

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3627 OF 2022

Hemant Narayan Rasne

..Petitioner

vs.

The Commissioner and Administrator
of Pune Municipal Corporation, Pune
& others

..Respondents

Mr. Nitin Deshpande a/w. Ms. Kanchan Phatak for Petitioner.

Mr. Vishwanath Patil for respondent nos. 1 & 2 – Pune Municipal Corporation.

Mr. Y. D. Patil, AGP for Respondent nos. 3 & 4.

**CORAM : A. A. SAYED &
M. S. KARNIK, JJ.**

DATE : 29 MARCH 2022.

P.C. :

1. The above Writ Petition is filed by the Petitioner, who is stated to be the Chairman of the Standing Committee of the Respondent No.2 – Pune Municipal Corporation, seeking the following reliefs:-

“A) This Hon’ble Court may by way of appropriate writ, order or direction, declare that the order bearing no.mco-2020/pra.kra.71(bhag 2)/navi-14 dated 03.03.2022 passed by the Principal Secretary Urban Development Dept.No.2 Mantralaya, Mumbai and respondent No.4 does not forbid the Standing Committee of the Respondent No.2 from functioning as per the provisions of Maharashtra Municipal Corporation Act, 1949 in the

alternative – This Hon'ble Court may quash and set aside the order bearing no.mco-2020/pra.kra.71(bhag 2)/navi-14 dated 03.03.2022 passed by the Principal Secretary Urban Development Dept.No.2 Mantralaya, Mumbai and respondent No.4 to the extent it forbids the Standing Committee of the respondent No.2 from functioning in accordance with the provisions of Maharashtra Municipal Corporations Act, 1949.

B) This Hon'ble Court may quash and set aside the letter dated 14.03.2022 bearing outward No.Nasa-6757 of the respondent No.1 signed by the Municipal Secretary.”

2. It is an admitted position that the tenure of the Respondent No.2- Pune Municipal Corporation (hereinafter referred to as 'the Corporation') has come to an end on 14 March 2022 and the Respondent No.1-Commissioner has been appointed as Administrator of the Corporation w.e.f. 14 March 2022.

3 Learned Counsel for the Petitioner has taken us through the relevant provisions of the Maharashtra Municipal Corporations Act, 1949. The contention of learned Counsel for the Petitioner is that notwithstanding that the tenure of the Corporation has come to an end on 14-03-2022, the Standing Committee of the Corporation continues to exist and can function as Standing Committee and the impugned letter dated 14-03-2022 of the Corporation wrongly states

that the Standing Committee ceases to exist. It is contended that under the proviso to section 20(3) of the Corporation Act, the members of the Standing Committee retire from office on the election of a new Standing Committee and therefore, unless the new Standing Committee is constituted after the first meeting of the Corporation after the General elections of the Corporation, the Standing Committee continues to hold office as it is a continuous body whose term never expires. It is pointed out that in respect of Transport Committee there is a specific provision viz.- proviso to section 25(5) which provides that if a Councillor who is a member of the Transport Committee ceases to be a Councillor, he ceases to be such member and his office becomes vacant. It is further pointed out that, similarly, in respect of Wards Committee there is a specific provision viz.- 29A(3) which provides that the duration of the Wards Committee shall be co-terminus with the duration of the Corporation. It is submitted that there is no such provision in respect of Standing Committee, which implies that the Standing Committee is treated differently and will continue to hold office. Learned Counsel submits that the Standing Committee performs important tasks like consideration of estimates and proposal of the Commissioner prepared under section 95 of the Corporation Act, fixing rates of taxes under section 99, recommending the adoption of budget,

scrutinizing Municipal Accounts, approving contracts of the Corporation and the like. It is contended that the appointment of Administrator does not affect the functioning of the Standing Committee. The learned Counsel draws support from section 48 of the Mumbai Municipal Corporation Act, 1988 which postulates that the Standing Committee continues to hold office till such time as the new Standing Committee is appointed notwithstanding that the members of the Standing Committee may no longer be Councillors.

4. It would be necessary, at the outset, to advert to the relevant provisions of law. Chapter IX-A of the Constitution of India was introduced by the Constitution 74th Amendment Act, 1992 which laid down a basic framework to ensure that the Municipalities are in a position to function effectively as democratic units of self-government. Article 243-U, which falls in Chapter IX-A, reads as follows:-

243U. Duration of Municipalities, etc . —

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such

amendment, till the expiration of its duration specified in clause (1).

(3) An election to Constitute a Municipality shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued. under, clause (1) had it not been so dissolved.

The relevant provisions of the Maharashtra Municipal Corporation Act are extracted hereunder:

“6. Duration of Corporation.

(1) Every Corporation, unless sooner dissolved, shall continue for a period of five years from the date appointed for its first meeting and no longer.

(2) A Corporation constituted upon the dissolution of a Corporation before the expiration of its duration, shall continue for the remainder of the period for which the dissolved Corporation would have continued under sub-section (1) had it not been so dissolved.

