Pandurang Narayan Adha Vs Ramchandra R. Panditrao

Court: Bombay High Court

Date of Decision: April 17, 1930

Acts Referred: Bombay Local Boards Act, 1923 â€" Section 35(2)(b)

Citation: AIR 1930 Bom 554 : (1930) ILR (Bom) 902

Hon'ble Judges: Mirza, J

Bench: Division Bench

Judgement

Mirza, J.
The facts which have given rise to this second appeal are as'' follows: On 1st April 1928 a new District Local Bourd was

constituted in Satara in place of the old Board whose term of office had expired. Defendant 2, who was the President of the old Board and the

retiring President until a President of the new Board was elected, had issued notices on 31st March 1928, but dated 29th March 1928, convening

a meeting of the newly constituted Board on 13th April 1928, for electing its President and Vice President for the next triennium. It is common

ground between the parties that the notices were served upon all the members of the newly constituted Board except two who however had come

to know independently that the meeting was to beheld and bad raised no objection on the ground that they had not received the formal notice from

the Board. It is also common ground that every member of the newly constituted Board was present and took part in the election of the President

and the Vice President at the meeting of the Board held on 13th April 1928, in pursuance of the notice although 14 clear days had not expired

between the service of the notice and the date of the meeting. Plaintiff 1 stood for election at this meeting to the office of Vice-President but was

not successful against the rival candidate who was elected. At the meeting of 13th April 1928 defendant 2 presided and the meeting proceeded to

elect a Chairman. Defendant 3 was elected Chairman and took over the chair from defendant 2 who stood for re-election to office of President.

After the Chairman had been elected, but before the business of the meeting was proceeded with the, plaintiffs lodged a protest that the meeting

was not properly constituted because some of the members had not received 14 clear days'' notice. The Chairman overruled the objection and the

plaintiffs participated in the business of the meeting under protest. Defendant 2 was re-elected President for the next triennium and a Vice President

for the period was also elected.

2. The plaintiffs addressed a notice dated 30th April 1928 to:

(1) The President, District Local Board Satara:

(2) P.N. Adhav, Esquire, President elected in the meeting of the District local Board Sutara, held on 13th April 1928; and

(3) Khan Bahadur D.B. Cooper, Chairman of the meeting of the District Local Board, Satara, held on 13th April 1928, for the purpose of electing

the new President and Vice President of the District Local Board, Satara for the next triennium.

3. In this notice the plaintiffs alleged that the meeting of the Board held on 13th April 1928, was not in accordance with the requirements of Section

35(2)(b), Bombay Local Boards Act, that the work transacted at the meeting was invalid and that the newly elected office bearers at that meeting

were not validly appointed and should not therefore act as such. Defendant 2 replied to this notice by his official letter No. L.F. 273, dated Satara,

31st May 1928, signed under his official designation ""President, District Local Board, Satara.

4. The plaintiffs who are two of the elected members of the newly constituted District Local Board, Satara, brought this suit in the Court of the

Joint Subordinate Judge at Satara against: (1) the District Local Board of Satara, (2) Pandurang Narayan Adhav; and (3) Khan Bahadur D.B.

Cooper, praying inter alia for a declaration that the special meeting of the Satara District Local Board, held on 13th April 1928, was not a legally

and properly convened meeting and that the business transacted at the meeting was illegal and invalid. They prayed also that defendant 2 may be

restrained from functioning as President of the new Board. The trial Court decreed the plaintiffs'' claim and granted an injunction permanently

restraining defendant 1 from functioning on the basis of the business transacted at the mooting of 13th April 1928, and restraining defendant 2 from

functioning an President of the new District Local Board. The decree of the trial Court is dated 28th December 1928. It may be noted hare that

the newly elected Vise President of the Local Board was not made a party to the suit although his interests were incidentally affected by the relief

which was claimed and eventually granted by the trial Court. From this decree of the trial Court defendant 2 preferred an appeal on 16th January

1929, in the District Court of Satara. The appeal was filed only against the original plaintiffs, the original defendant I, the District Local Board,

Satara, and the original defendant 3, Khan Bahadur Cooper, not being parties to it.

5. It is stated on behalf of respondent 3 in the present second appealÃ¯Â¿Â½the original defendant 1 in the trial CourtÃ¯Â¿Â½that after defendant 2 filed the

appeal in the District Court of Satara on 16th January 1929, as already stated, ho applied to that Court on 19th Jan. 1929 for a stay of execution

of the injunction granted by the trial Court against him and She other part es to the suit. That application was refused by the District Court of

Satara. From that refusal defendant 2 did not prefer any further appeal. It is also stated on behalf of defendant 1 that on 18th February 1929, the

District Local Board held a meeting for the election of a new President and Vice President in the places of the President and Vice President who

had been declared by the Court to be in-validly elected at the meeting held on 13th April 1928. Defendant 2, it is stated, took part in the business

of this meeting without any protest and allowed his name to be put forward as a candidate for the vacant office of President. Defendant 2 was

unsuccessful at this election, the rival candidate, defendant 3, having been elected President. Defendant 2 proceeded with his appeal against the

plaintiffs only without making the District Board or its newly elected president parties to the appeal. The District Court dismissed defendant 2''s

appeal on 1st July 1929. From that dismissal defendant 2 has filed the present second appeal and has made the District Local Board of Satara a

party respondent to the appeal.

