrong in the approach

A of the High Court in relying upon the affidavits of deponents who were not cross-examined if on conspectus of the entire circumstances of the case it found the averments in those affidavits to be true.

Mr. Amin has next challenged the correctness of the finding of the High Court that 17 councillors had supported the motion of no B confidence. It is submitted that the version of he appellant regarding what transpired in the meeting of May 6, 1973 is correct. The High Court, according to the learned counsel, was in error in relying upon the version of respondent No. 1. In particular, Mr. Amin submits that V. S. Patel councillor was not present in that meeting. The presence of Councillor Kantilal Chhaganlal Shah in the meeting has also been questioned. In this respect we find that the High Court C has relied upon the affidavits of 16 councillors who in the course of their affidavits stated that 17 councillors including those councillors themselves had voted in the meeting held on May 6, 1973 in support of the motion of no confidence. Out of those 16 councillors, 15 were admittedly in Kalol on that day. They having signed the motion of no confidence, there was, in the opinion of the High Court, no reason why they should not be present in that meeting. As regards D the presence of Councillor Kantilal Chhaganlal Shah, the High Court relied upon his affidavit wherein he stated that he was present in the meeting and had voted in support of the motion of no confidence and found that his deposition had not been shaken in cross-examination. Regarding Councillor V. S. Patel about whom the case of respondent No. 1 was that he had supported the motion of no confidence while that of the appellant was that he was not present in the meeting, E the High Court observed that the material on record pointed to the conclusion that he had supported the motion of no confidence. The High Court in this context relied upon the version given by Chief Officer R.D. Barot, who was admittedly present in that meeting, as well as the statement of Babulal Dahyabhai Khamar, press correspondent. After having heard Mr. Amin at considerable length, we find no sufficient ground to interfere with the appraisement of the depositions and other material on record by the High Court.

Mr. Amin, however, submits that Councillor V. S. Patel had been supporting the appellant in the past. Patel also filed on May 8, 1973 an affidavit in support of the appellant in the course of which he denied that he was present in the above meeting or that he had supported the motion of no confidence. It is urged that as V. S. Patel G was a supporter of the appellant it is most unlikely that he would vote in favour of the motion of no confidence against the appellant. We are unable to accede to this submission. It may be a matter of mournful reflection but all the same it is the acknowledgement of a stark reality that there has been in recent years in the case of some elected representatives so much erosion of moral values that they feel H no compunction in repeatedly changing their loyalty and shifting their allegiance from one party leader to the other. Such representatives have a pliable conscience plainly because they succumb to all kinds of pressures and yield to all kinds of temptations. They bring a

touch of melodrama and the kaleidoscopic nature of the local political scene is quite often a reflection of the sombre activities of these representatives. Against the backdrop of such activities we find nothing surprising or unusual in the conduct of Councillor Patel.

It may be mentioned that respondent No. 1 has brought on record material as would indicate the circumstances under which V. S. Patel chose to support the motion of no confidence. Soon after the decision of the Gujarat High Court on April 2, 1973 that a motion of no confidence to succeed against the President should be supported by at least 17 councillors, the residents of ward No. 7 in Kalol held a meeting. V. S. Patel, who along with two others had been elected to the municipality from that ward, was admittedly present in that meeting. Some of the persons present in that meeting, according to Patel, asked him to work in unison with the majority group which was led by respondent No. 1. It seems that it was as a result of the pressure which was brought to bear upon Patel in that meeting that he supported the motion of no confidence. After the meeting of May 6, 1973 Patel again seems to have changed his mind and joined the group of the appellant.

There is one important circumstance which tends to show that the version of respondent No. 1 with regard to what transpired in the above meeting is nearer the truth. In the earlier meeting which was held on November 1, 1972, a motion of no confidence against the appellant had been supported by 16 councillors. The Gujarat High Court by its judgment dated April 2, 1973, held that the motion of no confidence against the appellant could succeed only if it was supported by at least 17 councillors. In view of that decision, it is most unlikely that 16 councillors would have sent notice of motion of no confidence on April 21, 1973 unless they had been assured of the support of a seventeenth councillor. Otherwise it would have been a sheer exercise in futility for the 16 councillors to repeat the performance of what had taken place in the meeting of November 1, 1972. We therefore find nothing improbable in the stand taken on behalf of respondent No. 1 that V. S. Patel had pledged his support to the motion of no confidence and that he actually supported that motion in the meeting held on May 6, 1973.

