

Bombay High Court

Chandrakant Chintaman Bhise And ... vs State Of Maharashtra And Ors. on 3 May, 1985

Equivalent citations: AIR 1986 Bom 198

Author: Jamdar

Bench: Dharmadhikari, Jamdar

JUDGMENT Jamdar, J.

1. All these writ petitions raise an important question about ambit and scope of the power conferred on the State Government by cl. (a) of sub-sec. (10) of S. 4 of the Bombay Primary Education Act, 1947, to nominate members of a Municipal School Board if the term of the office of the members of such a board expires during the suppression of electing authorised municipality. It is the purported or proposed action of the State government in exercise of this power that is questioned in these petitions.

2. Writ Petition No. 1084 of 1983 is filed by the petitioners, who are respectively Chairman and Member of the Bhiwandi Municipal School Board which was constituted in July 1975 under S. 3 of the Bombay Primary Education Act. Bhiwandi Municipal Council which is the authorised Municipality within the meaning of S. 2(b) of the Primary Education Act was constituted after elections in Dec. 1974. the term of the Municipal Council was due to expire by the end of Nov. 1979. But, by the Government resolution dt. 11th Dec. 1979 issued by the State Government under S. 40(1) of the Maharashtra Municipalities Act the term of the council was extended up to 30th Nov. 1980. Consequently by virtue of the provisions contained in S. 4(9) of the Bombay Primary education Act, the term of the Bhiwandi Municipal School Board stood extended 1980 passed by the State Government an Administrator was appointed for Bhiwandi Municipal Council under S. 313 of the Maharashtra Municipalities Act. thereafter by the order dt. 5th Feb. 1981 issued under S. 48A of the Maharashtra Municipalities Act. Bhiwandi Municipal Council stood dissolved. However, in spite of the appointment of the Administrator and subsequent dissolution of the municipality, the same School Board constituted in Dec. 1974 continued to function till Jan. 1983 when steps were taken by respondent 2 at the instance of the then Deputy Minister Shri Wakar Ahmed Momin to appoint new school board in place of the exdisting one and to nominate the persons named in the letter of recommendation, Exhibit B dt. Oct.. 6, 1982 addressed by the said Shri Wakar Ahmed Momin. the petitioners, therefore, filed this petition for quashing the letter dt. 8th Jan. 1983 addressed by the second respondent. Director of Education to all administrators and school boards in the State calling upon them to furnish information required for constituting the new school boards as contemplated by S. 4(10)(a) of the Bombay Primary education Act and also for a writ of prohibition prohibiting the respondents from taking any action in pursuance of the said letter and also prohibiting them from superseding the municipal school board of Bhiwandi Nizampur Municipal Council. According to the petitioners letter dt. 18th Jan. 1983 issued by respondent 2 is totally illegal and is contrary to the provisions of case that sub-sec. (10) of S. 4 of the Bombay Primary Education Act confers a right on the State Government to nominate persons of new school Board only when the authorised municipal council is superseded and that the said provision is not available for nominating members of the school board when the authorised municipal council is dissolved.

3. In his affidavit in reply Shri Bandu Kondiba Vyavahare, Asst. Secretary, Education and Employment Department asserted that since the term of office of the members of Bhiwandi-Nizampur Municipal School Board expired during the suppression of the Municipal School Board, the State Government in view of the provisions of S. 4(10)(a) of the Bombay Primary Education Act is entitled to nominate the members of the School Board until the authorised municipality is re-established. According to him though thereafter the Bhiwandi Municipal Council was dissolved along with other municipal councils in the State of Maharashtra. the term of office of the members of the school board having already expired in 1980 during the suppression of the municipal council, the proviso to S. 4(9) of the Primary Education Act is evidently not applicable and the petitioners and other members of the school board cannot avail of the benefit of the said provision. He deemed that the action of the first respondent is mala fide and was taken with the intention to accommodate persons of the choice of the then Deputy Minister.

