

असाधारण  
EXTRAORDINARY

Daman 19<sup>th</sup> August, 2015, 28 Sravana 1937 (Saka)

सं. : 33  
No.

सरकारी राजपत्र  
OFFICIAL GAZETTE



सत्यमेव जयते  
भारत सरकार  
Government of India

संघ प्रदेश दमण एवं दीव प्रशासन

U.T. ADMINISTRATION OF DAMAN & DIU

प्राधिकरण द्वारा प्रकाशित  
PUBLISHED BY AUTHORITY

Office of the Administrator,  
Daman & Diu and Dadra & Nagar Haveli,  
Secretariat, Daman

No. 1/3/11-DMC/2014-15/5309

Dated August 13<sup>th</sup>, 2015

ORDER

**Backdrop and Context**

1. The present Daman Municipal Council, comprising of 15 elected Councillors was constituted on 25/01/2011. It had been witnessing persistent instability, ever since its inception. This followed from a series of no confidence motions, moved by different groups against the incumbent President and Vice President, backed by a switch over of one or more members from one side to other. This adversely affected the functioning of the Council. A series of complaints were received from the public at large regarding mismanagement, impropriety, transgression and abuse of authority.

2. The Chief Officer of Daman Municipal Council submitted a detailed report to the Director (Municipal Administration) on 06.01.2014 pointing out specific cases of financial mismanagement and procedural irregularities relating to tendering, construction permissions and other matters. A note to this effect was sent by the Director (Municipal Administration) to the Secretary (Urban Development) on 8<sup>th</sup> January, 2014. Taking cognizance of these issues, the Administrator, Daman & Diu ordered an inquiry on 15<sup>th</sup> January, 2014 to be conducted by the Secretary (Social Welfare) (IO) under section 296 of Daman and Diu Municipalities (Amended) Regulation, 1994 (hereinafter referred to as the Regulation).

3. After going through the report of the IO, the then Administrator had observed on 8<sup>th</sup> June, 2014 that there are multiple violations on part of the Daman Municipal Council "Many violations are financial in nature while the others relate to other aspects like

meetings, appointment of staff, regularisation/promotions, building permission, lease of shops etc." He had ordered that the entire report be examined by the Finance Secretary on financial aspects and irregularities. The matter was entrusted to the Finance Secretary for conducting an inquiry under section 296 of the Regulation on 1st September, 2014 with a specific remit to inquire into the following aspects:

- (1) Whether the general conduct of business and meetings in the Municipal Council is as laid down in regulations.
- (2) Whether adequate norms of financial prudence are being maintained.
- (3) Whether the Municipal Body is able to effectively discharge the projects entrusted to it under the grants-in-aid released by Government and whether the Council is able to efficiently provide Municipal services entrusted to it under law/regulation.

The Finance Secretary submitted his report on 07/10/2014 (hereinafter referred to as FSR).

4. Even as the issues relating to management and financial irregularities of the Municipal Council were being examined by the Administration, the Council functioning saw further turbulence. Ever since its constitution, the President of the Municipal Council was changed on 8 occasions. This situation was created as a result of one or more Councillors switching sides, seeking to dislodge the ruling group. The Director (Municipal Administration) gave a report on 7th October, 2014 that the recurring instability in Daman Municipal Council has brought the internal administration to a grinding halt and the Council has failed in discharging its duties effectively. He further asserted that the Council has continuously failed to perform the duties bringing the municipal administration to a state of virtual paralysis.

5. In this backdrop, a show cause notice was issued by the undersigned to the Municipal Councillors on 7th October, 2014 Under Section 298 of the Regulation asking them to show cause by 10th October, 2014 as to why the Council should not be dissolved. After a detailed inquiry, the Council was dissolved vide order dated



31.10.2014 and Secretary (Education/Tourism) of the Union Territory Administration was appointed as Administrator of Municipal Council to perform routine functions of the Municipal Council.