6. Mr. A.G. Desai, on behalf of respondent 3, the District Local Board of Satara, has raised a preliminary objection that this second appeal is not

competent against the District Local Board as it was not made a party in the first appeal and the District Local Board has since acted, as it was

bound to do, in accordance with the decree of the trial Court. Mr. Desai contends that he has obeyed the decree of the trial. Court; a new

President and Vica President have been since elected and are now functioning their respective offices and it would be very inconvenient if present

arrangements were disturbed by the reversal of the trial Court''s decree confirmed as it is by the appeal Court. Mr. Desai also contends that

defendant 2 has waived any right he might have had to set aside the trial Court''s decree in appeal by having taken part without protest in the

election meeting held on 18th February 1929, and standing as a candidate for the vacant office of President. Mr. Desai has relied on the rulings in

Snkharam Mahadev Dange v. Hari Krishna Dange [1881] 6 Bom. 113 Ahmadji v. Mohamadji [1899] 1 Bom. L.R. 218 Rustomji v. Sheth

Purshotamdan [1901] 25 Bom. 606 Hanmant v. Secretary of State AIR 1930 Bom. 251 and Nuri Mian v. Ambica Singh [1916] 44 Cal. 47 in

support of his contention that the Court is entitled to take cognizance of events which have happened since the filing of the suit or appeal. Mr.

Thakor on behalf of the appellant has contended that although he cannot demy that events have taken place since the filing of the first appeal as

stated by Mr. Desai, yet, as this is a second appeal, we should not take cognizance of any facts outside the record for determining the rights of the

parties before us. Mr. Thakor has not been able to cite any authority for this proposition. I am unable to agree that this Court in second appeal is

bound to decide the case on its ilegal merits without regard to the conduct of the appellant in these proceedingsÃ¯Â¿Â½both here and in the lower

appellate CourtÃ¯Â¿Â½by which parties outside this second appeal have come to acquire new rights in relation to its subject-matter and respondent 3,

the District Local Board, is subject to the trial Court''s injunction. Mr. Thakor has not been able to explain satisfactorily why defendant 1 was

omitted from the appeal in the first appellate Court. The reason he gives is, that as defendants 1 and 3 had originally supported the appellant in. the

trial Court he was justified in considering that they were not necessary parties to the first appeal. Defendant 2 must have realized, when he filed the

first appeal, that the success of his appeal would become nugatory if the injunction that was originally issued against him and defendant 1, the

District Local Board, was not set aside against both of them. In case it was set aside only against defendant 2, and not against defendant 1, the

position would become anomalous and embarrassing. If the appeal Court were to set aside the injunction against defendant 2, defendant 2 would

be enabled to claim against defendant 1 that there being no longer an injunction of the Court against him ho should be allowed to function as

President of the Board to which office he was elected at the meeting of 13th April 1928; at the same time defendant 1, owing to the permanent

injunction issued against it by the trial Court, would be bound to obey that order and prevent defendant 2 from functioning as President. After the

trial Court''s judgment and the election held on 18th February 1929, the position of defendant 1 materially changed in respect of the rights, if any,

of defendant 2 in virtue of the election held on 13th April 1928. Defendant 1 might very well contend that defendant 2''s conduct, in taking part in

the election meeting of 18th February 1929, amounts to a waiver of any rights he might have as the previously elected President of the Board.

Defendant 1 might also possibly contend that, under the provisions of Section 26 (2), defendant 2 had become incapable of acting owing to the

injunction issued against him by the trial Court which, until it was set aside, would prevent him from acting as president, and therefore defendant 1

was entitled to hold a fresh election to fill up the president''s office, and the result of that election would not be invalidated in consequence of any

future validation by the appeal Court of the original election of 13th April 1928. It was obviously the duty of defendant 2 to have made defendant 1

a party to the first appeal where all these contentions could have been gone into. Any first appeal against defendant 1 appears now to be time

barred. It is clear in my judgment that defendant 2 (appellant) is not entitled to make defendant 1 a party respondent in the second appeal. In the

absence of defendant 1 any points we might decide in favour of the appellant''s contentions would be purely matters of speculative interest and of

little practical consequence to the parties. As however the points of law involved in this second appeal have been argued before us, I would make

a brief reference to them.

