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HEMANT NARAYAN RASNE

v.

THE COMMISSIONER AND ADMINISTRATOR OF PUNE
MUNICIPAL CORPORATION & ORS.

B

(Civil Appeal No. 7685 of 2022)

OCTOBER 19, 2022

[DINESH MAHESHWARI AND J.K. MAHESHWARI, JJ.]

C *Maharashtra Municipal Corporations Act, 1949: ss. 6, 6A, 20, 452A; Constitution of India, Art.243U – Corporation election – Continuan*
D *ce of Standing Committee – When the term of Pune Municipal Corporation (PMC) came to an end – State government on being informed that it was not possible to conduct general elections for constitution of the new Corporation, appointed an administrator – Appellant, Chairman of the Standing Committee of PMC filed a writ petition before High Court on the ground that the Standing Committee shall remain in existence until constitution of new Standing Committee, irrespective of appointment of the administrator – High Court dismissing writ petition held that once a Councillor ceases to be Councillor, the Standing Committee would not still exist and continue to function as such and it was the Administrator, who was appointed, who would exercise the powers and functions of the Corporation – Challenge against – Held: When no person could be said to be holding the office of the Councillor after completion of the term in view of the mandate of ss.6 and 6A of the Act of 1949, it follows as a necessary corollary that the Standing Committee stood dissolved along with the completion of the term of the Corporation – The proviso to sub-section (3) of s.20 cannot be read to mean that notwithstanding the expiration of the duration of a Corporation and thereby, termination of the term of office of the Councillors, there could still be any Standing Committee in existence – Sub-sections (1A) and (1B) of s.452A of the Act, which are operating in the instant case, deal with a specific peculiar contingency where general elections could not be held during the time specified by the enactment even after the expiry of the term of the Corporation, essentially due to COVID-19 pandemic situation – Appointment of Administrator in such a contingency does not and*

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cannot override the mandate of Art.243U of the Constitution of India as also the provisions of ss.6 and 6A of the Act as regards the tenure – End of the tenure of Corporation has its consequential effect of the end of the term of the office of the Councillor; and when no person including the present appellant could be said to be holding the office of Councillor after end of the term of the Corporation, existence of any Standing Committee thereafter, is simply out of question – Any other interpretation shall be standing at conflict with the mandate of Art.243U of the Constitution of India and ss.6 and 6A of the Act of 1949.

Dismissing the appeal, the Court

HELD: 1.1 Whether the Standing Committee could be said to be a continuing Committee even after the term of the Corporation has come to an end and thereby, the term of the office of its members, i.e., the Councillors has also ended. The answer could only be in the negative. [Para 12][196-F]

1.2 When no person could be said to be holding the office of the Councillor after completion of the term in view of the mandate of Sections 6 and 6A of the Act of 1949, it follows as a necessary corollary that the Standing Committee stands dissolved along with the completion of the term of the Corporation. The proviso to sub-section (3) of Section 20 of the Act of 1949 essentially comes in operation only in the eventuality when there are existing members of the Standing Committee in office when general elections are held and they are to retire on the election of a new Committee, i.e., at the first meeting of the Corporation after general elections. The proviso cannot be read to mean that notwithstanding the expiration of the duration of a corporation and thereby, termination of the term of office of the Councillors, there could still be any Standing Committee in existence. It gets perforce iterated that the Standing Committee stands dissolved along with the completion of the term of the Corporation. [Para 13 & 14][197-B-E]

1.3 The provision of Section 452 essentially operates in relation to the contingency where the State Government takes the steps for dissolution of the existing Corporation after

- A opportunity of show cause upon being satisfied that the Corporation is not competent to perform the duties imposed upon it or is persistently making default or is abusing its powers. Sub-sections (1A) and (1B) of Section 452A of the Act, which are operating in the present case, deal with a specific peculiar contingency where general elections could not be held during
- B the time specified by the enactment even after the expiry of the term of the Corporation, essentially due to COVID-19 pandemic situation. Appointing of Administrator in such a contingency does not and cannot override the mandate of Article 243U of the Constitution of India as also the provisions of Sections 6 and 6A
- C of the Act as regards the tenure. [Para 15][197-F-H; 198-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7685 of 2022.