4. Writ Petition No. 3991 of 1983 is filed by two duly elected members of the municipal School Board of Manmad Municipal Council. Elections to the Municipal Council were held in Nov. 1974 and the Municipal Council was constituted in Dec. 1974. Manmad Municipal School Board was constituted with effect from 4th Dec. 1975, the date on which names of the members elected as well as nominated were published in Maharashtra Government Gazette. The term of Manmad Municipal Council was to expire in Dec. 1979 But. by virtue of the above referred resolution dt. 11th Dec. 1979. it was extended up to 30th Nov. 1980. Subsequently by an order dt. 5th Feb. 1981 issued under the newly inserted S. 48-A of the Maharashtra Municipalities Act, the municipal Council was dissolved and an administrator was appointed. The municipal school board constituted on 4-12-1975, however. continued to function. However, on 10-11-1983 the Deputy Director of Education. Nasik division, Nasik received a telegram from education and Employment Department calling his attention to Government letter M. S. B. 1683/375/PE-dt. 5-9-1983 regarding dissolution of Manmad Municipal School Board or nomination of the members thereof and asking him to send his detailed proposals along with names and bio-data of the members to be appointed. It is this telegram which is sought to be quashed by the petitioners, inter alia, on the grounds that the proposed action violates Art. 19(1)(a) of the Constitution, that it is mala fide as it is sought to be taken against the administrator for his failure to credit in the account of the Municipal School Board the amount received from the Government by the Municipal Council, as per r. 157(2) of the Bombay Primary Education Rules. It is also their case that S. 4(10) is not attracted when the Municipal Council is dissolved. No return is filed by the respondents. in this petition.

5. Writ Petition No. 3561 of 1984 is filed by three citizens ordinarily residing within the limits of Pimpri-Chinchwad Municipal Corporation for quashing the notification dt. 27th Aug. 1984 issued by the Government of Maharashtra, Education and Enokitnebt Department under S. 4(10)(a) of the Bombay Primary Education Act, 1947, nominating respondents 3 to 14 as members of the Municipal School Board of Pimpri-chinchwas Municipal Corporation.

6. Pimpri-Cinchwad Municipal Council was established in Mar. 1971. Elections to the said Council were held in Nov. 1978. the petitioners were elected as Municipal Councillors in the said election. Municipal councillors so elected in their turn elected ten members of the Municipal School Board. After the said elections the municipal school board was duly constituted on 17th May 1979 on which

date names of the nominated and elected members of the school board were published in the maharashtra Government Gazette under the provisions of r. 8 of the Primary Education Rules. The term of the School Board which was for five year was scheduled to expire on 17th May 1984. However, before the expiry of the said period Pimpri-Chinchwad Municipal Council underwent a change. By the Notification dt. 5th Oct. 1982, issued under S. 3(2) of the Bombay Provincial Municipal Corporations Act, the Government of Maharashtra constituted the local areas mentioned in the two Schedules appended to the said notifications to be the city of Pimpri Chinchwad for the purpose of that Act with effect from 11th Oct., 1982. By another notification of even date, it was declared that the whole of the above mentioned local area comprised within the limits of Pimpri-Chinchwad Municipal area in Pune District shall cease to be a municipal area. By yet another notification of even date issued in exercise of the power conferred by cl. (ab) of para 22 in part 4 of appendix 4 of the Bombay Provincial Municipal Corporations Act, the Government of Maharashtra appointed an Administrator for the Municipal Corporation of the city of Pimpri-Chinchwad in the first instance for a period of one year with effect from 11 the Oct. 1982 to exercise all the powers and to perform all the functions and duties of the said Corporation and other authorities mentioned in the said para 22. However, Pimpri-Chinchwad Municipal School Board which was constituted on 17th May 1979, continued to function till the impugned notification dt. 27th Aug. 1984 was issued.