7. The appellant''s contentions might be conveniently divided under the following heads: (1) there was no proper notice by the plaintiffs u/s 136,

Bombay Local Boards Act of 1923, and hence the suit was not maintainable; (2) the election held on 13th April 1928 was a matter which related

to the internal management of the Board and hence no member or members of the Board in their individual capacity would be entitled to maintain a

suit to have the election declared invalid; (3) the plaintiffs waived any right they had to the meeting being considered invalid by not raising an

objection at the time the retiring president presided and that the objection raised by them after the chairman was elected, and their continuance at

the meeting after that under protest would not avail them on this point; (4) the meeting held on 13th April 1928 was a statutory meeting to which no

provision regarding the service of notice applied and the service having been shown to have allowed 12 or 13 clear days in each case should in the

absence of such provision be regarded as reasonable and sufficient; and (5) that if the meeting of 13th April 1928 is to be regarded as a special

meaning to which She provision of 14 clear days service applied, the want of 14 clear days'' notice should be regarded as a mere irregularity or

informality which would be cured under the provisions of Section 35 (4) of the Act. I will deal with these points separately.

8. Section 136, Bombay Local Boards Act of 1923, provides that no suit shall foe commenced against any Local Board without giving to such

Local Board one month''s previous notice in writing of She intended action. It is contended here that no notice was given to the District Local

Board and the notice given to the President of the District Local Board should not ba regarded as a notice to the District; Local Board. It may be

noted here that 6ne notice was headed "" u/s 136, District Local Boards Act, Bombay Act 6 of 1923."" It has also been pointed out that under the

rules framed by Government under this Act all correspondence with Local Boards is to ba addrassed to fine President of the Local Board. It is

clear from the framing of the notice that it was intended for the District Local Board, and ""The President, District Local Board, Satara"" stands in

this notice for the District Local Board itself. The District Local Board acknowledged receipt of this letter and treated it as a notice given to the

District Local Board. The District Local Board joined defendant 2 in the trial Court, in putting forward tha contention that it had received no

proper notice, but it was not a party to the first appeal, and we have no means of knowing what attitude tha Local Board would have adopted

there on tha contention that it had received no proper notice of the suit aud hence the suit was bad. In my opinion it is not open to the appellant to

raly on this contention.

9. For the second contention that the election meeting of 13th April 1928 was a matter of internal management of tha Lncal Board, Mr. Thakor

has relied on rulings in In re Express Engineering Works, Limited [1920] 1 Ch. 466 and In re Oxteii Motor Co. [1921] 3 K.B. 32 It may be noted

that these cases turned upon certain provisions of company law applicable to shareholders.

10. In Nariman v. Municipal Corporation of Bombay AIR 1923 Bom. 305 Mulla, J., held that the question as to the validity of votes at a meeting

of tha Municipal Corporation of Bombay could ba decided only by a Court of law. He expressed an opinion that questions as to tha validity of

votes were not questions relating to the internal management of a company or corporation and could ba dealt with only by a Court of law.

11. In Parshuram v. Tata Industrial Bank AIR 1924 Bom. 102 Pratt, J., held that an irregularity in the proceedings at a meeting of a limited

company was not a matter for the Court, but for a majority of the shareholders of the company to deal with and that the Court would interfere only

if the rights of the shareholders were infringed, or if a case of fraud or ultra vire3 action was made out; ordinarily, the Court would not interfere to

correct a mere irregularity or to do that which the majority of the shareholders of the company had the power to do themselves. In the case before

us it is clear that tha plaintiffs were complaining of an act which constituted an irregularity inasmuch as the 14 clear days" notice provided by

Section 35 of the Act had not been given if the meeting is to ba regarded as a spacial meeting. It cannot be said that tha infringement complained of

is the infringement of any rule relating to the validity of votes or is an infringement of a kind ultra vires of the Act. If this was a mere irregularity it

would be a matter of internal management of tha District Local Board to consider whether it should or should not be condoned. Gopai v.

Snnmukhappa AIR 1927 Bom. 603 was a case although tne decision on the construction of Sections 27 and 35 (2)(b), Bombay Local Boards

Act of 1923, turned on different considerations. The learned Chief Justice has referred in that case to the principle involved in Parshuram v. Tata

Industrial Bank AIR 1924 Bom. 102 with approval. Ha says at p. 1330 (of 25 B.L.R.) of his judgment:

Speaking for myself, I fael a strong reluctance to interfering with the internal affairs of important legislative or municipal bodies more than the Court

ia obliged to do. Thus, as his been pointed out by Pratt, J., in Parshuram v. Tata Industrial Bank AIR 1924 Bom. 102 there is a general principle

as rsgards, for instance, limited liability companies, that the Court will not interfere with the internal affairs of companies or corporations except on

certain wellregulated principles generally known as the rule in Foss v. Harbottle (11). But, having regard to the conclusion which we have come to

on the merits, it is unnecessary to pursue that point.