6. Aggrieved with the order, the Councillors approached the Hon'ble High Court, Mumbai which vide its judgment dated 10.2.2015 quashed and set aside the above impugned order dated 31.10.2014 and also directed the Administrator to dispose of proceedings under Section 298 of the said Act within two months from the date of the Order. The relevant para of the order of the Hon'ble Court is reproduced below:

*"Accordingly, in the facts and circumstances of the present case, the impugned order dated 31<sup>st</sup> October 2014 is quashed and set aside. The Council and its Councillors stand restored. Specific liberty is granted to the Administrator to take fresh proceedings under Section 298 of the said Act, if necessary by issuing the fresh show cause notice or modifying the existing show cause notice. In the proceedings that follow, the Administrator shall ensure that there is no failure of natural justice. The proceedings shall be completed expeditiously i.e. within a period of two months from the date of this order. The Council and the Councillors shall also cooperate in the matter of expeditious disposal of the proceedings. Pending such proceedings, the Council and the Councillors shall be entitled to attend to the routine business only. The Council and the Councillors, during this period shall not take any major decisions, particularly involving financial matters without the leave of the Administrator who has issued the show cause notice under Section 298 of the said Act. In case it is noticed that the Council or Councillors are adopting any dilatory strategies for the disposal of proceedings under Section 298 of the said Act, it shall be open to the Administrator to make appropriate orders, including by way of interim suspension.....*

*.....The Administrator shall proceed to dispose of proceedings under Section 298 of the said Act in accordance with law and with expedition, as directed."*



7. As per the direction of the Hon'ble High Court, a fresh Show Cause Notice was issued vide order dated 23/02/2015 under Section 298 of the Regulation to the Councillors of DMC alongwith the copies of all relevant reports asking them to show cause by 9<sup>th</sup> March 2015 as to why the Council should not be dissolved.

8. In order to effect smooth functioning of the Council, a meeting was convened by the Administrator with all the Councilors to draw a fair operating procedure of decision making. In light of the Hon'ble High Court order, it was agreed that the Council would deliberate on a plan of action on the works to be carried out, take the same to the Collector, Daman being the Director (Municipal Administration), who would then submit the financial proposals for approval of the Administrator through the Secretary (Urban Development).

9. In the meantime, surprisingly even as the Council was restored vide judgment dated 10<sup>th</sup> February, 2015, a group of 6 Councilors represented yet again to the Director (Municipal Administration) with a copy to Administrator expressing No Confidence in the ruling group and the President on the very next day i.e. on 11.2.2015.

10. The Show Cause notice was replied to by the Councillors in two groups. One group of eight Councillors filed additional submissions along with its earlier reply dated 22/10/2014. The second group, representing 7 Councillors submitted partial written reply and sought 10 days additional time seeking copies of some documents, to submit a detailed reply. Accordingly, copies of Note submitted (dated 08/01/2014) by the Director (Municipal Administration) to the Secretary (UD) and Page No.7 and Exhibits – A, B, C, D & E of inquiry report of Finance Secretary dated 07/10/2014 were given to them on 08/04/2015. Further copies of public Notices and copies of representation submitted by the Public to Finance Secretary was also provided to the Councillors.

11. In light of the voluminous documents provided to the Councilor which required detailed replies, additional time was sought from Hon'ble High Court, Mumbai which



kindly extended the time till 14<sup>th</sup> August, 2015 for disposing off the proceedings under Section 298 of the said regulation in the interest of natural justice.

12. The matter was heard again on 15/06/2015 and 10 Councillors was present. The group of 7 Councillors submitted its detailed written submissions on 15/06/2015.

13. I have carefully perused all the materials on record including a written submission given afresh by both group of Councillors, the reports of Finance Secretary, report of Inquiry Officer, Director (Municipal Administration) and report of Chief Officer.

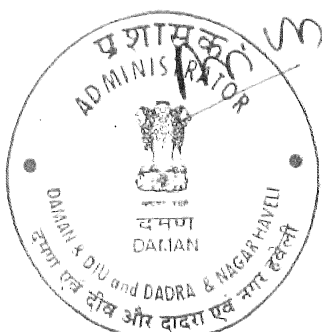
#### Key charges against the Councillor

##### Paralysis of decision making in the Municipal Council.

It is abundantly clear that ever since the Municipal Council was constituted, there has been an atmosphere of persistent instability due to fractious environment in the elected body. In reply to this issue, 7 Councilors stated that the regulation does not limit the number of No Confidence Motions and there is no provision of anti defection in the DMC Regulations. The term of the President was changed eight times and has varied from a period of 36 days to 9 months. **It is perplexing that instead of responding to the reasons of such instability even through a fresh chance was afforded to the Council, a group of 6 Councilors yet again moved a fresh Motion of No Confidence on the very next day when the Council was restored.** It demonstrates the sheer inability to work collectively and lack of will on the part of elected body to discharge its political responsibility effectively. There is no doubt that the persistent fighting in the Council vitiated the decision making process rendering the body completely ineffective for discharging its duties.

