Fazalbhai Amirbhai and anr. Vs. the Baroda Barough Municipality and anr.

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Court : Gujarat

Decided On : Dec-08-1965

Reported in : (1966)7GLR367

Judge : J.M. Shelat, C.J. and; P.N. Bhagwati, J.

Appellant : Fazalbhai Amirbhai and anr.

Respondent : The Baroda Barough Municipality and anr.

Judgement :

J.M. Shelat, C.J.

1. This is a petition for a writ of mandamus or any other appropriate writ for setting aside the ruling given-by respondent No. 2 as the President of the Baroda Borough Municipality disallowing a motion moved by the petitioners in a special general meeting convened on July 6, 1962 from being put to vote to that meeting, to direct the respondents to hold a meeting once again and to direct the second respondent to put the aforesaid motion to the vote of councillors. The facts leading to the petition may shortly be stated.

2. The Baroda Borough Municipality is constituted under the Bombay Municipal Boroughs Act, XVIII of 1925. In the year 1962 the second respondent was its duly elected president. On or about May 12, 1959 the Municipality published a scheme for disposal of certain lands belonging to it, being survey numbers 740, 733, 738 and 739 to certain classes of persons, namely, those belonging to the lower income group for the purpose of constructing residential houses or for those who were residing in congested areas or those who had no house of their own in the city. The scheme inter alia provided that the lands should be divided into plots and allotted to applicants coming from the aforesaid classes and each plot should measure 75 feet x 40 feet. Under the scheme the applicants were to lodge their applications within seven days from the date of the publication thereof. In pursuance of the scheme, a number of persons applied for allotment of plots and the Municipality in accordance with the scheme allotted plots of some of the applicants who satisfied the conditions under the scheme. Amongst the applicants were one Lalitchandra Chhotabhai Diwanji, Surendranath C. Patel, Hasmukhlal Parikh and Ramanlal Jamnadas Shah, to whom the Municipality allotted plots Nos. 43 to 46 and 47. According to the petitioners, after the allotment was made, one Chimanlal Haribhai Amin, the Secretary of Sardar Chhatralaya of Baroda and a sitting member of the Legislative Assembly of Gujarat, encroached upon the aforesaid plots 44, 45 and 46 and some portions of plots 47 and 48, took hold of possession thereof and started to construct a hedge around the trespassed portions and even started cultivation thereon. On the said encroachment having taken place, the aforesaid allottees applied to the Municipality requesting it,

to remove the encroachment and to hand over possession of the plots allotted to them. In consequence of this complaint, the Municipality issued three notices, the last one being dated December 16, 1961, in which after reciting the encroachment and the fact of illegal construction of the compound by the said Chhatralaya, the Municipality called upon the said Amin to remove the said hedge and intimated that in default further action would be taken by the Municipality. Notwithstanding the notices, the said Amin did not vacate the encroachment and therefore the matter was mooted in a meeting of the Municipality held on April 23, 1962 when the second respondent as the President of the Muni-cipality assured the councillors that he would take all necessary steps to get the encroachment removed by the said Amin. This fact has not been denied by the President in his affidavit in reply. Since nothing further happened and the compound hedge was not removed by the said Amin, a complaint was filed by an inspector of the Municipality on June 18, 1962 in the Court of the learned Judicial Magistrate, First Class, Baroda, alleging that the accused therein, i.e. the said Chimanlal H. Amin,. Had committed trespass upon municipal lands on September 25, 1962 and that the complainant was in a position to lead evidence of four of the employees of the Municipality whose names were set out in the said complaint. It appears that the said complaint was subsequently withdrawn on August 9, 1962 and the proceedings in the Court show that the reason for the withdrawal was that the Chief Officer of the Municipality had ordered that the complaint should be withdrawn. Accordingly, on August 9, 1962 an application for withdrawal of the complaint was made by the said inspector and the learned Magistrate passed an order allowing withdrawal and acquitting the accused under Section 248 of the Code of Criminal Procedure.