12. It is contended by Mr. Bahadurji on behalf of respondents 1 and 2 that the provisions, of Section 35 (2)(b) requiring 14 clear days'' notice are

mandatory and not directory, and if they are to be regarded mereiy as directory and not mandatory, it is possible to conceive of circumstances in

which an irregularity in observing the provision of 14 clear days'' service of notice might materially prejudice the rights of parbies. It is contended

by Mr. Bihadurji that, although in the present case 12 or 13 clear days'' notice was given, yet the extra day or two might: have made all the

difference to the election as giving longer time and opportunity to members to nuke up their minds for which candidate to vote and for the

candidates to canvass for support at the election. Without meaning bo make any insinuation against defendant 2, Mr. Bahadurji says it is possible

to conceive a case where an unscrupulous retiring President might purposely give less than fourteen days'' clear notice in order to secure his own re

election as President of the new Board for want of tims for electors to consider the claims of a proper rival candidate, There is no evidence in the

case that any prejudice has ensued to any party owing to the wanb of fourteen clear days'' notice This want of fourteen clear days notice was, in

my opinion, a mere irregularity in a matter of internal management of bha Board. 1 he Coart should not have interfered as no prejudice was shown

to have ensued to any party owing bo the irregularity. With regard to the third poins relied on by Mr. Thakor is is clear that the meeting for whch

notice was given was the meeting at which a Chairman to be elected at the meeting was to preside and conduct the proceedings in respact of the

election of President and Vice President. The President retiring presided only for the purpose of the meeting elecbing its chairman. The objection

raised to the proper business of the maeting after the chairman was elected was not, in my opinion, too lata because the real business of the

meeting was not to commence until after the appointment of a chairman. It would not be necessary under such circumstances that the person

objecting to the meeting on the ground of irregularity or illegality should have dona so at the preliminary stage when the retiring president presided

and the chairman was elected.

13. On the fourth point Mr. Thakor contends that the meeting convened for 13th April 1928 was a statutory meeting to which the provisions of

Section 27 and not Section 35, Local Boards Act applied. Section 27 provides:

On tha expiry of the term of office of a Local Board the President and Vica President shall continue to curry out the current admtuisstrativu duties

of their offices until such time as a new President and Vice-President shall have been elected and shall have taken over charge of their duties:

Provided that in the case of the new Board constituted under this Act, a meeting for tha election of a new President shall be called by the President

of the retiring Board. The President of the Retiring Board shall preside at such meeting and the new Board shall then elect its own Chairman for

that meeting and then the meeting shall proceed to elect the new President.

14. This point is taken by Mr. Thakor for the first time in this Court. Para. 3 of the plaint refers to the meeting held on 13th April 1928 as a special

meeting. The written statement of defendant 1 did not deny the allegation that this was a special meebing. Para. 6 of the written statement admits

that notices were issued by tha President for the meeting and para. 7 of the written statement tnenbions thab the meebing and the business

transacbed at it were valid by virtue of Section 35, Clause (4). The reference to Section 35, Clause (4), makes it clear that defendant 1 was relying

on the meeting aa a special meeting to which the provisions of Section 35 would apply and the irregularities would bo validated u/s 35 (4).

Defendants 2 and 3 in their written statement expressly admit in para. 5 that the notices issued were in respect of the meeting of 13th April 1928,

and ware fourteen days'' notices as required by the Act. The written statement proceeds to deny the allegation that fourteen days'' notices were not

given to the Board. The notice itself is in these terms:

A special meeting will be held in the Local Board office...on the 13th April 1928 Friday at 1 p.m. All members should attend the meeting

positively. Let this be known.

15. Both the lower Courts have proceeded on th.3 assumption that the meeting was a special meeting. Para. 19 of the grounds of appeal in this

Court relies upon Clause (4), Section 35, Bombay Local Board, Acts to validate the want of fourteen clear days'' notice. The appellant cannot be

allowed at this late stage to change his case on this point.

16. With regard to Mr. Thakor''s last point, that Section 35 (4) can cure any irregularity in the service of the notice, it is clear that failure to give

due notice of the intention to hold a meeting of the Board amounts to an informality which could be cured under the provisions of Section 35 (4).

The notice fell short of the fourteen clear days or two. Every member of the Board was present at the meeting and as a matter of fact took part in

the voting and it is not shown that anybody wa3 prejudiced by the want of fourteen clear day''s notice.

17. Mr. Bahadurji has relied upon the language of Section 35 (2)(b) and contends that the section should be regarded as a whole; Sub-section (4)

should not be treated as separate from the general intention that can be gathered from the whole section 35 (2)(b) provides:. ""fourten clear days''

notice of a apecial meeting...shall ba circulated to the members.

18. From the use of the word ""shall"" Mr. Bahadurji urges that the terms of the section should be regarded as mandatory. The use of the word

shall"" would not by itself make a provision of the Act mandatory. It is to be construed with reference to the context in which it is used. In the Act it

appears, the word ""shall"" has been indifferently used for mandatory as well as for directory provisions. The word ""shall"" in Section 35 seems

properly to apply to a directory rather than to a mandatory provision. Mr. Bahadurji has relied on the case of Joshi kalida''s Sevakram v. The

Dakore Town Municipality [1883] 7 Bom. 393 where it was held by this Court in construing a section of the Bombay District Municipal Act of

6,1873 that a certain provision as to notice of meeting was not directory but obligatory. In that case the notice related to the convening of a

meeting where a proposal was to be adopted for imposing a new tax. The Act required that all commissioners should be given notice of such a

meeting. Three commissioners were not given notices. Two out of the three who were not given notices were present at a subsequent meeting, but

the business of that meeting was different from the meeting at which the tax had been imposed. The Court held that the tax was illegally imposed.