From the Judgment and Order dated 29.03.2022 of the High Court of Judicature at Bombay in W.P. (C) No.3627 of 2022.

- D Shyam Divan, Vinay Navare, Sr. Advs., Shreeyash U. Lalit, Mahesh Kumar, Nikhil Borwonkar, Manish Sharma, Roopenshu Pratap Singh, Ms. Devika Khanna, Mrs. V. D. Khanna, Advs. for the Appellant.

- E Mrs. Anita Shenoy, Sr. Adv., Makarand D. Adkar, Vijay Kumar, Ms. Rekha Rani, Shantanu M. Adkar, Ms. Bharti Tyagi, Anand Landge, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Advs. for the Respondents.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

- F Leave granted.

- G 2. By way of this appeal, the appellant has questioned the order dated 29.03.2022 whereby, the High Court of Judicature at Bombay has dismissed the writ petition (No. 3627 of 2022) filed by him while asserting his capacity as the Chairperson of the Standing Committee of respondent No. 2, Pune Municipal Corporation¹ and seeking the relief essentially to the effect that irrespective of expiry of the term of the Corporation, the Standing Committee shall nevertheless continue to function and the order issued by the Government on 03.03.2022, appointing an Administrator, does not forbid the Standing Committee from functioning in accordance

H ¹ Hereinafter also referred to as 'the Corporation'.

with the provisions of the Maharashtra Municipal Corporations Act, 1949². A

3. For comprehension of the relevant factual aspects, we may take note of the fact that the term of the Pune Municipal Corporation was coming to an end on 14.03.2022 and when the Government was informed that it would not be possible to conduct general elections for constitution of the new Corporation, the referred order dated 03.03.2022 was issued, appointing the Commissioner, Pune Municipal Corporation, as its Administrator. This order dated 03.03.2022 reads as under: - B

“GOVERNMENT OF MAHARASHTRA

Urban development department

Govt. Order No. M C O – 2020/ C. No. 71(part - 2) Na. Vi. – 14 C

Mantralaya (main building), 4th floor,
Madam Cama road, Hutatma rajguru Chowk, Mumbai – 400032. D

Dtd. 03 March 2022.

Ref : - 1] The Maharashtra act No. 1 of year 2021 dtd. 13/1/2021 2] The Maharashtra act No. 6 of year 2021 dtd. 23/03/2021 3] letter of the state election commission No. Ra Ni Aa/ Ma Na Pa – 2020 / C. No. 7 / Ka – 5 Dtd. 02/02/2022. E

Government Order

2] It has been informed vide ref. No. 3 that, it will not be possible to conduct general elections whose tenure is ending in the months of March – April, 2022; within the prescribed time and also to appoint the administrator there after the tenure of the local bodies is over. F

3] As the tenure of the municipal corporation is at the most five years from the date of the first meeting as per the article 243 U of the Constitution of India and also as per the provision in the sec. 6, 6(A) of the Maharashtra municipal corporation act 1949, hence the above said tenure cannot continued beyond that. G

² Hereinafter also referred to as ‘the Act of 1949’/ ‘the Act’. H

A 4] Due to this, The appointment of the Commissioner,
Pune Municipal Corporation is being made as the
administrator at the Pune Municipal Corporation whose
tenure is ending on the date 14/03/2022, as per the provisions
in the of the Maharashtra municipal corporation act 1949
and especially as per the provisions in the (1 A), (1 B) of
the sec. 452 A.

B 5] The Commissioner, Pune Municipal Corporation should
take the charge as the administrator when the prescribed
tenure of the Pune Municipal Corporation is over and carry
out the necessary procedure as per the provisions in the
act.