6A. Term of office of Councillors.

The term of office of the Councillors shall be co-terminus with the duration of the Corporation.

6B. Election to constitute Corporation.

An election to constitute a Corporation shall be completed

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- (a) before the expiry of its duration specified in sub-section (1) of section 6; or
- (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Corporation would have continued is less than six months, it shall not be necessary to hold any election under this section for constituting the Corporation for such period.

20. Constitution of Standing Committee.

(1) The Standing Committee shall Consist of sixteen councillors.

(2) The Corporation shall at its first meeting after general elections appoints sixteen persons out of its own body to be members of the Standing Committee.

(3) One-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which the first meeting of the Corporation mentioned in sub-section (2) was held:

Provided that all the members of the Standing Committee in office when general elections are held shall retire from office on the election of a new Committee under sub-section (2).

(4) The members who shall retire under sub-section (3) one year after their election under sub-section (2) shall be selected by lot at such time previous to the date for retirement specified in sub-section (3) and in such manner as the Chairman of the Standing Committee may determine, and in succeeding years the members who shall retire under this section shall be those who have been longest in office:

Provided that, in the case of a member who has been re-appointed, the term of his office for the purposes of this sub-section shall be computed from the date of his re-appointment.

(5) The Corporation shall at its meeting held in the month preceding the date of retirement specified in sub-section (3) appoint fresh members of the Standing Committee to fill the offices of those who are due to retire on the said date.

(6) Any councillor who ceases to be a member of the Standing Committee shall be eligible for re-appointment.

25. Appointment of Transport Committee.

... ..

(5) One-half of the members of the Transport Committee appointed by the Corporation shall retire in every second year on the first day of the month in which the meeting referred to in sub-section (2) was held:

Provided that, in the case of a councillor appointed a member of the Transport Committee, if at any time before the date of his retirement he ceases to be a councillor, he shall cease to be such member, and his office shall thereupon become vacant. The vacancy shall be filled in accordance with the provisions of sub-section (9), as if it had occurred under section 26.

... ..

29A. Constitution of Wards Committees.

... ..

(3) The duration of the Wards Committees shall be co-terminus with the duration of the Corporation.

452A. Power of State Government to appoint Government officer or officers to exercise powers and perform functions and duties of Corporation.

(1) For every Municipal Corporation deemed to have been constituted or constituted for a larger urban area under sub-section (1) or sub-section (2) as the case may be, of section 3, the State Government may appoint a

Government officer or officers to exercise all the powers and to perform all the functions and duties of a Corporation under this Act:

Provided that an Administrator appointed by the State Government before the 31st May 1994 under the provisions of this Act, as it existed immediately before the 31st May 1994, for a Municipal Corporation deemed to have been constituted for a larger urban area under sub-section (1) of section 3 who is in office on the said date, shall be deemed to be the Government officer appointed under this sub-section to exercise all the powers and perform all the functions and duties of the said Corporation under this Act.

1A. Notwithstanding anything contained in this section, where the State Election Commission has brought to the notice of the State Government that it is not possible for the State Election Commission to conduct the general elections to the Corporation due to outbreak of COVID-19 pandemic in the State, then the State Government may, by order, appoint a Government Officer or officers, or extend the period of any officer appointed under sub-section (1), for such period as may be requested by the State Election Commission, which shall not extend beyond the 30th April 2021, to exercise all the powers and to perform all the functions and duties of the Corporation under this Act.

1B. Notwithstanding anything contained in this section, where the State Election Commission has brought to the

notice of the State Government that it is not possible for the State Election Commission to conduct the general elections to the Corporation within the period specified in the order issued under sub-section (1A), due to COVID-19 pandemic situation in the State, then the State Government may, by order, appoint a Government Officer or officers, or extend the period of any officer appointed under sub-section (1), for such period of any officer appointed under sub-section (1), for such period as may be requested by the State Election Commission, for exercising all the powers and performing all the functions and duties of the Corporation under this Act.

(2) The officer or officers appointed under sub-section (1) shall hold office until the first meeting of the Corporation or for a period of six months from the date of specification of an area as a larger urban area, under sub-section (2) of section 3, whichever is earlier:

Provided that the Administrator deemed to have been appointed as the Government officer under sub-section (1) shall hold office until the first meeting of the Corporation,

(3) The officer or officers appointed or deemed to have been appointed under sub-section (1) shall receive from the Municipal Fund such pay and allowances as may be determined, from time to time, by the State Government.

5. First and foremost, it is required to be noted that there is no provision under the Maharashtra Municipal Corporations Act, 1949 which states that notwithstanding the tenure of the Corporation

coming to an end, the Standing Committee of the Corporation continues to exist and can function as a Standing Committee. It is well settled principle in law that the Court cannot read anything into the statutory provisions which is not provided therein.