3. Before the withdrawal of the complaint took place, thirteen councillors signed a requisition on June 6, 1962 and sent it to the President for calling a special general meeting under Section 35(2) of the Bombay Municipal Boroughs Act setting out therein a motion which they proposed to move at the meeting. The motion which the requisitionists wanted to move recited the fact of the Municipality having acquired the aforesaid lands, the allotment thereof amongst other plots of plots Nos. 43 to 46 and 47, their allotment to the aforesaid persons and the fact of the secretary of the Chhatralaya having illegally encroached upon the aforesaid plots and lastly the inaction on the part of the Municipality in taking any steps for having the said encroachment vacated. The motion inter alia proposed that the Establishment Committee of the Municipality should make an enquiry to ascertain who amongst the municipal employees was responsible for the inaction and to submit a report in that regard at the next meeting. The motion also suggested that the Municipality should take immediate action against the said Amin and for recovery of mesne profits which might be fixed by a Court of law and for recovery of possession of the trespassed lands. The motion also recited that the said Amin had acquired for the said Chhatralaya certain lands in the first instance from the Government and thereafter from the Government Servants' Co-operative Housing Society and had also acquired plots Nos. 49, 50 and 51 from the Municipality when the Municipality made allotment of the said lands and stated that notwithstanding the acquisition of so much land the said Chhatralaya was still intent upon making encroachments upon the aforesaid plots and had failed to vacate the encroachment and called upon the Municipality to pass a resolution cancelling the allotment of plots Nos. 49, 50 and 51 in favour of the said Chhatralaya. The Vice President of the Municipality in the absence of the second respondent convened a special general meeting at 5-30 p.m. on July 6, 1962.

4. At the said meeting out of forty-five councillors, thirty attended and out of those

thirty who were present all the thirteen requisitionists were also present. According to the minutes of the meeting presumably recorded by the Secretary but signed by the second respondent in token of its authenticity and correctness, the meeting as directed commenced its work at 5-30 p.m. The meeting first passed two condolence resolution in respect of the death of Purshottamdas Tandan and Dr. B.C. Roy of Calcutta and thereafter took up the work in the matter of the proposed motion. One Dr. Rasiklal Bhatt raised a point of order to the effect that since the meeting had been convened by the Vice President the second respondent could not preside over that meeting. That point of order was rejected by the second respondent and he continued to preside over that meeting. It appears from the minutes of the proceedings that the motion was thereafter read out to the meeting and, as the minutes record, the motion was allowed and discussion thereon also was allowed by the second respondent. The minutes however show that the discussion on the motion which commenced at about 5-45 p.m. lasted until about 8-30 p.m. and after the discussion was over and when the motion had to be put to the vote of the councillors, the second respondent as the President passed the following impugned order:

Thereafter on a discussion by the meeting of the above motion received from Shri Padmakumar B. Jhaveri and Shri Fajalbhai A. Sopariwala, the President ruled out the motion stating that in view of the possession of the lands referred to in the motion the action proposed in the motion was inappropriate and therefore the motion was not permissible in law.

The possession mentioned in the aforesaid order apparently referred to the possession of the said land by a tenant. It is the validity of this order that is being challenged in this petition.