##### Financial mismanagement, imprudence and impropriety:

The key allegations against the Council in this regard were the following:



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DATED : 19 <sup>TH</sup> AUGUST, 2015.

- i) The Municipal Council failed to prepare any budget as required under Section 97 of the Regulation for the year 2011-12, 2012-13 and 2013-14. The last budget was approved by the Director (Municipal Administration) in 2010.
- ii) Section 69 of the Regulation stipulates that the financial powers of the Standing Committee and the Subject Committee are Rs. 50,000/- and Rs.10,000/- respectively and any work beyond this would need ratification by the Council. However, a detailed assessment of expenditure carried out by the IO demonstrates that the Standing Committee far exceeded its powers in financial sanctions and in one case has even sanctioned work of Rs. 4.72 crore and there are at least 45 instances where expenditure running into several lakhs have been sanctioned by the Standing Committee.
- iii) That there are a large number of instances where work has been split up into smaller portions to avoid such technical sanctions. The report of the acting Administrator, Municipal Council in fact goes a step ahead, suggesting that such splitting of works in some cases was done with a malafide intent to issue work order to the relative of one of the Councillors. Specific instances has been referred to wherein, on 03/06/2011, a large work on a continuous stretch has been split up into smaller work orders to make them within the ceiling of Rs. 15 lakhs and the work was awarded to the relative of one of the Councillors. A charge of nepotism, apart from gross financial irregularities is a very serious matter by any account.
- iv) In certain cases, the supply order for electrical material has been issued without following codal formalities.
- v) The IO's report clearly points out that the procedures followed for convening the council meetings clearly sidelined the Chief Officer. The



President demonstrated a very casual attitude in convening such meetings, including giving short notices of one day or two days, absence of meeting agenda which is clearly violation of section 79(5) (a) and (b) of the Regulation. It is also clearly brought out that the Chief Officer was prevented from examining matters both from legal/technical and financial standpoint especially when it is related to award of works.

- vi) Standing Committee vide its resolution dtd. 8/8/2013 regularised the services of certain employees who were engaged on a casual basis without following any due recruitment procedure. Apart from this, the Standing Committee has also promoted/redesignated employees on adhoc basis without conducting any DPC or due process. These are serious administrative lapses which would entail long term financial liabilities for the Municipal Council and confer certain rights on employees regardless of their eligibility.
- vii) The Municipal Council through its Standing Committee resolution has allowed transfer of leased shops by paying merely Rs. 10000/- which is in clear violation of section 88(3) of the Regulation which states that extension of lease beyond three years needs approval of Director(Municipal Administration) and in any case the lease shall not exceed seven years.
- viii) In certain cases construction of high rise buildings was allowed without securing a No Objection Certificate from the Coast Guard.
- ix) As per section 78 of the Regulation, *"there shall be six ordinary meetings in each year for the disposal of general business in every alternate month commencing from the month in which the first meeting of the Council under section 52 is held, and such other ordinary meetings the President may find necessary. It shall be the duty of the President to fix the dates for all ordinary meetings and to call such*



meetings". However, in 2014, only 3 special meetings have been convened by the Municipal Council and only one ordinary meeting was convened, whereas at least 06 ordinary meetings ought to have been convened.

- x) Report of the Finance Secretary pointed out that issuance of construction licence, completion certificate, levy of house tax are purely administrative and executive functions which ought to have been discharged by the Chief Officer, supported by the Municipal Engineer. However, he observed that these powers were exercised by the Standing Committee overlooking the production of NOCs from Fire Department and Coast Guard which is violative of Daman & Diu Municipalities Building Model bye laws and Zoning Regulation (2nd Amendment) 2001 & Municipalities Building bye laws and Zoning Regulation (3rd Amendment), 2002. He observed that the current council issued construction licences to 52 high rise buildings and only in 15 cases NOC was obtained from the Coast Guard, and not a single high rise building had obtained fire NOC at the time of issuance of occupancy certificate.
- xi) The Municipal Council regularised services of 21 staff members in various categories, promoted 8 staff members, extended services of 40 staff members without following the relevant recruitment rules and due procedures.
- xii) The Council obstructed the Chief Officer from discharging his duties and went to the extent of locking his chamber. On several occasions the Director (Municipal Administration) had to issue directions to the President, Daman Municipal Council informing him about the statutory provisions, rights and responsibilities of the Chief Officer and the need to restore balance in the functioning of the Council.





