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

PUBLIC INTERET LITIGATION NO. 104 OF 2023

Ranjeet Sampatrao Raskar & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

**WITH
PUBLIC INTERET LITIGATION NO. 126 OF 2023**

Ujwal Govind Keskar & Ors. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

Mr. Pralhad Paranjape a/w Mr. Manish Kelkar for the
Petitioners in PIL No. 104/2023.

Mr. S. M. Gorwadkar, Senior Advocate i/by Mr. Ritvik Joshi for
the Petitioners in PIL No. 126/2023.

Mr. Abhijit P. Kulkarni for Respondent No. 4 – P.M.C. in PIL
104/2023 and for Respondent No. 2 – P.M.C. in PIL 126/2023.

Dr. Birendra B. Saraf, AG with Mr. P.P. Kakade, GP and Mr. M.
M. Pabale, AGP for Respondent No. 1, 2 and 3 in PIL
104/2023.

Dr. Birendra B. Saraf, AG with Mr. P.P. Kakade, GP and Mr. M.
M. Pabale, AGP with Mrs. R. A. Salunkhe, AGP for Respondent
No. 1, 3 and 4 in PIL 126/2023.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 21st AUGUST, 2023

P.C.:

1. Heard Mr. Paranjape, learned advocate for petitioners in PIL No. 104 of 2023, Mr. Gorwadkar, learned senior advocate for petitioners in PIL No. 126 of 2023, Dr. Saraf, learned Advocate General for the State of Maharashtra and Mr. Kulkarni, learned advocate for the Pune Municipal Corporation.
2. These two Public Interest Litigation petitions primarily challenge a notification dated 31st March, 2023 issued by the Urban Development Department, State of Maharashtra, which is referable to Section 3(3)(a) of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as "the Act of 1949").
3. The arguments of the learned counsel for the petitioners, assailing the impugned notification, revolve around the phrase "after consultation with the Corporation" occurring in Section 3(3)(a) of the Act of 1949 as interpreted by the Division Bench of this Court in **Sandeep Pandurang Patil vs. The State of Maharashtra & Ors.** (PIL Stamp No. 5619 of 2020), wherein this Court has, after elaborate discussion, construed the said phrase to mean an effective and meaningful consultation and further that "consultation with the Corporation" can only be "consultation with the Corporation" constituted under Section 5 of the Act of 1949, namely, the body corporate and will not mean consultation with the Commissioner of the Municipal Corporation. Certain other arguments have also been made by the learned counsel for the petitioners in support of their petitions.

4. Learned Advocate General Dr. Saraf, however, has submitted that the notification impugned in these petitions, dated 31st March, 2023, is not a final notification either excluding certain areas from Municipal Corporation of Pune or constituting another Municipal Council and is only referable to Sub-section (4) of Section 3 of the Act of 1949 whereby objections have been invited from the general public and final notification will be issued following the mandatory provisions contained in the Act of 1949. He has also submitted that since the final notification is still to be issued excluding certain areas from Municipal Corporation of Pune and constituting another Municipal Council, challenge to the impugned notification is absolutely premature. He has further stated that apprehensions of the learned counsel for the petitioners in these petitions are absolutely unfounded for the reason that though consultation as required under Section 3(3)(a) with the Municipal Corporation has been done in the sense that the consultation with the administrator appointed under Section 452A of the Act of 1949 has taken recourse to, however, in case before issuing any final notification, if any legal lacuna is found in the consultation process, the same shall be cured and deficiency, if any, shall be made good.

5. At this juncture, learned counsel for the petitioners have strongly urged that any consultation process by the Municipal Commissioner, may be in his capacity as administrator appointed under Section 452A, will not fulfill the mandatory requirement of "consultation with the Corporation" in terms of provisions contained in Section 3(3)(a) of the Act of 1949 as explained by this Court in the case of **Sandeep Pandurang**

Patil (Supra). They have vehemently argued that consultation with the Corporation in terms of the provisions contained in Section 3(3)(a) of the Act of 1949 would necessarily mean consultation with body corporate, that would mean consultation with the Corporation when the House of the Corporation is in existence. In this view, the submission is that in absence of consultation with the Corporation at the time when the elected House of the Corporation is not in existence, the requirement of consultation with the Corporation as per the mandate of Section 3(3)(a) would not be fulfilled and hence not only the impugned notification but entire process undertaken by it for exclusion of certain areas from Municipal Corporation of Pune and for constituting another Municipal Council is vitiated in law.

6. We have considered the rival submissions made by the learned counsel representing the parties and have also noted the statement of the learned Advocate General that before issuing the final notification, if any legal lacuna/deficiency is found, the same shall be cured/made good.

7. As far as the submission of the learned counsel for the petitioners that "consultation with the Corporation" in this case is vitiated for the reason that there has not been any consultation with the Corporation as a body corporate constituted under Section 5 in absence of House of the Corporation in existence, is concerned, reliance has been placed by the learned Advocate General on the Division Bench judgment of this Court in **Hemant Narayan Rasne vs. Commissioner and Administrator of Pune Municipal Corporation & Ors.**, 2022 SCC OnLine Bom 4505. In the

said judgment, issue related to term of some Standing Committee of the House of Pune Municipal Corporation in the wake of appointment of the administrator. This Court referring to the plain language occurring in Section 452A of the Act of 1949 has clearly held that the said provision mandates that administrator shall exercise “all” the powers and perform “all” the functions and duties of the House under the Act of 1949. The said judgment was taken upto Hon’ble Supreme Court, reported in 2022 SCC OnLine 1489, **Hemant Narayan Rasne vs. Commissioner and Administrator of Pune Municipal Corporation & Ors.**, which affirmed the view taken by the Division Bench of this Court.

8. Thus, we are of the considered opinion that once the administrator is appointed under Section 452A, he is empowered to undertake and perform all the functions and duties which are otherwise entrusted to the body corporate constituted under Section 5 of the Act of 1949.

9. Lastly, it has been contended by the learned counsel for the petitioners that the phrase “after consultation with the Corporation” occurring in Section 3(3)(a) of the Act of 1949 has already been construed by the Division Bench of this Court in the case of **Sandeep Pandurang Patil** (Supra) and according to the said judgment any consultation *qua* Section 3(3)(a) has to be necessarily done with the body corporate of the Corporation constituted under Section 5 and not with the administrator/Municipal Commissioner. In respect of this submission we may only note that the said judgment was rendered at the time when the elected body corporate constituted under Section 5, which included the House of the

Corporation, was not in existence. Accordingly, the judgment in the case of **Sandeep Pandurang Patil** having been rendered in a different context, in our opinion, will have no application to the facts of the present case. For these reasons, the argument made by the learned counsel for the petitioners in this regard merits rejection, which is hereby rejected.

10. Resultantly, the PIL petitions are disposed of in terms of the statement made by the learned Advocate General that before issuing the final notification excluding certain areas from the Municipal Corporation of Pune and constituting another Municipal Council, if any legal lacuna/deficiency is found in the process of consultation with the Corporation, the same shall be cured/made good.

11. We further permit the petitioners to make a representation raising the objections, if any, in respect of the consultation with the Corporation, within 10 (ten) days from today. All other prayers and submissions made and raised in these PIL petitions are kept open for consideration, which may be raised in any other matter.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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