C In the name of and by the order of the Hon. Governor of
Maharashtra.

Sd/-

D (Mahesh Pathak)

The Principal Secretary (Na Vi – 2)”

E 3.1. The case of the appellant is that on 24.02.2022, the
programme for election of the new Chairperson of the Standing
Committee of the Corporation was announced; and in the elections
conducted on 04.03.2022 in that regard, he was duly elected as the
Chairman. The appellant made a representation on 10.03.2022 to the
effect that irrespective of the appointment of Administrator, the Standing
Committee will remain in existence until constitution of new Standing
Committee after general elections. This representation was replied by
F the Government on 14.03.2022 with reference to the provisions contained
in Article 243U of the Constitution of India and Section 6A of the Act of
1949 while stating that the proposition of the appellant was inconsistent
with the applicable provisions of law. Feeling aggrieved, the appellant
preferred the writ petition that has been dismissed by the High Court by
G way of its impugned order dated 29.03.2022.

4. The High Court, after detailed survey of the relevant provisions,
found the suggestions made on behalf of the appellant devoid of substance,
while observing, *inter alia*, as under: -

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“5. First and foremost, it is required to be noted that there is no provision under the Maharashtra Municipal Corporation 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 sub-section (2) of section 20. This submission of the learned Counsel entirely overlooks the

A 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
B 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,
C 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”.

(emphasis supplied)

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5. While considering the petition filed by the present appellant in challenge to the order aforesaid, this Court broadly took note of the submissions made on behalf of the appellant, particularly with reference to the scheme of Act of 1949 as also the provisions contained in the Bombay Municipal Corporation Act, 1888³ and, while issuing notices, observed as under: -

“A copy of the impugned order dated 29.03.2022, as filed with I.A. No. 71890 of 2020 is taken on record.

No further order is required on the application seeking permission to file special leave petition without certified copy of the impugned order. The application I.A. No. 61735 of 2022 is, accordingly, disposed of.

While questioning the order impugned, learned senior counsel appearing for the petitioner has, *inter alia*, taken us through the proviso to sub-section (3) of Section 20 of the Maharashtra Municipal Corporations Act, 1949 (‘the Act of 1949’) as also the provisions contained in Section 452 (2) (c) and while contrasting it with the provisions contained in Section 452 A (1B) of the Act of 1949.

Learned senior counsel has further referred to the specific provision contained in Section 48 of the Bombay Municipal Corporation Act, 1888 (‘the Act of 1888’), which provides for continuity of the Standing Committee, irrespective of the retirement of the councillors and until the appointment of new Standing Committee.

Learned senior counsel submits that though no such provision akin to Section 48 of the Act of 1888 is there in the Act of 1949 but, a comprehensive consideration of the provisions of the Act of 1949, including those contained in Section 20 read with Section 452A as also the other provisions concerning other committees like Section 25 concerning Transport Committee and Section 29A concerning Wards Committee would lead to the logical deduction that so far the Standing Committee in terms of Section 20 is concerned, its life cannot be treated as co-terminus with the term of the Corporation.

³ Hereinafter also referred to as ‘the Act of 1888’.

A Issue notice, returnable in six weeks.

Dasti service in addition to ordinary process is permitted”.

6. The contesting respondents having appeared and having filed the counter affidavit, we have heard the learned counsel for the parties finally at this stage itself.

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7. Learned senior counsel for the appellant has taken us through the scheme of the Act of 1949 and has put forth the submissions that the constitution and term of the Standing Committee is governed by Section 20 of the Act of 1949 and, when the prescription therein is compared with the provisions in relation to the other Committees like the Transport Committee in Section 25 and the Wards Committee in Section 29A, the striking feature is that while the term or period of existence of those Committees or its Member-Councillors are limited or co-terminus with the duration of Corporation, there is no such corresponding provision in Section 20. On the contrary, as per the proviso to sub-section (3) of Section 20, all the members of the Standing Committee in office at the time of holding of elections, retire from the office only on the election of a new Standing Committee. Therefore, according to the learned counsel for the appellant, the scheme of enactment is clear that the tenure of the Standing Committee has never been envisaged to be co-terminus with the term of the Corporation.