6. Article 243-U(1) of the Constitution lays down that every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and “no longer”. Similarly, Section 6(i) of the Maharashtra Municipal Corporation Act provides that every Corporation, unless sooner dissolved, shall continue for a period of five years from the date appointed for its first meeting and “no longer”. The words “no longer” used in Article 243-U(1) of the Constitution and section 6(1) of the Maharashtra Municipal Corporation Act, thus mandate that the duration of the Corporation can only be for a period of 5 years and there can be no extension to the tenure of the Corporation. Section 6A of the Maharashtra Municipal Corporation Act stipulates that the term of the Councillors shall be co-terminus with the duration of the Corporation.

7. On a plain reading of the above provisions, there can be no manner of doubt that upon the duration of the Corporation coming to

an end, a Councillor ceases to be Councillor. Once a Councillor ceases to be Councillor, we do not see how the Standing Committee, which comprises 16 Councillors, can still exist and continue to function as such and it is the Administrator, who is appointed, exercises the powers and functions of the Corporation. The entire emphasis of the learned Counsel for the Petitioner is on the proviso to section 20(3) of the Maharashtra Municipal Corporation Act, which states that all the members of the Standing Committee in office shall retire from office on the election of the new Committee under subsection (2) of section 20. This submission of the learned Counsel entirely overlooks the situation in the present case where an Administrator (the Commissioner) has been appointed. Once an Administrator is appointed, it is only the Administrator who can exercise the powers and perform functions of the Corporation. This is also clear on plain reading of section 452A of the Maharashtra Municipal Corporation Act, which mandates that the Administrator shall exercise “all” the powers and perform “all” the functions and duties of the Corporation under the Maharashtra Municipal Corporation Act and shall hold office until the first meeting of the Corporation. The Petitioner has not raised any challenge to the appointment of the Administrator by the State Government and the challenge is limited to the extent of proscription in allowing the

Standing Committee to function. In the teeth of the section 452A of the Maharashtra Municipal Corporation Act, we do not see how it can be contended that notwithstanding the tenure of the Corporation coming to an end and notwithstanding the appointment of the Administrator, the Standing Committee would still exist and can continue to function. Merely because in case of 'Transport Committee' there is a specific provision [i.e. proviso to section 25(5)] that the member of the Transport Committee on ceasing to be Councillor, ceases to be member of the Transport Committee and its office becomes vacant or in case of 'Wards Committee', there is a specific provision [i.e. section 29A(3)] that the duration of the Wards Committee shall be co-terminus with the duration of the Corporation, cannot lead to the conclusion that despite the absence of any such specific provision in the Maharashtra Municipal Corporation Act, the Standing Committee still exists and can continue to function. It is difficult to fathom a situation where notwithstanding section 452A under which the Administrator exercises all the powers and perform functions, the Standing Committee simultaneously exercises such powers and functions under the provisions of the Maharashtra Municipal Corporation Act.

8. Reliance by the learned Counsel for the Petitioner on section 48 of the Mumbai Municipal Corporation Act, (which provides that the Standing Committee in existence on the day for the retirement of Councillors shall continue to hold office until such time as a new Standing Committee is appointed, notwithstanding that the members of the said Committee or some of them may no longer be Councillors), is misplaced. Firstly, in the present case, we are only concerned with the Maharashtra Municipal Corporation Act and not with the Mumbai Municipal Corporation Act. Secondly, there is no such provision in the Maharashtra Municipal Corporation Act. Even otherwise, prima facie, section 48 of the Mumbai Municipal Corporation Act would not apply once an Administrator has been appointed, as has been appointed in the present case.

9. Under section 452 of the Maharashtra Municipal Corporation Act, the State Government is empowered to dissolve the Corporation, if it appears to the State Government that the Corporation is not competent to perform or persistently makes default in performance of duty imposed upon it or exceeds or abuse its powers. If the contention of the learned Counsel for the Petitioner that the Standing Committee is a continuous body, is to

be accepted, it may entail a situation where despite the dissolution of the Corporation under section 452, it would be permissible for the Standing Committee to function notwithstanding the defaults or abuse of powers.

10. Article 243U(3) of the Constitution and Section 6B of the Maharashtra Municipal Corporation Act mandate that election to the Corporation is to be completed before the expiry of the duration of the Corporation of five years. Such election therefore ought to have been completed prior to the duration of the term of the Corporation, which ended on 14 March 2022. It is only due to the exceptional circumstance prevailing in the State owing to Covid-19 pandemic, that the election to the Corporation could not be held prior to the tenure of the Corporation coming to an end on 14-03-2022 and it is in these circumstances that an Administrator was required to be appointed. It is noted that in view of such exceptional circumstances, the State Government has inserted a new sub-section 1B in section 452A in the year 2021, which contemplates appointment of an Administrator, if it is not possible to hold general elections to the Corporation on account of Covid-19 pandemic situation in the State.

11. In light of the above we are of the view that the Writ Petition is misconceived and is required to be dismissed and accordingly dismissed. There shall be no order as to costs.

(M. S. KARNIK, J.)

(A. A. SAYED, J.)