19. The case, in my opinion, has no application to the case before us.

20. Mr. Bahadurji has also relied on In re Railway Sleepers Supply Company [1885] 29 Ch. D. 204 where in construing a section of the

Companies Act 1862 the Court held that a special resolution for reduction of capital which had been passed and confirmed without allowing for an

interval of fourteen clear days as provided by the Act was bad in law. These two cases, in my opinion do not help us in the present case. They turn

on special provisions of the Acts with which they deal,

21. Apart from the special circumstances to which I have already alluded I should be inclined to hold that the lower Courts erred in granting and

confirming the injunction against the defendants. The want of fourteen clear days'' notice was a mere irregularity which could be cured by Section

35 (4) of the Act. It was also, in my opinion, a matter which fell under the internal management of the Board with which the Court should not have

interfered as no prejudice was shown to have resulted to any party. As defendant 1 is not properly before us we are unable to grant any substantial

relief to the appellant. Vacating the order of injunction as against the plaintiffs can be of no material help to the appellant so long as the injunction is

allowed to stand against defendant 1. By his conduct in not making defendant 1, a party to the first appeal the appellant has put it out of our power

to grant him relief which would avail against defendant 1.

22. The appeal should be dismissed. Under the peculiar circumstances of this case a just order for costs, in my opinion, would be to order the

appellant to pay the costs of respondent 3 of this second appeal. Respondents 1 and 2 should be ordered to bear their own costs of this second

appeal. The order for costs of the trial Court should be varied by ordering the plaintiffs to pay the costs of defendant 2, and the order for costs of

the lower appellate Court should be varied by ordering each party to bear his own costs.

Broomfield, J.

23. The material facts in this case are as follows: The term of office of the.District Local Board of the Satara District expired at the end of March

1928. A new Board, consisting of twenty-seven elected and nine nominated members came into existence from 1st April 1928. In accordance

with Section 27, Bombay Local Boards Act 6 of 1923, Mr. P.N. Adhav, who was the reretiring President of the Board summoned a meeting of

the newly constituted Board for 13th April 1928. Notice of the meeting was issued to the members on 31st March. Two of the members did not

receive the notice, but all were present at the meeting. Khan Bahadur D.B. Cooper was elected Chairman, and as soon as he had been elected,

two members of the Board, Sardar R.R. Panditrao and Mr. B.Y. Lomate, objected that the meeting had not been legally convened, for various

reasons, but mainly on the ground that members had not been given fourteen days'' clear notice as required by the Act. The objections were

overruled by the Chairman, and the meeting then proceeded to business. Messrs. Panditrao and Lomate took part, but under protest.

24. Mr. P.N. Adhav was re-elected President and a Vice President was also elected. The agenda given in the notice also included the election of a

standing committee, but this business was not taken up on the ground that it was not competent for a meeting convened u/s 27 of the Act. (It may

be mentioned that if Section 27 is to be strictly construed the meeting was not competent to elect a Vice President, the only business referred to in

Section 27 being the election of the President).

25. On 5th June 1928, Sardar Panditrao and Mr. Lomate filed a suit against (1) The District Local Board; (2) Mr. P.N. Adha v. [1901] 25 Bom.

606 Khan Bahadur Cooper, for a declaration that the meeting of 13th April was not legally convened and that the business transacted was not

legally transacted, and for an injunction restraining defendants 1 and 2, that is, the Board and its President, from functioning. The principal defences

were that there had been no proper notice of the suit to the District Local Board, that the meeting was legally convened, that in case there had

been any irregularity in that connexion Section 35 (4) of the Act sufficed to cure it, that the plaintiffs had not taken their objections at the earliest

opportunity and should be taken to have waived their rights, if any and that in any case it was a matter concernmg the internal management of the

District Local Board and the civil Court ought not to interfere. The trial Court on 20th December 1928, found in favour of the plaintiffs, gave them

the declarations asked for and issued an injunction permanently restraining the District Local Board from functioning as if the business transacted at

the meeting of 13th April had been legal and proper and also restraining defendant 2 from functioning as President.

26. On 16th January 1929, defendant 2, Mr. P.N. Adhav filed an appeal in the Distriat Court. He cited the plaintiffs only as respondents and did

not make the District Local Board a party to the appeal. An application for stay of execution was made on the same day but this was refused on

19th January. The injunction restraining the District Local Board and its President from functioning therefore remained in force. The District Local

Board accepted the position and steps were taken to convene a meeting for the election of a new President. At a meeting held for this purpose on

18th February 1929 Khan Bahadur Cooper was elected President. Mr. P.N. Adhav attended and took part in this meeting but he did not take any

steps to have the District Local Board or K.B. Cooper made parties to his appeal. The appeal was decided on 1st July 1929 and was dismissed,

the trial Court''s decree being confirmed. Second Appeal No. 882 of 1929 was admitted by this Court on 27th September 1929.