Argument has also been advanced that no signature of the councillors present were taken in the meeting held on May 6, 1973. It is stated that respondent No. 1 had been insisting on taking such signatures in the past and that in two or three meetings signatures of the councillors were in fact obtained. The omission to take the signatures in the meeting of May 6, 1973, according to Mr. Amin, was deliberate so that the correct number of councillors present in the meeting might not be known. We are unable to accept this argument. There is no statutory provision in the Gujarat Municipalities Act which requires that the signatures of the members attending a meeting must be obtained. It is true that respondent No. 1 had been insisting

A on obtaining signatures of the councillors present in a meeting but his plea in this respect was generally not accepted. No signatures were admittedly taken in the meeting held on November 1, 1972 when 16 councillors supported the motion of no confidence against the appellant. It is conceded by Mr. Amin that on two or three occasions when signatures of councillors attending the meeting were taken, this was done at the commencement of the meeting. As it was B Vice President Barot, who initially presided over the meeting held on May 6, 1973, the responsibility to take the signatures at the commencement of the meeting could at the best be that of Vice President Barot and not that of respondent No. 1. Respondent No. 1 in our opinion, cannot be penalised for the omission of Vice President Barot who admittedly belongs to the group of the appellant.

C It has next been argued on behalf of the appellant that a ground had been specified in notice dated April 21, 1973 which was sent by 16 councillors for convening the meeting to consider the motion of no confidence. The councillors in that meeting, according to the submission, had to stick to that ground and could not depart from it in passing the motion of no confidence. With a view to show that D a different ground was set up in passing the motion of no confidence, our attention has been invited to the minutes of that meeting which when translated into English read as under :

> "Shri B. M. Patel, the President of the Kalol Municipality has been put to a minority since 12th October 1972. Since then he has not been allowing the Municipal Administration E to run in keeping with the provisions of law. Moreover, in the special General Meeting of the 1st November, 1972, a motion of no confidence was passed against Shri B. N. Patel by 16 votes against 2 votes, but according to law a motion of no confidence can be passed by two-third votes of the total number *i.e.*, 17 votes and at present 17 members declare their no confidence against the President on the present F motion of no confidence against the President of the Kalol Municipality."

The above contention has been controverted by respondent No. 1 who has argued the appeal personally. It is no doubt true, submits respondent No. 1, that in the earlier part of the minutes there is a recital that the appellant had not been allowing the municipal administration to function in accordance with the provisions of law, the G concluding part of the minutes shows that "17 members declare their no confidence against the President on the present motion of no confidence". Respondent No. 1 accordingly submits that the ground which had been specified in the notice for the meeting was adhered to when passing the motion of no confidence. Although the stand taken on behalf of respondent No. 1 in this respect does not appear H to be bereft of force, we need not express an opinion on this aspect of the matter because the contention advanced by the appellant can be repelled on another ground, namely, that there is no imperative requirement in the case of a motion of no confidence that it should

be passed on some particular ground. There is nothing in the language of section 36 of the Gujarat Municipalities Act reproduced earlier which makes it necessary to specify a ground when passing a motion of no confidence against the President. It is no doubt true that according to the form prescribed the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow therefrom that the ground must also be specified when a motion of no confidence is actually passed against a President. It is pertinent in this context to observe that there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members. We may in the above context refer to page 591 of Practice & Procedure of Parliament, Second Ed. by Kaul and Shakdher wherein it is observed as under :

> "A no-confidence motion in the Council of Ministers is distinct from a censure motion. Whereas, a censure motion must set out the grounds or charge on which it is based and is moved for the specific purpose of censuring the Government for certain policies and actions, a motion of no-confidence need not set out any grounds on which it is based. Even when grounds are mentioned in the notice and read out in the House, they do not form part of the no-confidence motion."

Mr. Amin has next assailed the finding of the High Court that the Collector had no jurisdiction to make an inquiry and pass order dated June 9, 1973. It is, in our view, not necessary to express an opinion on this aspect of the matter as Mr. Amin has not during the course of arguments assailed the other finding of the High Court that the procedure adopted by the Collector was violative of the principles of natural justice. In view of this latter finding, the order of the Collector dated June 9, 1973 was in any event liable to be quashed.

Mr. Dhebar, who has appeared on behalf of the Collector, has submitted that the Collector was not actuated by any oblique motive in passing order dated June 9, 1973. We agree with Mr. Dhebar that there is no cogent material on record to show that the Collector

A was actuated by any oblique motive when he passed that order. The fact that the procedure adopted by him was violative of the principles of natural justice might show an error of judgment, but from that it cannot be inferred that the Collector was motivated by ulterior consideration.

B There is, in our opinion, no force in the appeal which fails and is dismissed with costs.

KRISHNA IYER, J.—The social lesions on the political tissues of our body politic are of as much pathological significance, in this C case, as the legal issues and the weaknesses of the court system, thrown up by the mini-crisis in a small municipal council which forms the subject-matter of this case. My learned brother Khanna, J. has discussed the points of law and questions of fact directly arising from the case and I am privileged to agree wholly with his observations, D reasoning and result. Nevertheless, I append this hesitant addendum, turning the focus on certain aspects fundamental to our system which this appeal reveals.