5. Mr. J.G. Shah for the petitioners contended that none of the provisions of the Bombay Municipal Boroughs Act, 1925 or the rules made thereunder by the first respondent Municipality empowered the second respondent to rule out the motion in the manner he did and on the grounds on which he ruled it out. In support of his contention, Mr. Shah drew our attention to the various provisions of the Act as also to some of the rules made by the Municipality under Section 58(1) and (b) of the Act and argued that the only rule which empowered the second respondent to disallow the motion was Rule 18 but the reasons given by the President in ruling out the motion at a stage when the discussion on the motion was already over and when it had to be put to the vote of the councillors were such that it would not be possible to say that the action of the President in ruling out the motion fell within the ambit of Rule 18, for that rule only permitted the President either to disallow any motion when it is moved or even if it is allowed to be moved to prevent or disallow discussion thereon on the ground that in the opinion of the President the motion was 'frivolous, vexatious, offensive or insulting.' Mr. Shah contended that the minutes as recorded and as signed by the President show that the President did not prevent or disallow discussion thereon but that what he prevented by his aforesaid order was to allow the motion to be put to vote by the councillors then present. He contended that such an action on the part of the President was beyond the scope and ambit of Rule 18. He also argued that the minutes clearly show on what grounds the President did not permit the motion to be voted upon by the meeting and that it was not on the ground that the motion or the discussion thereon was either frivolous, vexatious, offensive or insulting. Mr. Shah argued that that being the position, the action on the part of the President did not fall within Rule 18 and was therefore, unauthorised and illegal and was liable to be set aside.

6. In order to appreciate these contentions, we think it is necessary to consider some of the provisions of the Act and also the rules in order to ascertain the scope of the power of the President as also the scope of his power to regulate the conduct of the business of the meeting referred to in Section 58 of the Act. Section 9 provides that a borough municipality shall consist of elected members and nominated members, if any, under Sub-section (2) of that section. Section 18 deals with the appointment of a President and a Vice President and provides that a municipality shall be presided over by a President who shall be elected by the councillors from among their number and there shall be a vice president similarly elected for each municipality. Section 30 provides that except as otherwise expressly provided in the Act, the municipal government of a municipal borough vests in the municipality and Sub-section (2) of that section provides that the executive power for the purpose of carrying out the provisions of the Act shall vest in the Chief Officer appointed under Section 33, subject, wherever it is in the Act expressly so directed, to the approval or sanction of the municipality or of the standing committee and subject also to all other restrictions, limitations and conditions imposed by the Act and the rules made thereunder. It is clear from this section that though the municipal government vests in the municipality, the executive power thereof is vested in the Chief Officer, the object of so providing being that it would not be possible for a body of councillors to do executive and administrative work of a day to day nature and therefore such power had to be vested under this section in the Chief Officer subject to the limitations and restrictions, approval and sanction expressly provided and/or directed under the Act. Section 31 lays down the duties of the President, one of such duties being to preside at all meetings of the municipality and subject to the provisions of the rules for the time being in force under Clause (a) of Section 58, to regulate the conduct of business at such meetings. Section 32 provides for similar powers of the Vice President to be exercised by him in the absence of the President. Section 35 deals with municipal meetings and Sub-sections (1), (2) and (3) thereof provide that there should be at least four ordinary general meetings in each year for the disposal of the general business of the municipality, the power and the duty of the President to call a special general meeting either when he thinks fit or upon a written request of not less than one-fourth of the councillors and on his failure to do so the power of the Vice President to call such a meeting not more than thirty days after the presentation of such a request. Sub-section (8) of Section 35 inter alia provides that except with the permission of the presiding authority, no business shall be trans-acted and no proposition shall be discussed at any general meeting unless it has been entered in the notice convening such a meeting or, in the case of a special general meeting, in the written request for such meeting. It also provides that the order in which any business or proposition shall be brought forward at such meeting shall be determined by the presiding authority who, in case it is proposed by any member to give priority to any particular item of such business or to any particular proposition, shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal. Under this sub-section, therefore, if an item is set out in the notice calling a general meeting or in the written request for a special general meeting, no permission of the presiding authority would be necessary for the discussion of such an item. Since the motion in respect of which the requisitioned special general meeting was convened was set out in the said requisition, it would appear that no permission of the President under this sub-section would be necessary for the discussion thereof. Sub-section (9) provides that every municipality should maintain minutes of the names of the councillors and of the Government officers, if any, present at such meeting and of the proceedings at such general meeting, in a book to be provided for that purpose and that such minutes should be signed, as soon as