27. In has been strenuously contended on behalf of tha appellant that this Court is not entitled to take cognizance of what has occurred after the

decision of the suit and that if this Court is satisfied that the meeting of 13th April 1928 was a lawfully convened meeting or that the appellant was

validly elected President at that meeting, he is entitled to a decree giving effect to that decision without reference to subsequent events. I cannot

accept that view. I hold, for reasons which I shall explain later that the appellant cannot now be allowed to disturb the existing state of things. But

some of the legal points raised in the case are of general importance and as they have been argued at great length and with much ability by learned

Counsel on both sides it is desirable that we should decide these points although so far as the result is concerned, they are only of academic

interest.

28. Mr. G.N. Thakor, who appears for the appellant has devoted a considerable part of his argument to the development of a point which has not

been taken before either in the trial Court or in the Court of first appeal, namely, that the Act does not require fourteen days'' notice of a meeting

summoned u/s 27. That section merely lays down that a meeting for the election of a new President shall be called by the President of the retiring

Board and there is a proviso that where no meeting for the purpose of such election has been held within fifteen days from the expiry of the term of

office the Collector may exercise the powers of the President for the purpose of calling such meeting. The provisions about notice are contained in

Section 35. Clause (1) of that section provides for quarterly meetings of the Board and enables the Board to make regulations with respect to the

transaction of business subject to the provisions of the following subsections. The Local Government has power to make rules for this and other

purposes u/s 133 of the Act, but we understand that there are neither regulations nor rules dealing with this matter of notice Clause (2)(a), Section

35, states that the President shall fix the dates of tha quarterly meetings and:

may whenever he thinks fit, and shall, upon the written request of not leas then one fourth of the members...call a special meeting.

29. Clause (2)(b) provides that:

twenty-one clear days'' notice of a quarterly meeting and fourteen clear days'' notice of a speoial meeting...shall be circulated to the members and

posted up at the Local Board office.

30. Clause (2)(e) provides that every meeting shall be presided over by the President or if he be absent by the Vice President.

31. Section 35, therefore, provides for two kinds of meetings, quarterly and special. A meeting summoned u/s 27 is obviously not a quarterly

meeting. Equally obviously it may be described as a special meeting but Mr. Thakor argued that it is not a special meeting within the meaning of

Section 35. It is not a meeting which the President may summon ""whenever he thinks fit.

32. The President that is the President of the retiring Board is bound to summon this meeting u/s 27, and if he does not do so within a certain time

the Collector is to exercise his powers Section 27 itself lays down who is to preside at the meeting and the provisions of Section 35 (2)(e) are not

applicable. Therefore the argument is meetings summoned u/s 27 and also meetings summoned u/s 26 for the filling up of casual vacancies in the

office of President and Vice-President are in a category by themselves and not governed by the provisions of Section 35. It is admitted of course

that such meeting cannot be held without notice but it is contended that in the absence of special provision any reasonable notice will suffice. The

Act appears to be lacking in precision and completeness in this respect and as it stands it is a little difficult to say what the intention of the legislature

was. Some of the language of Section 35 is certainly not appropriate to a meeting summoned u/s 27 or Section 26. But because Section 35 (2)(a)

enables the President to call a special meeting whenever he thinks fit and requires him to do so in case of a written request, it does not necessarily

follow that meetings summoned u/s 27 or Section 26 are not special meetings also within the meaning of Section 35. Those provisions of Section

35 which are inappropriate to such meeting would not apply to them on the principle generalia specialibus non derogant. But provisions which are

appropriate, for instance, the provision about notice may reasonably be held to apply. It is to be noted that Section 35 is the first section of a

general chapter dealing with the conduct of business of the Local Boards. Clause (4) of the section which provides that acts of the Board etc., are

not to be invalidated by mere informalities appears to be obviously applicable in respect of all meetings including those summoned u/s 27 or

Section 26. Moreover if it had been the intention of the legislature that meetings summoned under those sections should be subject to special rules

as regards notice one would have expected that that would have been expressly so provided. The other view that only reasonable notice is

required would be certain to lead to disputes and difficulties. On the whole I am of opinion that the provisions of Section 35 (2)(b) requiring

fourteen clear days'' notice for special meetings apply as much to meetings summoned u/s 27 or Section 26 as to any other special meetings. In the

present case this condition was admittedly not complied with and that brings us to Mr. Thakor''s next main argument, namely that the failure to

comply strictly with the provisions about notice was under the circumstances a mere informality and therefore does not affect the validity of

business transacted at the meeting by reason of Clause (4), Section 35. That clause is as follows:

No act of a Board, or of any parson acting as a member or as a President, Vice-President, or Chairman shall be deemed to be invalid by reason

only of some defect in the appointment of such Board, President Vioe President Chairman or member or on the ground that they or any of them

were disqualified for the office of momber, or that formal notice of the intention to hold a meeting of the Board was not duly given or for any other

such mere informality.