We were told at the Bar that the case consumed eighteen long days of a Division Bench of the High Court (the Judges observe that E counsel addressed them on the background of the case for about nine hours) and we see before us a few hundred pages of judgment, although the facts are relatively few, being confined to the passage of a non-confidence motion, with the requisite majority, and the law limited to a few sections of the relevant municipal statute.

F This systemic prolixity highlights the need, in this country, where litigation is notoriously dilatory and the docket backlog in courts explosive, for developing better business management methods in the forensic area, more modern court methodology and streamlining of G procedure, lest the people should get disenchanted with that noble institution, the Judicature, whose credibility is the corner-stone of the rule of law and of organised government.

Indeed, it is trite law that disputed questions of fact are not usually decided under Art. 226, but it is a common phenomenon that litiga- H tion spiralling up to the highest court from below gets stalled so much that victor and vanquished are stultified in the end. The present case is an instance in point of the unhealthy but imblamable

tendency of parties to rush directly to the High Court for speedy redress where the normal remedy is a suit in a lower civil court.

The learned Judges note, that having regard to the controversy and quantum of evidence, the petitioner (the respondent before us) should have been relegated to a suit, but desist from that course on the express ground that the trial of the suit would consume considerable time and "then there will be an appeal to the District Court against the decision of the civil court. The appeal to the District Court will be followed by a second appeal to the High Court. The trial of the suit and the appeals to the District Court and the High Court will certainly take a very long time". Cynically, the High Court adds : "The courts of law, while upholding the rule of law, cannot defeat it by the procrastination of litigations". I agree that, in the present case, had the aggrieved party been driven to the hierarchy of courts, he would have lost, not on the merits, but by the sands of time running out before ultimate victory was in sight. Time and tide do not wait for the tardy course of Indian justice and, if the appellant had really forfeited the confidence of the councillors (as we have held), he should not be allowed to cling on to the President's office in the confidence that our slow-motion Court system would take a few years for processing final legal justice, hopefully helping him through his unmerited full term. The High Court has observed about this aspect of the case : "The anti-democratic situation in a democratic institution will, under these circumstances, be fostered and perpetuated by litigations in courts." These words of robed experience are a reflection on the mechanics and dynamics of our forensic system and suggest radical, not peripheral, technological reforms and scientific re-organisation of court-management. Largely this is the responsibility of the legislature and partly of the courts.

Counsel for the appellant expressed shock about reliance on affidavits by the High Court without the affiants being tested by cross-examination. Reasons for this course have been adduced by the High Court and we have found no legal flaw therein. On the contrary, I wish to emphasise that it adds enormously to inconvenience, expense and delay to insist on oral evidence for proof of every little relevant fact in judicial proceedings by suit or writ. Faith in *viva voce* examination tested by severe cross-examination has sometimes been reduced to a legal superstitution. While screening the veracity of glib versions on vital matters of controversy by telling cross-examination in court is necessary, many facts, either formal, non-controversial or well-

A established otherwise, may well be proved by affidavit evidence. Breaking tradition and introducing the system of affidavits, verified statements and certificates in many areas of judicial enquiry, leaving a discretion to the court to call the author into court—is an experiment well worth making, by reform of our law of evidence and procedure as is being attempted in other countries. Written hearsay has ceased to be anathema in Anglo-American or Socialist countries and in our country of distance, poverty and delay, processual changes in this direction may lessen cost and add speed. Not only is the grievance of the appellant on this score chimerical, the length of time taken in this case before the High Court is sufficient to warrant my observations for serious legislative consideration.

The learned Judges of the High Court have frankly stated that they have, *inter alia,* relied on 'statements made before the police (vide p. 99 of Vol. III of the appeal record). It is surprising that a court should, in a civil case, rely upon statements made before the police. It is not merely irrelevant, but throws up suspicions because the police had no business to record any statement as the High Court itself has, in another place, pointed out. The learned Judges, for instance, have stated : "Though there was no complaint or information at that time either from respondent No. 1 or from any member of his group about what respondent No. 1 alleges to have happened on May 5, 1973, the police had taken interest in the matter and started an enquiry on their own." Some inscrutable purpose has animated the police officers to investigate into what was altogether beyond their pale. If such unwarranted police intrusions into municipal doings were left uncriticised, the peril to the citizen and to public institutions is obvious. It strikes me that the State Government will enquire into how such officious police interference occurred and whether there was any sinister savour about it.