practicable, by the presiding authority and should at all reasonable times be open to inspection by any inhabitant of the municipal borough. Sub-section (10) provides that all questions shall be decided by a majority of votes of the councillors present at voting, the presiding authority having a second or a casting vote in cases of equality of votes, and votes shall be taken and result recorded in such manner as may be prescribed by rules in that behalf for the time being in force under Clause (a) of Section 58. Section 58, to which reference has been made in this section, inter alia empowers the municipality to frame rules not inconsistent with the Act regulating the conduct of its business. In pursuance of this power, the first respondent municipality framed rules by a resolution dated September 13, 1956 which were brought into force as from October 1, 1956. Rule 2(5) defines a 'motion' as including a proposal or an amendment. The motion that was moved by the petitioners in the aforesaid motion dated July 6, 1962 was, therefore, clearly a motion within the meaning of this rule. Chapter II of the rule lays down the conduct of municipal business and Rule 3 provides for the preparation of a notice convening a general meeting. Rule 7 provides that after the presiding authority has taken his seat, the minutes of the previous meeting shall be read out and after confirmation shall be signed by the presiding authority, provided that they may be taken as read unless an objection is taken by a councillor or councillors present in the house. We are informed by the learned advocates of the parties that the minutes of the meeting dated July 6, 1962 were also duly confirmed in the meeting held next after the aforesaid meeting of July 6, 1962. Rule 12 deals with raising a point of order and empowers a councillor to submit a point of order for the decision of the presiding authority calling in question the propriety of some portion of the proceedings before the meeting. Such a point of order should refer as briefly as possible to the alleged want of order and the councillor raising it shall not be entitled to make any speech thereon but will be entitled to explain in brief his view point to the presiding authority. Such a point of order and the decision of the Presiding authority thereon shall be kept on record and the decision of the presiding authority shall be final. The point of order that can be raised under this rule is obviously with reference to the want of propriety of the proceedings or a portion thereof before the meeting, such as for instance, that a proposal put forward before the meeting is not relevant or germane to the matter on the agenda. It is an admitted fact that no point of order as to the propriety of the aforesaid motion or the action proposed to be taken therein was raised at the time of the meeting and in fact such a point of order would not be possible under Rule 12, for the meeting was called to discuss the motion itself and therefore discussion thereof would be germane and relevant to that motion which was moved and seconded at that meeting. Rules 17, 18 and 19 deal with motions and procedure relating thereto. Rule 17 provides that every motion and amendment shall be handed over by the proposer in writing in Gujarati or in English to the presiding authority before it is moved. Rule 18 provides: 'The President shall have the authority to disallow any proposal or motion which in his opinion is frivolous, vexatious, offensive or insulting. He may also prevent or disallow discussion of any such motion or proposal.' It is clear from this rule that the President has not only the power to disallow any proposal or motion provided it is in his opinion either frivolous, vexatious, offensive or insulting, but has also the power to prevent or disallow discussion upon any such motion or proposal even after he has allowed it to be moved. The rule, however, does not in express terms provide for any power in the President not to put a motion or a proposal to the vote of the councillors present at the meeting even though he has allowed such a motion or proposal to be moved and permitted discussion thereon. Rule 19 provides that except in cases of emergency and with the consent of the presiding authority no councillor shall be entitled to propose a motion other than the

one directly arising from the subject before the meeting. Rule 26 deals with the discussion and the procedure relating thereto and Rule 38 deals with voting on the original motion and the amendment thereof. Lastly Rule 47 provides that the minutes shall be written in Gujarati in accordance with the form given in Schedule A to the rules but no speeches shall be recorded in the minutes and the presiding authority may delete from the motion any matter held by him to be out of order, argumentative or offensive and the matter so deleted shall not be recorded in the minute book. These are all the relevant provisions of the Act and the rules.