7. According to the petitioners, Pimpri Chinchwad Municipal Council which elected the existing School Board was not superseded and hence the first respondent State of Maharashtra, had no authority to nominate any School Board under sub-sec. (10) of S. 4 of the Primary education Act, because the plain reading of sub-sec. (9) and (10) of S. 4 would show that the legislature had clearly distinguished between dissolution and supersession and had made sub-sec. (10) applicable only to cases where the authorised Municipality is superseded. It is also the case of the petitioners that the impugned notification is issued with undue haste with an ulterior motive and under colorable exercise of the power vesting in the first respondent. According to them, the preamble of the notification which says 'whereas the Pimpri-Chinchwad Municipal Council is dissolved ' itself shows that the notification was issued with undue haste without application of mind because admittedly Pimpri-Chinchwas Municipal council is neither superseded nor dissolved. Further, respondents 3 to 13, who are nominated as members of the School Board, are all wealthy businessmen and active members of the ruling party, having no back-ground of any work in the field of education and the only apparent consideration for appointment of the said respondents as members of the School Board is their allegiance to the party in power and their possible used in the forthcoming Lok Sabha elections. According to the petitioners respondents 3, 4, 6, 7, 8 and 9 are non-Marathi speaking and are really not qualified to be in charge of primary Education which is necessarily imparting education in Marathi. It is also the grievance of the petitioners that the impugned notification discriminates against the School Board of the petitioners because even though almost all the Municipal Councils within the State of Maharashtra are in the state of dissolution and even though more than 50 the School Boards are functioning in the area of the said Municipality, only the Municipal School Board of the petitioners is chosen for dissolution under sub-sec. (10) of S. 4 of the Primary Education Act.

8. In her affidavit in reply Smt. Vrinda Kulkarni, deputy Secretary, Education and Employment Department, has contended that the authorised Municipal Council viz. Pimpri-Chinchwad Municipal Council underwent drastic change and hence even though there was no suppression, the provisions of S. 4(10)(a) of the Primary Education Act can be invoked by the Government for reconstituting the Board. She further asserted that even according to the provisions of S. 4(8) of the Primary Education Act, if elections to the authorised municipality cannot for any reason be held at all or cannot be completed within reasonable period, the Government can nominate the required number of persons as members of the school board and as in the case of Pimpri-Chinchwad Municipality, there is no elected body of the corporation and as apparently elections cannot be held at this stage, the Government can nominate members of the School Board according to the provisions of S. 4(10)(a) read with S. 4(8) of the Primary Education Act. Further, in view of the fact that the Municipal School Board has already completed its full term and the members thereof have enjoyed their full term, there is no question of making undue haste or issuing notification either with an ulterior motive or in colorable exercise of power, The Deputy Secretary asserted that the notification has been issued after taking into consideration the object of the Act and also because the members of the previous school board have completed their full term. She denied that the present school board is singled out for reconstitution and asserted that wherever situations warrant the school boards are constituted. She also asserted that all the nominated members know Marathi. Respondent 3 also filed his affidavit asserting, inter alia, that he is a law graduate, knows Marathi and apart from being a political worker, he is also a social worker, Respondent 4 also filed an affidavit in reply asserting, inter alia, that he knows Marathi and denying that he has no background of any social work.

9. By interim orders passed in Petitions Nos. 1084 of 1983 and 3991 of 1983, the proposed action was stayed. However, no interim relief was granted in Writ Petition No. 3561 of 1984, obviously on the ground that the petition was directed to be heard along with the aforesaid two petitions in the week commencing from 17-9-1984.

10. The main contention of the petitioners in all these petitions is that power under sub-sec. (10)(a) of S. 4 of the Primary Education Act can be exercised only when the term of the office of the members of the Municipal School Board expires during the suppression of authorised Municipality and this power cannot be exercised when the authorised Municipality is dissolved or otherwise ceases to exist. Shri Sawant, learned Counsel for the respondents, however, urged that the word 'suppression' appearing in the relevant provision will have to be given wider meaning in the context of various relevant provisions of the statutes governing Municipal Councils and the Municipal Corporations in the State. According to him, in the light of various relevant provisions in the Maharashtra Municipalities Act, 1965 and the Bombay Provincial Municipal corporations Act, the word 'suppression' will have to be liberally /s. 4 (10)(a) applicable not only when a Municipal Council or a Municipal Corporation is superseded but also when these institutions are dissolved or cease to exist in view of change in the Constitution.