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7.1. Learned senior counsel has further referred to various provisions of the Act of 1949, like those contained in Sections 68(2), 69(2), 96, 101, 102 and 272 to underscore the point that the Standing Committee remains rather pivotal in the entire functioning of the Corporation and even if an Administrator is appointed in the given contingencies, particularly those pertaining to Section 452A of the Act of 1949, continuance of the Standing Committee for proper performance of the functions and duties of Corporation is rather indispensable.

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7.2. Learned senior counsel has further submitted with reference to Section 48 of the Bombay Municipal Corporation Act, 1888 that in the said enactment, provision has specifically been made for continuance of the Standing Committee, until the appointment of new Standing Committee, notwithstanding that the members of the Committee may not be Councillors. This, according to the learned counsel, is clearly indicative of the fact that in the scheme of the enactments relating to

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municipal functions, perpetual continuance of Standing Committee is not a concept unknown; rather it is explicitly provided in the Act of 1888 and is implicit in the scheme of the Act of 1949. A

7.3. According to the learned senior counsel for the appellant, when a dissolution of the Corporation takes place in terms of Section 452 of the Act, the powers and duties of the Corporation including Standing Committee could be exercised by such Government Officer/Officers as may be appointed in terms of clause (c) of sub-section (2) of Section 452 but then, there is no such akin provision in Section 452A of the Act. This is also, according to the learned counsel, indicative of the fact that in relation to the contingencies of Section 452A, as applicable to the present case, the Standing Committee shall continue to operate. B C

7.4. In substance, the submission of the learned senior counsel for the appellant has been that the Standing Committee being appointed as continuing body, does not cease to function with expiry of term of the Corporation; and the Standing Committee that was constituted on 04.03.2022, before the expiry of the term of the Corporation, that is before 14.03.2022, continues to exist. D

8. *Per contra*, learned senior counsel for the contesting respondents has particularly drawn our attention to the provisions relating to the composition of the Transport Committee and Wards Committee and has submitted that the said Committees being comprising of Councillors as also other members, specific provisions for limiting their term was required to be made. According to the learned counsel, no such provision was required to be made for the Standing Committee because of the fundamental fact that the Standing Committee, in terms of sub-section (1) of Section 20, consists only of Councillors as its members (16 in number). E F

8.1. Learned senior counsel would submit that when the term of office of the Councillor is co-terminus with the duration of the Corporation in view of Section 6A of the Act of 1949 and then, the duration of Corporation itself is for a period of five years and no longer, any proposition of survival of Standing Committee after completion of term of the Corporation (and thereby ending the term of the Councillors), is incompatible with the scheme of the Act of 1949. Learned counsel has also referred to provisions contained in Article 243U of the G

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- A Constitution of India to submit that the unextendable term of the Municipality being five years, any proposition of continuance of Standing Committee cannot be countenanced.

8.2. Thus, learned counsel for the contesting respondents has supported the order passed by the High Court.

- B 9. Learned senior counsel for the appellant would submit in rejoinder that proviso to sub-section (3) of Section 20 of the Act of 1949 makes it clear that the members of the Standing Committee are to retire from office only on the election of new Committee under sub-section (2); and such a positive provision, contradistinguished with the provisions of Sections 25 and 29A, makes it clear that the Standing Committee is a continuing body and even when the term of the Corporation has come to an end, the lastly constituted Standing Committee shall continue to function until the constitution of the new Standing Committee.

- D 10. Having given thoughtful consideration to the rival submissions with reference to law applicable, we are clearly of the view that this appeal remains devoid of substance and deserves to be dismissed.

11. The relevant provisions referred to by the learned counsel for the parties and having bearing on the present discussion read as under: -

The Constitution of India

- E “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:

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

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Maharashtra Municipal Corporations Act, 1949

- G “Section 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.