7. The question which arises for our determination is whether the second respondent as the President of the Municipality and presiding over the meeting dated July 6, 1962 had the power to rule out the aforesaid motion and prevent the same being put to the vote of the councillors present at that meeting as he purported to do on the grounds recorded in the minutes of that meeting signed by him and subsequently confirmed at the next meeting of the Municipality. As already stated, the second respondent ruled out the motion observing that in view of the land alleged to have been encroached upon by the said Amin and/or the said Chhatralaya being in possession of a tenant, the action proposed in the said motion, namely, to remove the said alleged encroachment, to recover damages from the said Amin and to cancel the allotment of the aforesaid three plots in favour of the said Amin and/or the said Chhatralaya, was inappropriate and therefore the motion was not permissible in law. There can be no doubt whatsoever, and there is none in our minds, that the reason given by the second respondent for ruling out the motion was not that the motion or the action proposed therein was either frivolous, vexatious, offensive or insulting. In fact, the minutes disclose in express terms the reason for ruling out the motion, that reason being that in view of the fact that the encroached lands were then in possession of a tenant the action proposed in the motion was inappropriate and therefore the motion was not permissible in law. That being the reason stated in express terms on account of which the motion was ruled out by the second respondent, it would not be possible to say that the motion was ruled out because in the opinion of the second respondent it was either frivolous, vexatious, offensive or insulting. Prima facie, therefore, it would appear that the motion was ruled out not under the power reserved to the President under Rule 18 but on the ground that the motion was not permissible in law as the action proposed therein was inappropriate. If the action of the president did not fall within the ambit of Rule 18, the matter of the motion had to be decided by the councillor by a majority of votes as provided by Sub-section (10) of Section 35. The minutes clearly show that the ruling given by the second respondent amounted to a decision by him, namely, that the action proposed in the motion was inappropriate in view of the possession of the lands being at that time with a tenant. Such a question, unless it fell within the ambit of Rule 18, had to be decided by the councillors and not by the President. Consequently, by expressing his own view on the merits of the motion and his view on the action proposed therein, the President, instead of allowing the meeting to decide the matter, ruled out the motion, thereby not only trespassing upon the authority of the councillors to determine the appropriateness of the motion or otherwise but also usurped the function of that meeting. Considering the relevant provisions of the Act and the rules, such an action on the part of the second respondent was clearly in contravention of Sub-section (1) of Section 35 which, as already stated, provides that a decision on a motion or a proposal shall not be by the President but by a majority of votes of the councillors present at the meeting. If the motion moved and the discussion at, that meeting were properly scrutinised, it is clear that the question that arose upon that motion was that action should be taken by the municipality in respect of the alleged

encroachment committed by the said Amin or the said Chhatralaya. The fact that the said Amin and/or the said Chhatralaya had committed trespass on lands belonging to the municipality and allotted by it to the aforesaid persons could not be disputed by the second respondent because, as already stated, in an earlier meeting the second respondent had impliedly admitted the said encroachment by assuring the councillors present at that meeting that he would take the necessary steps to remove the encroachment. The only question, therefore, that remained for discussion in respect of the motion was not whether any encroachment had been committed but in view of that encroachment whether the action proposed in the motion should be adopted by the Municipality or not. Therefore, it is not possible to say that the motion was an irrelevant motion which on the ground of irrelevance could be ruled out by the second respondent. The aforesaid lands having been allotted to the aforesaid persons and those persons having not been able to obtain possession thereof and having complained to the first respondent municipality and the motion merely proposing as to whether the action proposed therein should be taken or not, it it once again impossible to say that the motion or the action proposed therein was either frivolous, vexatious, offensive or insulting. In point of fact, the second respondent did not seem to have ruled out the motion and prevented it from being voted upon by the councillors present on the ground that it was frivolous, vexatious, offensive or insulting. He ruled it out on the ground that the action proposed in the motion was inappropriate and that therefore the motion itself was not permissible in law. It would thus appear that the order passed by the second respondent for ruling out the motion and not putting it to the vote of the councillors present at that time was not in exercise of the power conferred upon him by Rule 18 of the aforesaid rules.