- xiii) The Municipal Council has not revised house tax rates and drainage tax and other fees which is supposed to be done on a periodical basis, causing financial losses. In fact a sum of Rs. 1.37 crore is outstanding towards house tax, drainage tax, rental of shops and building which is a grave lapse causing loss of resources to the Municipal Council.
- xiv) Six Councillors have on record given a letter on 16/09/2014 stating that there are acts of favouritism and nepotism favouring certain developers, citing specific instances. They also admitted that the Chief Officer is not permitted to perform his duty for construction permission and grant of completion certificates. They also mentioned that certain decisions clearly stem from a purely motivated agenda.

**Responses to Show Cause notice by the Councillors**

**The summary of responses given by one group of 8 Councilors i.e. Mr. Shaukatali Mithani & Others on these charges are:**

- a) The whole Council cannot be held responsible for the action. A large number of actions are of executive nature for which the statutory responsibility rests with the Chief Officer and Municipal Engineer. The appointment, promotions and regularization of personnel is primarily the duty of Chief Officer and Standing Committee and cannot shoulder the blame for such decisions.
- a) The allegations against the Councilors are vague and general in nature and based on reports of subordinate officers of the Administrator.
- b) The Show Cause Notice dated 23<sup>rd</sup> February, 2015 once again scuttled the applications moved on 11.2.2015 by 8 Councilors moving a Motion of No Confidence against the President and Vice President.
- c) They reiterated the same response as given to the previous show cause notice.



The broad summary of replies submitted by seven Councilors is as under i.e. Mr. Mukesh K. Patel & Ors.

- (i) The preparation of budget is primarily the responsibility of the Chief Officer and they attributed the administrative mismanagement in the Municipal Council to the frequent transfers of Chief Officers and the absence of a full time Chief Officer.
- (ii) In their reply, they mentioned that under the Regulations the Chief Officer has been given certain statutory responsibility who is supposed to work under the control, supervision and direction of the President. By implication, every proposal, estimate etc. have to be routed through the President and the Standing Committee.
- (iii) The Standing Committee exercises powers on behalf of the Council for routine works.
- (iv) The Chief Officer mostly absented himself from the meetings of the Council and Standing Committee and it was the duty of the Chief Officer to bring any irregularity to the notice of the President/Chairman of the Council.
- (v) The notice for the meeting of the Standing Committee were in order and have been sent in terms of sub-section 5(b) of Section 79 of the regulation.
- (vi) In terms of appointment, promotion and regularization of personnel by the President, it was argued that no due process has been specified in the said regulations and it has been the practice in the Municipal Council since 1971 and same procedure is followed in Silvassa and Diu Municipal Council.
- (vii) The Councilors also mentioned that since the President has been empowered under Section 59(d) to call for records of the Council, the Chief Officer was directed to route the building plan approval files through the President. However, the NOC from



Coast Guard, Fire Department etc. were the duty of the Chief Officer and Municipal Engineer.

- (viii) In response to the allegation of wrongful renewal of lease and transfer of such leases of shops it was mentioned that this has been the practice of the Standing Committee.
- (ix) In response to the allegation that the Standing Committee had gone beyond its financial powers, it is mentioned that the same was ratified by the Council.
- (x) The responsibility of tax and revenues rests with the Chief Officer and the Council can not be faulted for the same.
- (xi) The Councilors denied that the office of Chief Officer was not locked but was decided to be renovated and the resolution was passed by the Standing Committee.
- (xii) The issue of purchase of new vehicle without authorization, it was mentioned that such purchases were made before 2013 when the Finance Ministry imposed ban on new purchases.

### O R D E R

I have carefully gone through the responses of the two group of Councilors and the materials on record. Certain violations are procedural in nature for which the blame cannot be fully apportioned to the elected Councilors. The Chief Officer and other officers of the Municipal body are expected to exercise due diligence in terms of the provisions of the Regulations.