- H (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. A

Section 6A. Term of office of Councillors.

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

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“Section 20. Constitution of Standing Committee.

(1) The Standing Committee shall consist of sixteen councillors. C

(2) The Corporation shall at its first meeting after general elections appoint 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: D

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). E

(4) The members who shall retire under sub-section (3) one year after their election under sub-section (2) shall be elected 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: F

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. G

(5) The Corporation shall at its meeting held in the month preceding the date of retirement specified in sub-section H

A (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

B Committee shall be eligible for re-appointment.”

“Section 25. Appointment of Transport Committee.

C (1) In the event of the Corporation acquiring or establishing a Transport Undertaking, there shall be a Transport Committee consisting of thirteen members for the purpose of conducting the said undertaking in accordance with the provisions of this Act and subject to the conditions and limitations as are contained therein.

D (2) The Corporation shall at its first meeting after a Transport Undertaking is acquired or established, appoint twelve members of the Transport Committee from among persons who in the opinion of the Corporation have had experience of, and shown capacity in, administration or transport or in engineering, industrial, commercial, financial

E or labour matters and who may or may not be councillors.

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F (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:

G **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.

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“29A. Constitution of Wards Committees.			
xxx	xxx	xxx	
(2) Each Wards Committee shall consist of -			
(a) the councillors representing the electoral wards within the territorial area of the Wards Committee;			B
(b) the officer incharge of the territorial area of the Wards Committee;			
(c) such number of other members not exceeding three, nominated by the Councillors referred to in clause (a), from amongst the members of recognised non-Government Organisations and Community based organisations engaged in social welfare activities working within the area of the Wards Committee:			C
Provided that such persons are registered as electors in the wards within the jurisdiction of the Wards Committee:			D
Provided further that the norms for recognition of the Non-Government Organisations, the requisite qualification for nomination as members and the manner in which they are to be nominated shall be such as the State Government may prescribe.			E
(3) The duration of the Wards Committees shall be co-terminus with the duration of the Corporation.			
xxx	xxx	xxx”	F
***	***	***	
“Section 452. Power of State Government to dissolve Corporation.			
(1) If at any time upon representation made or otherwise it appears to the State Government that the Corporation is not competent to perform, or persistently makes default in the performance of, the duties imposed upon it by or under this Act or any other law for the time being in force or exceeds or abuses it powers, the State Government may,			G
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- A after having given the Corporation an opportunity to show cause why such order should not be made, by an order published, with the reasons therefor, in the *Official Gazette* dissolve the Corporation with effect from the date to be specified in the Order,
- B (2) With effect from the date specified in the order passed under sub-section (1) or with effect from the date on which the Corporation stands dissolved under the proviso to article 243-ZF, the following consequences shall ensue:-
- (a) ***
- C (b) ***
- (c) all powers and duties of the Corporation, the Standing Committee, the Transport Committee and all other committees constituted under the Act, shall, during the period of dissolution be exercised and performed by such Government Officer or Officers as the State Government may, from time to time, appoint in this behalf;
- D (d) on dissolution of the Corporation all the property vested in the Corporation shall vest in the State Government.
- E (e) the person or persons appointed under clause (c) may delegate his or their powers and duties to an individual of a committee or sub-committee.
- F (f) the Government Officer or Officers appointed under clause (c), and the individual or the members of the committee or sub-committee referred to in clause (e) shall receive such remuneration from the Municipal Fund as the State Government may from time to time determine.
- G (3) ***
- (4) The Corporation shall be re-constituted by election of councillors at general ward elections within the time specified for the purpose in clause (b) of section 6B:
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Provided that the person or persons appointed under clause (c) of sub-section (2) shall continue to exercise the powers and perform the duties of the Corporation, the Standing, Committee and, as the case may be, the Transport Committee until the first meeting of the Corporation constituted by the election of councillors as aforesaid shall have been held.