11. In order to appreciate the rival contentions, it would be necessary to state in brief the provisions of the Bombay Primary Education Act, 1947, relating to the constitution of the Municipal School Boards. of the said enactment. Sub-sec. (2) of S. 3 lays down that for each area of authorised

municipality there shall be a municipal school board. Authorised Municipality is defined by S. 2(6) of the Act as a municipality which is authorised by the State Government under sub-sec. (I) of S. 16 to control all approved schools within its area. S. 4. with which we are mainly concerned in these petitions, contains provision as to how municipal school board is to be constituted. S. 5 mentions disqualification's of members. S. 6 prescribes machinery and procedure to be followed, if validity of election of a member of the school board is brought in question. S. 6(a) makes provision for the contingency of disqualification at the time of election being discovered subsequently. S. 6(b) prescribes disqualification's incurred by a member after becoming a member of the school board. S. 7(A) prescribes penalty for sitting or voting as a member of a school board if the person knows that he is not qualified or that he is disqualified for member shall not vote or take part in a discussion on any matter before a meeting of a school board in which he had directly or indirectly, by himself or his partner, any share or interest such as described in Co. (f) of S. 5 or in which he is professionally interested on behalf of a client, principal or other person. Section 9 confers power on the State government to remove any member elected, appointed or nominated on the School Board on its own motion or on the recommendation supported by a resolution passed by at least 2/3rds of the whole number of the school board or authorised municipality which elected the members. Section 9-A lays down that a person who was a member of the school board but has resigned his office as such member can be disqualified by the State Government for misconduct in the discharge of his duties or for any disgraceful conduct as member. Section 10 prescribes procedure for election of Chairman and Vice-Chairman.

12. As mentioned above. S. provides for constitution of school board. Sub-sec. (1) lays down that each school board shall consist of members not less than 12 and not more than 16 in number. As per sub-sec. (2) of these members not less than 2 and not more than 3 in number shall be appointed by the State Government Sub-sec. (3) confers power on the State Government to determine from time to time the number of members under sub-sec. (1) and (2). Sub-sec. (4) provides that of the members appointed by the State Government under sub-sec. (2) one shall be an officer of the State Government and the remaining shall be persons (1) who shall have passed matriculation examination or shall possess any other equivalent or higher educational qualification which the State Government may specify in this behalf. or (2) who have had experience of the system or institutions of primary education. Clause (a) of sub-sec. (5) of S. 4 lays down that members other than those appointed by the State Government shall be elected by the authorised municipality. Provided that if approved schools within the area of any non-authorised municipality are controlled by authorised municipality, not more than two of such members as may be determined by the State Government, from time to time, shall be elected in the manner prescribed by the said non-authorised municipalities on the municipal school board. Clause (b) of sub-sec. 9(5) makes it clear that members elected under this sub-section shall not be necessarily members of the electing local authority. As laid down in sub-sec. (6), of the members elected by the authorised municipality such members not exceeding two as may be prescribed shall be from Scheduled Casts and the Scheduled Tribes. Sub-sec. (7) prescribes educational qualifications for elected members of the School Board. It is laid down that members of the elected under sub-sec. (5) shall have passed primary school certificate examination and shall possess such the equivalent or higher qualification as may be prescribed provided that person from amongst scheduled casts and the scheduled tribes shall be eligible for being elected members if they shall have passed at least primary 4th standard

examination, provided further that out of the seats of the members to be elected the authorised municipality not less than 3 shall be reserved in the prescribed manner for the persons who have passed matriculation or second year training examination or/and who possess any other equivalent or higher educational qualification, which the State Government may specify in this behalf.

13. As the resolution of the question posed in these petition involves interpretation of sub-sec. (8) to (11) of S. 4, we would like to quote those provisions ad verbatim :-

"4(8) If the State Government is satisfied that any election (including a bye-election) cannot for any reason be held at all or cannot be completed within such period as the State Government considers reasonable or has not resulted in the return of the required number of qualified persons willing to take office, the State Government shall nominate from amongst persons who would have been qualified to be elected the required number of persons as members of the school board and the persons so nominated shall be deemed to have been duly elected under sub-sec. (5) :

Provided that if at any time after the nomination of such persons as members of the school board, the State Government is satisfied that a fresh election (including a bye-election) can be duly held the State Government may, by a notification published in the official gazette, direct that the members so nominated shall cease to hold office with effect from such date as may be specified in such notification, notwithstanding the fact that the term of office of such members for which they had been nominated has not expired.