8. As already stated, Rule 18 confers two powers upon the President (I) he has the authority to disallow a proposal or a motion when it is sought to be moved and (2) even if he were to allow such a motion to be moved, to prevent or disallow discussion on any such motion or proposal if in his opinion it is either frivolous, vexatious, offensive or insulting. The rule, however, does not provide that after the President has allowed such a motion to be moved and has also allowed discussion thereon, he has the power after such discussion is over not to put such a motion to the vote of the councillors present. In the present case, it is not in dispute that the second respondent allowed the motion to be moved and seconded and also allowed a discussion thereon. The minutes in fact show that the discussion was a prolonged one and actually lasted for about two hours and forty-five minutes. It was after, the discussion was over and just before the meeting closed that he passed his impugned order ruling out the said motion and refusing it to be put to the vote of the meeting on the ground that it was not permissible in law as the action proposed therein was inappropriate. If our interpretation of Rule 18 were to be correct, once the second respondent had allowed the action to be moved and had allowed discussion thereon, he exhausted his power under Rule 18 and there being no further power reserved to him to prevent such a motion being put to the vote of the councillors, the impugned action on his part would not fall within the scope and ambit of Rule 18.

9. But assuming that Rule 18 confers such power upon him, i.e. the power not to put the motion to the vote of the councillors present even after he had allowed it and permitted discussion thereon, Rule 18 would permit him to adopt the action which he did provided he came to the opinion that the motion in question was frivolous, vexatious, offensive or insulting. If the second respondent had disallowed the motion from being put to the vote or had ruled it but under the power reserved to him under Rule 18, the proceedings of that meeting would show that he had exercised his power

under Rule 18 having been of the opinion that the motion in question fell under any one of the four aforesaid grounds. While passing his order he must, therefore, express his view that in his opinion the motion fell within the mischief of its being either frivolous, vexatious, offensive or insulting. As already pointed out, the minutes signed by the second respondent clearly show that he had purported to rule out the motion not on the ground that it was either frivolous, vexatious, offensive or insulting but that the motion was not permissible in law as the action proposed therein was inappropriate. Such a reason having been expressly given by him and recorded also in express terms in the minutes clearly negatives the position that the action adopted by him was on the ground that he was of the opinion that the motion fell within the mischief of Rule 18, namely, that in his opinion it was either frivolous, vexatious, offensive or insulting.

10. Mr. Karlekar, who appears for the second respondent, however, relied upon paras 7 and 11 of the second respondent's affidavit in reply and argued that the action taken by the second respondent would fall within the scope of Rule 18, for according to the averments made in these paragraphs, the second respondent was of the opinion that he should disallow the motion because it was frivolous, vexatious, offensive or insulting. Mr. Karlekar, however, had to concede that considering the language of the motion as also its contents it was impossible to say that it was frivolous, vexatious, offensive or insulting. He had also to concede that it would be impossible to treat the motion as frivolous or vexatious, for, since the motion complained of an encroachment made on the municipal lands and the proposed action to be taken for the removal of such encroachment, a proposal to adopt such an action cannot either be called frivolous or vexatious much less offensive or insulting. It is true that in paras 7 and 11 the second respondent has averred that the motion was frivolous, vexatious, offensive and insulting and that he had the authority to disallow or withhold such a motion from being put to vote both under the Act as also under the rules made thereunder and that after considering the circumstances he had come to the opinion that the motion was frivolous, vexatious, offensive and insulting. The affidavit in reply was filed on December 6, 1965, nearly three years after the petition was filed and more than three years after the said meeting was held. The opinion that he must have formed with regard to the motion would be better found from the minutes of the meeting for they were recorded soon after the meeting was held and the correctness and the authenticity of those minutes was ensured by the fact the second respondent has not only signed those minutes but they were confirmed at the meeting held next after the meeting in question. Since those minutes show that the motion was ruled out on the ground that it was not permissible in law because the action proposed was inappropriate, it would be that reason recorded in the minutes as prescribed by the rules which should weigh the Court rather than the one which at a subsequent stage the second respondent puts forward in his affidavit in reply when he is conscious of the fact that the petitioners have challenged his ruling on the ground that it was not given under Rule 18 or in any event that it did not fall within the ambit and scope of that rule. As already stated, the reason given by the second respondent as recorded in those minutes clearly negatives the position that he was at that time of the opinion that the motion was either frivolous, vexatious, offensive or insulting and therefore his ruling did not fall within Rule 18. If that was his opinion, surely he would have expressed that opinion in his ruling and the minutes in that event would have clearly shown that the motion was ruled out by him on the ground that either the motion itself or the discussion thereon showed that it was frivolous, vexatious, offensive or insulting.