Section 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:

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(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 it 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

A 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.

B (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:

C **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.

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The Bombay Municipal Corporation Act 1888

D “**Section 48.** 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 under section 43, notwithstanding that the members of the said Committee or some of them may no longer be Councillors.”

E 12. The importance of Standing Committee in the setup of a Municipal Corporation and myriad functions to be discharged by it, as stated in various provisions of the Act of 1949, are hardly of any dispute but then, reference to all such provisions remains entirely inapposite to the present case because the question herein is as to whether the Standing Committee could be said to be a continuing Committee even after the term of the Corporation has come to an end and thereby, the term of the office of its members, i.e., the Councillors has also ended. In our view, the answer could only be in the negative.

G 13. When it is apparent that the duration of the Corporation itself is for a period of five years and no longer, as per the mandate of Article 243U(1) of the Constitution of India, duly reflected in Section 6 of the Act of 1949; and the term of the office of Councillors has specifically been provided to be co-terminus with the duration of Corporation in Section 6A of the Act of 1949; and then, the Standing

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Committee is to be consisting of “sixteen Councillors”, we are unable to find any logic in the submissions made by the learned counsel for the appellant that even if the term of the Corporation comes to an end and even when the term of office of the Councillors comes to an end yet, the Standing Committee as existing on the date of completion of the terms of Corporation and Councillors shall continue to be in office until composition of the new Committee after elections. When no person could be said to be holding the office of the Councillor after completion of the term in view of the mandate of Sections 6 and 6A of the Act of 1949, it follows as a necessary corollary that the Standing Committee stands dissolved along with the completion of the term of the Corporation.

14. The proviso to sub-section (3) of Section 20 of the Act of 1949 essentially comes in operation only in the eventuality when there are existing members of the Standing Committee in office when general elections are held and they are to retire on the election of a new Committee, i.e., at the first meeting of the Corporation after general elections. The proviso cannot be read to mean that notwithstanding the expiration of the duration of a Corporation and thereby, termination of the term of office of the Councillors, there could still be any Standing Committee in existence. It gets perforce iterated that the Standing Committee stands dissolved along with the completion of the term of the Corporation.

15. The other contention urged on behalf of the appellant by comparison of Sections 452 and 452A of the Act, particularly that no akin provision as that of Section 452(2)(c) is found in Section 452A, is also devoid of logic and substance. The provision of Section 452 essentially operates in relation to the contingency where the State Government takes the steps for dissolution of the existing Corporation after opportunity of show cause upon being satisfied that the Corporation is not competent to perform the duties imposed upon it or is persistently making default or is abusing its powers. Sub-sections (1A) and (1B) of Section 452A of the Act, which are operating in the present case, deal with a specific peculiar contingency where general elections could not be held during the time specified by the enactment even after the expiry of the term of the Corporation, essentially due to COVID-19 pandemic situation. Appointing of Administrator in such a contingency does not and cannot override the mandate of Article 243U of the Constitution of India as also the provisions of Sections 6 and 6A of the Act as regards

- A the tenure. As already noticed, end of the tenure of Corporation has its consequential effect of the end of the term of the office of the Councillor; and when no person including the present appellant could be said to be holding the office of Councillor after end of the term of the Corporation, existence of any Standing Committee thereafter, is simply out of question.
- B Any other interpretation, in our view, shall be standing at conflict with the mandate of Article 243U of the Constitution of India and Sections 6 and 6A of the Act of 1949.

C 16. In regard to the other submissions on behalf of the appellant with reference to Section 48 of the Act of 1888, we could only comment that no such provision and not even an akin provision is found in the Act of 1949. For what has been discussed hereinabove, the said argument does not take the case of the appellant any further.

17. Accordingly and in view of the above, this appeal fails and is, therefore, dismissed.

Devika Gujral and Anurag Bhaskar
(Assisted by : Rahul Kumar, LCRA)

Appeal dismissed.