However, it is clear that the recurrent and persistent instability in Municipal Council has been of major contributor for paralyzing the decision making apparatus, rendering the collective decision making in the Council impossible.. The Councilors are elected by the people to discharge essential municipal functions and absence of any provision for anti defection is not a plea enough for repeated turbulence in the body. An extra ordinary situation was created wherein under the garb of democratic functioning, there was repeated instability created in the Council. The Hon'ble High Court in its judgment has



also observed "such an argument is missing the woods for the trees. The submission, perhaps misses the point that the Council is not merely for the Councilors but the Council is to serve and further the interests of the members of the public. Vibrant municipal administration is undoubtedly more important than a vibrant democracy".

There are certain statutory responsibilities which are entrusted to the elected Councillors and the Standing Committee constituted there under and actions taken by such bodies must be in harmony with the law.

(a) Section 69 of the regulations reads as under:

*"The powers of financial sanction of the Standing Committee and the Subjects Committees of a Council shall not exceed Rs.50,000 and Rs.10,000 respectively".* The Councillors in their replies have come up with no plausible explanation as to how they sanctioned projects and proposals far in excess of the amount specified in the Regulations, running into several Crores. Obtaining technical sanction is a completely different proposition from the competence to accord financial sanction which has been unambiguously specified in the Regulations. There has been a clear transgression of financial powers and abuse of authority by the Standing Committee.

(b) The Regularization of services of employees, promotion/redesignation on adhoc basis by the Standing Committee without conducting any DPC has serious implications. It is an established principle in administration that due process of law must be followed in the matters of recruitment, which is transparent, fair and affords equal opportunity to all. In taking a decision for such appointments, not only has the Standing Committee followed irregular practice but also transgressed its powers. Section 73(1) reads as follows: "A Council may, with a sanction of the Director, create such posts of officers and servants other than those specified in sub-section (1) and (2) of the last preceding section as it shall deem necessary for efficient execution of its duties under this regulation".



In this case, neither the permission of creating posts were taken by the Council and not even the whole Council has deliberated on the matter. Clearly the action is bad in law and has also created a financial liability on the municipal body in perpetuity apart from the possibility of a legal challenge.

(c) The report of the Acting Administrator clearly cited several instances of splitting of work with a mala-fide intention wherein work order was issued to the relative of one of the Councilors. The Councilors at no point had either denied, refuted or challenged the charge of nepotism and have thus indirectly accepted charges.

Under Section "16(1) No person shall be qualified to become a Councilor who -- "(k) save as hereinafter provided, has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the Council or in any contract with or under or by or on behalf of the Council".

This section recognizes nepotism in award of works to be a serious enough charge to be a ground for disqualification from becoming a Councilor and this action cannot be condoned.

(d) Section 97 of the regulation clearly spells out the process of preparation of budget of the Municipal Council. The process of initiation of the budget is with the Chief Officer who submit the same to the Standing Committee which thereafter refers it to the Council which again refers it to the Director (Municipal Administration) in case the Council is indebted to the government.

Section 97(3) states as under:

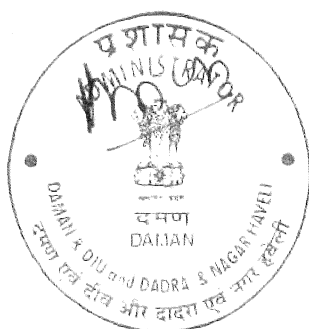
*"Provided that, if the Standing Committee fails to make its recommendation before the 31<sup>st</sup> day of January, the President shall place the statements and estimates before the Council without the recommendations of the Standing Committee."*



The spirit of the regulation casts a clear burden of the responsibility on the shoulders of the President to ensure that the budget is passed. It is a well established norm of financial propriety for any organization that the budget is the base document which gives a transparent account of income and expenditure, estimates for the next year, proposals of taxation and levies. In fact any authorization of expenditure without a provision of budget is irregular and against the norms of financial propriety. No State Government or even Union Government can incur any expenditure without due ratification by the appropriate legislature/Parliament. In the case of local body, it is the elected Councillors who hold the primary responsibility for ensuring that the budget is passed. The persistent default in budget preparation over the last three years demonstrate either lack of will or intentional design towards mal administration and mismanagement or both. In any case, this is a serious enough charge for which the elected Council cannot abdicate responsibility.