Our elected local bodies are expected to be self-governing unit (Art. 40 of the Constitution). If these grass-roots institutions pervert themselves, small wonder that Power at higher levels, betrays popular trust. In the present case, certain incontrovertible facts need mention to appreciate my apprehensions about this tiny municipal administration having become a play thing of factious politics with under-currents of personal conflicts and overtones of economic interests.

The Kalol Municipality is a small town and the wheels of its politics are alleged to be linked with the economics of an industrial

unit—the Navjivan Mills. While rival versions are asserted before us (neither, if true, being complimentary), it is pertinent that, out of a strength of 25 one of the councillors is a peon of the Mill, three of them other employees and a fifth, connected with it. Both sides allege, although with conflicting projections, that between the Presidential election in 1970 and the toppling tremors within two years, the estrangement between the Mill management and the appellant had developed. While the Mill group voted with the appellant to elect him President, they swung to oust him from office in May 1972. Without examining the veracity of either party's version, one may express the hunch that the economic interests of that industry must have had some sort of influence over the working of the Kalol Council.

From the inception, the appellant and the 1st respondent, have been fighting for power end, in the first round, the former won, on November 1, 1970. Nevertheless, some councillors appear to have concentrated on power-grab and, as part of this political circus, created confusion at municipal meetings. It is equally clear, from the judgment of the High Court "that in respect of quite a good number of meetings of the municipality held since October 12, 1972 different sets of minutes have been maintained by respondent no. 1 on the one hand and by the petitioner's group, on the other hand". The Court has further stated that the appellant, apprehensive of his eroding majority had ruled out many motions. "He has converted them (rule-outs) into an instrument to negative the will of the majority and to cajole them into submitting to him. We are constrained to say that there cannot be an uglier, more distasteful, more disagreeable and more distorted form of democracy than one we have seen on evidence in the civic affairs of Kalol. . . ' The town has been helplessly witnessing unseemly duels amongst the city fathers which have brought all progress and normal administration to a standstill. It also appears from the record of the case that no meeting of the municipality could be held except under police protection."

The fluctuating fortunes and the fluid loyalties emerging from the diary of events makes disturbing reading. The learned Judges of the High Court notice that while the petitioner-appellant defeated respondent no. 1 on November 1, 1970 that event sparked off, not collective functioning for the common good, but combats for group cornering of positions. "On December 10, 1970 Kalol Municipality adopted a motion *for* disqualifying the petitioner (respondent no. 1 here) from the councillorship and passed it". However, "on June 1972, a resolution was passed by 23 councillors of Kalol Municipality voting *against*

A the petitioner (1st respondent herein) being disqualified by the State Government". We have it further from the judgment of the court below that "on October 12, 1972 respondent no. 1 (appellant before us) admittedly lost his majority. On December 4, 1972 a resolution B came up for consideration before the Municipality to reduce the term of respondent No. 1 (appellant herein), as President of the Municipality, from 5 years to 2 years." The chaos in that tiny cosmos is self-evident. Presumably some citizens were exasperated at these happenings and "on February 18 a public meeting was held in the C Kalol Town Hall". A leaflet issued in connection with that meeting mentions that "a tug-of-war has been going on in the Kalol Municipality between two groups and that the meeting of the citizens was called for the purpose of considering the situation arising out of it." From the materials on record, it is legitimate to draw the inference that D the citizens' meeting gave a mandate to some councillors to act with the majority, in the interests of civic welfare. We have one more fact of grave import. An earlier no-confidence motion passed by 16 councillors was held by the High Court to be numerically deficient by one, to make up the 2/3rds majority. And at the second no-confidence E motion, as we have already held, one who otherwise had supported the appellant, switched loyalties. These are distressing testimony to pollution in public life.

Kalol is not alone nor is the politics of jockeying a local syndrome. F If the municipal microcosm has put self above service, wearing the mask of public office, the national macrocosm will eventually magnify the vice; and once popular mistrust of democracy spreads, voices in the whispering gallery will be heard "Mischief. thou art afoot, take what course thou wilt." If this small municipality needs policemen G to hold its meetings, periodically exercise itself in the fine art of defection and false minutes perhaps allows the interests of a Mill to sway its affairs and compels the holding of public meetings to command its elected representatives to behave themselves, political democracy is moving towards the evening of long shadows. Laws and H Courts are not the remedy for this malady, but better men and basic mortality when ballots are sought. "Remember," said John Adams, "remember, democracy never lasts long. It soon wastes, exhausts and

murders itself. There never was a democracy that did not commit suicide."(1) The appeal we are dismissing is socio-legally sympathematic.

P.B.R. *Appeal dismissed.*

(1) Quoted by Hidayatullah, J. (as he then was) in "Democracy in India and the Judicial Process—Lajpatrai Memorial Lecture Series—1965 Asia Publishing House p. 16.