33. The important words for our purpose are those which I have italicised and the first thing we have to decide is what is meant by formal notice

not being duly given. Mr. Bahadurji who represents the respondents plaintiffs has contended that the clause should not be interpreted in such a way

as to render nugatory the mandatory provisions of the preceding clauses. According to him ""formal notice"" means notice which complies with all

the prescribed formalities and therefore inter alia allows fourteen clear days; there must always be a formal notice in this sense but if the formal

notice isn ot ""duly given"" that defect may be cured by Section 35 (4). The only direction there as to the method of service of the notice is that it

should be circulated so that according to this argument the only defect curable by this clause would be some irregularity in the method of

circulation. That it seems to me would render the clause practically meaningless so far as it relates to notices.

34. There is no direct authority on the point. Reliance has been placed on Joshi Kalidas Sevahram v. The Dakor Town Municipality [1883] 7

Bom. 393 and on Abajj Sitaram v. Trimbak Municipality [1903] 28 Bom 66 but these cases do not really support the narrow construction sought

to be placed on the language of the clause. In the former of these cases where the question was whether a tax had been legally imposed it

appeared that three members of the municipality who were absent from Dakore had no notice at all of the meeting and also that no notice

mentioning the business to be transacted had been posted up at the kacheri. It is also to be noted that Bombay Act 6 of 1873, which applied to

that case contained no provision corresponding to Section 35 (4), Bombay Local Boards Act. The District Judge has referred to Section 76 of the

Act of 1873 but that corresponded not to Section 35 (4), but to Section 66 (1) Bombay Local Boards Act, and would not apply to notice of a

meeting. In Abaji v. Trimbak Municipality [1903] 28 Bom 66 the relevant Act was Bombay Act 2 of 1884. That did contain a provision Section

27 (17) similar to Section 35 (4) in the Bombay Local Boards Act. But the facts were quite different. The Act empowered the President only to

call special meetings, and it was held that a special general meeting which was not called by the President and at which neither the President nor

any official member was present was not a properly constituted meeting and that the defect could not be cured by Section 27 (17). That was

obviously not a mere informality, Both these cases appear to be distinguishable from the present and I think there is nothing to prevent us from

construing the language of Section 35 (4) according to its natural meaning. The use of the word ""formal"" before ""notice"" might be said to suggest

that notice of some kind is always necessary for if the intention had been that notice might be dispensed with altogether one would have expected

the words to be ""on the ground that notice had been duly given."" There are some remarks of Marten, C.J., in Gopal v. Sanmukhappa AIR 1927

Bom. 603 which indicate that even that might be going too far. But in any case I can see no reason to think that the intention of the legislature was

to make the full prescribed period of notice absolutely indispensable without reference to the circumstances. I take Section 35 (4) to mean that any

failure to comply with the prescribed formalities in respect of notice will not affect the validity of the proceedings if the said failure can fairly be

described as a mere informality; and I take ""a mere informality"" to mean, in effect, anything which, though contrary to the Act or rules, has not in

fact occasioned any injustice or prejudice.

35. In the present case, as already stated, all the members of the Board had notice of the meeting of 13th April. Nearly all of them had formal

notice which allowed about 12 clear days. Two of them (not the plaintiffs) did not receive any formal notice, but they attended the meeting and

raised no objection. One of the two happened to be Khan Bahadur Cooper who, as Chairman of the meeting, disallowed the plaintiffs'' objection

that the meeting was not properly convened. In view of the provisions of Section 27 of the Act it is not unreasonable to suppose that all the

members knew that a meeting for the election of a new President would in the ordinary course have to be held about the middle of April. The only

reason suggested to us for holding that the full prescribed period of 14 days should be held to be indispensable is that otherwise a person who

aspires to be President, or is interested in the election of some other person as President, may find his time for canvassing curtailed. I am prepared

to admit that there might be cases where a serious curtailment of the prescribed period of notice, or even any curtailment of it, would work

injustice. But this cannot be said to be such a case. The plaintiffs had plenty of time for canvassing. Neither of them appears to have been in the

running for the post of President. Plaintiff 1 was proposed for the post of Vice President by plaintiff 2, but he was not elected. There seems not to

be the faintest reason to suppose that the re-election of Mr. P.N. Adhav was in any way facilitated by the failure to comply strictly with the rules,

or that the voting at the meeting would have been different if 14 clear days'' notice had been given. As all the members except two received formal

notice, which allowed them very little less than the full prescribed period, as the two who did not receive such formal notice, nevertheless had

notice and raised no objection, and as no one appears to have been prejudiced in the least, I hold that this was a case of a mere informality within

the meaning of Section 35 (4) which did not invalidate the meeting.

36. It follows that, in my opinion, the lower Courts were wrong in allowing the plaintiffs" suit: and I need not therefore deal in much detail with the

rest of Mr. Thakor"s arguments in that connexion.