(e) Section 79 (1) & 79(2) of the regulation reads as under: *"subject to any general or special orders of the Committee, the ordinary meetings of a Committee shall be held on such days and at such time as the chairman may fix" "Upon the written request of the President or of not less than one-fourth of the members of the Committee, the Chairman shall call a special meeting of the Committee on a date not later than seven days after the receipt of such request".*

The legal provisions laid down under the rules of business for conduct of meetings under Section 78(1) & (2) that *"There shall be held six ordinary meeting in each year for the disposal of general business, in every alternate months commencing from the month in which the first meeting of the Council under Section-52 is held, and such other ordinary meetings a the President may find necessary. It shall be the duty of the*



*President to fix the date for all ordinary meetings and to call such meetings"*

*"The President may, whenever he thinks fit, and shall, upon the written request of not less than one fourth of the total number of Councilors and on a date not later than fifteen days after the receipt of such request by the President, call a special meeting".*

These sections of law defines the rules of business transaction in the Council. The President can not shy away from his responsibilities of calling the meetings because the responsibility rests squarely with him and not with the Chief Officer for calling the ordinary meetings or special meetings of the Council. In persistently defaulting to call ordinary meeting of the Council, the President has failed to discharge his responsibilities as the head of a democratic elected body and an effort has been made to subvert the collective decision making principle. Only one ordinary meeting was convened as against the statutory requirement of six such meetings.

(f) The Chief Officer in writing conveyed to the Director (Municipal Administration) on several occasions alleging an obstructionist attitude of the Councillors in discharging his duties. He went on record to complain that the Council had locked him out of his room. In every case, the Director (Municipal Administration) had to give the directions to the Councillors defining the rules and obligations as laid down in the Regulations. It appears that the Councillors tried to browbeat the Chief Officer into certain actions and acted beyond the provisions of the Regulations.

(g) Six Councillors have on record sent a letter to the Director (Municipal Administration) on 15<sup>th</sup> January, 2014 seeking the removal of President and Vice President, not on political ground but cited innumerable irregularities including mismanagement in awarding of



tenders, mis-utilization of public funds, irregularities in functioning of municipal body. Clearly there has been a written admission on record by a group of Councillors that the Council has failed to discharge its responsibilities .

**CONCLUSION:**

This matter is not of recent origin, but the gross mismanagement, financial imprudence and irregularities have been under a scanner of the Administration since December, 2013. Different officers inquiring the matter from a different perspective have arrived at the same conclusion that this Council suffers from gross mismanagement and its affairs. Director(Municipal Administration) repeatedly had to give directions to the Council on matters of administrative procedure. Several opportunities have been afforded to the Council members to demonstrate that the affairs of the Municipal Council are well within the framework laid down in the Regulations, but they failed to do so.

Even after being afforded fresh opportunity by Hon'ble High Court, there was a clear lack of intent and will on the part of the Councillors to discharge their collective responsibility. The Councillors in their replies have been unable to offer any explanation on various violations and transgressions directly attributed to them even after adequate opportunities were provided to them. Even if the procedural aspects are condoned, the nature of violations and abuse of authority is serious enough to warrant strong actions. In ordinary circumstances, the administration would not step in to take a harsh measure like dissolution of a democratically elected body. But for the reasons outlined above, I have arrived at a firm conclusion that the situation has arisen whereby the present Municipal Council is no longer competent to discharge its responsibilities as laid down in the Regulations.





Wherein the administration of the Council can no longer be carried out in accordance with the provisions of the Regulation.

I have arrived at the conclusion that the Council has overstepped and abused its powers repeatedly, persistently defaulted in the discharge of its duties and committed serious irregularities including financial impropriety which can no longer be overlooked in larger public interest.

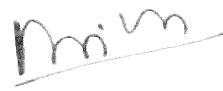
**Therefore**, in exercise of the powers conferred upon me under section 298 of the Daman and Diu Municipalities (Amended) Regulation, 1994, I do hereby order immediate dissolution of the Daman Municipal Council. All the Councillors are hereby directed to vacate their offices and hand over all municipal records in their possession. They shall immediately cease to represent the Council.

Director (Municipal Administration) is hereby authorized under Section 298(2)(b) to exercise all powers vested in the Council, President, Vice President, various committees of the Council who shall be duly assisted by the Chief Officer. All property vested in the Council shall hereby vest in the Central Government till the Council is reconstituted.

I do hereby order that process of conducting fresh elections to the Municipal Council be completed within a period of 4 months and not later than 6 months from now.

Given under my hand and seal in Daman on this 13th day of August, 2015



  
(Ashish Kundra)  
Administrator,  
Daman & Diu and  
Dadra & Nagar Haveli