10.1 That being the position, we have no doubt in our minds that the second respondent had refused to put the motion to the vote of the meeting on that occasion not because he was of the opinion that the motion was frivolous, vexatious, etc., but because he felt that the action proposed in that motion was inappropriate and therefore the motion should not be put to the vote of the meeting. Such an action would clearly not fall within Rule 18 nor under any other rule. It is clear that the second respondent took upon himself the burden of deciding the appropriateness or otherwise of the action proposed in the motion thereby entrenching upon the legitimate function and power of the meeting to decide the question as to whether the action proposed in the motion should be adopted by the Municipality or not.

10.2 Mr. Karlekar, however, contended that the second respondent acted under, Clause (a) of Section 31 which gives power to the president to regulate the conduct of the business at the municipal meeting. It is no doubt true that the Legislature has conferred upon the President the power to regulate the conduct of the business at the meetings of a municipality. But the power to regulate the conduct of such business is subject to the provisions of the rules as framed by the municipality under Clause (a) of Section 58. Mr. Karlekar in fact conceded that the only provision under which the second respondent could rule out the said motion lay in Rule 18 of the said rules. If, therefore, the impugned action of the second respondent cannot fall under the provisions of Rule 18, the conclusion is inescapable that his action was unauthorised and therefore illegal. Mr. Karlekar next argued that under Rule 18 the President had also the power to disallow a motion even after he had allowed it to be moved and permitted discussion thereon and that therefore he was entitled to rule out the motion before he put that motion to the vote of the meeting. The contention, in our view, suffers from at least two infirmities. The first infirmity is that even assuming that he has such a power and further that he disallowed the motion and not that he refused to put it to the vote, he could have recourse to Rule 18 provided that he was of the opinion that the motion was frivolous, vexatious, offensive or insulting. As already stated the minutes of the meeting do not show that he arrived at that opinion but on the contrary they show he had ruled it out on the ground that the action proposed therein was inappropriate. The second infirmity in that contention is that as we read Rules 17 and 18, the procedure therein laid down falls clearly in three stages, namely, the moving of a proposal, a discussion thereon and lastly the determination thereof. The power conferred upon the second respondent under Rule 18 deals with only stages one and two, namely, the moving of the motion or proposal and discussion thereon. If the President were of the opinion either at stage number one or stage number two that motion is any one of the four kinds mentioned in Rule 18, he has clearly the power of disallowing such a motion and preventing or disallowing discussion thereon. But once the President allows a motion to be moved and also a discussion thereon and the only thing left is to put such a motion to the vote for determination by the meeting, he has, in our view, no power under Rule 18 to prevent such a motion being put to the vote of the meeting. In either case, therefore, Mr. Karlekar's contention cannot be sustained, first on the ground that the second respondent had no power or authority not to put the motion to the vote and secondly on the ground that he has not resorted to the power contained in Rule 18, the minutes of the meeting clearly showing that he purported to act in the manner he did on the ground that the motion was not permissible in law as the action proposed therein was inappropriate.

11. For the reasons aforesaid, we are of the opinion that the action taken by the second respondent was unauthorised and therefore illegal and the ruling given by

him is liable to be set aside. We, therefore, issue a writ of mandamus setting aside the impugned order passed by the second respondent as recorded in the said minutes signed by him. The petition is allowed to that extent. The respondents will pay to the petitioners the costs of this petition.