37. As regards the contention that notice of the suit was not duly given to the Local Board as required by Section 136 of the Act, the facts are that

plaintiffs sent a notice, Ex. 51, on 30th April 1928, to, (1): the President, District Local Board, Satara; (2) P.N. Adhav, President elected in the

meeting of the District Local Board, Satara, held on 13th April 1928; (3) Khan Bahadur D.B. Cooper. The notice expressly purported to be

issued u/s 136 of the Act, and the first notice was clearly intended to be a notice, not to the President individually, but to the Board as represented

by the President. The second notioe was to the President individually. It is nowhere prescribed how a notice to the Board is to be addressed, but it

is laid down in the rules framed under the Act that all correspondence intended for the Board is to be addressed to the President. Mr. Adhav

accepted the first notice, presumably on behalf of the Board, as well as the second notice addressed to himself personally, and it was he who

signed as President the written statement put in on behalf of defendant 1 in the suit. The notice should, no doubt, have been addressed to the

District Local Board simplieiter or to the District Local Board by its President, but under the circumstances the mis-direction is obviously

immaterial. The Board did in fact receive due notice, and the amount of time which has been devoted to the discussion of this pure technicality in

both the lower Courts is difficult to understand, except on the view that private rivalries and animosities rather than public spirit are mainly

responsible for this litigation.

38. As regards the argument that plaintiffs should be taken to have waived their right of suit because they did not raise their objections until after

the election of the Chairman, and because they took part in the meeting, I think there is no substance in it. Plaintiffs might reasonably suppose that

the meeting was not open for the transaction of business until the Chairman had been elected, and the minutes show that they took part in the

subsequent proceedings under protest.

39. The argument that the Court should have declined to interfere with the internal management of the District Local Board is based on what is

known as the rule in Foss v. Harbottle (11). The rule was relied upon in Parshuram v. Tata Industrial Bank AIR 1924 Bom. 102 where Pratt, J.

said (p. 1085 of 25 B.L.R.):

Irregularities are not a matter for the Court, but for a majority of the company to deal with. The Courts will interfere only if the rights of the

shareholders are Infringed; or if a case of fraud, or ultra vires action is made out. Otherwise the Court does not interfere to correct an irregularity

or to do that which the majority of the company have the power to do.

40. That case and the other cases to which we have been referred in this connexion were all company cases, but in Gopal v. Sanmuhhappa AIR

1927 Bom. 603 Marten, G.J., expressed the opinion that the rule might apply in the case of a corporation like the District Local Board. I should

feel no difficulty in applying the rule in this case, but it appears to me that it is hardly necessary to have recourse to it. For the rule, at any rate as

stated by Pratt, J., only relateg to irregularities by which no one is prejudiced, and such irregularities are cured anyhow by Section 35 (4).

41. In the ordinary way the result of our finding, that the meeting of 13th April was invalidated by the defect in the notice, would be that the decree

of the trial Court would be set aside. But in view of subsequent events (which this Court is entitled to consider: see Order 41, Rule 33, and

Sahharam MaJiadev Dange v. Hari Krishna Dange [1881] 6 Bom. 113 and other cases in which that decision has been followed), and in view of

the course taken by the appellant himself, that would be a most inequitable result. The District Local Board accepted the decision of the trial Court

and did not appeal against it. That was a course which it was quite proper for the Board to take; in fact it would appear to have been the best

course for it to take in the public interest. The decision might have been contested. An attempt might have been made to get the injunction issued

by the Court suspended. Bud the result of further litigation was problematical, and in the meantime it was imperative that the work of the Board

should be carried on without delay. The emergency powers given under the Act were, therefore, invoked and a fresh meeting was summoned. At

this meeting, it appears, the appellant offered himself as a candidate for the presidentship. He was not elected, but he took his chance of being

elected, and that in itself renders his subsequent proceedings very difficult to explain except on the theory that he was mainly actuated by his private

interests. He then went on with his appeal, but without making the District Local Board or the newly elected. President parties to it. The result of

that was that the litigation became practically a personal matter between the appellant and the plaintiffs. As far as the District Local Board was

concerned the decision of the trial Court became res judicata. The appellant added the District Local Board as a party to this second appeal, but

that is an irregular proceeding and does not make the Board properly a party. It might be open to the Court to add a respondent who was not

made a party in the Court of first appeal, though that is a matter as to which the High Courts have differed. But in any case the power is

discretionary, and I should not be prepared to exercise it in this case, even if the Court had been asked to do so, which it was not. Whatever

personal injury the appellant may have suffered is of no account in comparison with the embarrassment which might be caused to the public body if

the decree of the trial Court were now to be set aside. For the appellant has made no secret of his intention, if successful, of claiming his position as

President as from April 1928 and of challenging the legality of the subsequent meeting. Under the circumstances wo are bound to hold, I think

quod fieri non debuit factum valet. There is no need, in my opinion, to have recourse to the inherent powers of the Court, for the appellant by his

conduct of the litigation has disentitled himself to any practical relief, which could only be given at the expense of the District Local Board. But if it

had been necessary I should have been prepared to hold that the Court"s inherent powers would have justified our refraining from miking a decree

which would haye been, in effect, an abuse of the process of the Court.

42. I agree with the order proposed by my learned brother, including, the order as to costs, which I consider reasonable in view of the very

peculiar circumstances.