(9) Except as otherwise provided in this Act, the term of office of the members of school board shall cease on the expiry of the term of the electing authorised municipality;

Provided that the term of office of such members shall not be deemed to expire by reason only of the fact the authorised municipality is dissolved or superseded.

(10)(a) if the term of office of the members of school board expires during the suppression of the electing authorized municipality a new school board shall be constituted as provided in sub-secs. 91) to (7) until the authorised municipality is re-established provided that the members of such school board shall be nominated by the State Government. (b) the term of office of the members of the school board so nominated shall be for such period not exceeding three years as the State government may determine :

Provided that if during such period the authorised municipality is re-established, the term of office of the members of the school board shall expire on the date on which a new school board is constituted.

(11) Notwithstanding the cessation or expiry of the term of office of the members of any school board under sub-secs. (8), (9) or (10) they shall continue in office until the members of a new school board are elected appointed or nominated, as the case may be."

Sub-sections (12) to (14) of S. 4 need not be referred to as they are not relevant for the purpose of these petitions. Analysing the above provisions it is clear that as provided in sub-sec. (9). ordinarily the term of office of the members of the school board is co-extensive with the term of the election authorised municipality. except in cases where the authorised municipality is dissolved or superseded prematurely. i.e. before completion of its term. Dissolution of the authorised municipality before expiry of its term does not have the effect of cessation of the term of office of the members of the school board. Moreover, as provided in sub-sec. (11) even if the term of office of the members expires, they shall continue in office until members of the school board are elected. appointed or nominated. as the case may be.

14. Besides the general power conferred on the State Government by sub-sec. (2) of S. 4 to appoint. not less than 2 and not more than three in number. members of the municipal school board. power to nominate members of the school board is conferred by S 4 in the circumstances mentioned in a sub-sec (8) and sub-sec. (10)(a) of S. 4. the power conferred by sub-sec. (8) to nominate members in place of members to be elected can be exercised by the State Government if it is satisfied that any election (including bye- election) cannot for any reason be held at all or cannot be completed within such period as the State government considers reasonable or has not resulted in the return of the required number of qualified persons willing to take office. only restriction being that the persons so nominated must be qualified to be elected. As further provided by sub-sec. (8) such nominated members shall be deemed to have been elected under sub-sec. (5). However, if at any time after the nomination of such persons as members of the school board the State Government is satisfied that a fresh election including a bye-election can be duly held the State Government may by notification published in the official gazette direct that members so nominated shall cease to hold office with effect from such date as may be specified in such notification notwithstanding the fact that the term of office of such members for which they had been nominated has not expired. This proviso to sub-sec. (8) was added by Bombay Act 26 of 1954 by which sub-sec. (11) was amended so as to make it applicable to cessation of the term of office contemplated by the said proviso to sub-sec. (8) and expiry of the term of office contemplated by Cl. (b) of sub-sec. (10). Hence even if the notification contemplated by the proviso to sub-sec. (8) mentions the date from which nominated members shall cease to hold office, by virtue of sub-sec. (11), they shall continue in office until the members of a new school board are elected. appointed or nominated as the case may be . Sub-sec. (8), however, will be attracted only when the school board is to be constituted for the first time or when the term of office of members of the existing school board expires in due course along with the term of the authorised municipality or when a casual vacancy of elected member occurs. It has no application to cases in which the authorised municipality virtue of proviso to sub-sec. (9) the term of office of the members of the school board is not deemed to have expired.

15. This brings us to sub-sec. (10) which as urged by Shri Sawant provides for the cases not covered by sub-sec. (8), It provides that if the term of office of the members of the school board expires during the suppression of the electing authorised municipality, new school board shall be constituted as provided in sub-secs. (1) and (7) until the authorised municipality is re-established provided that members of such school board shall be nominated by the state Government. the term of office of such nominated members shall be for such period not exceeding three years, as the State government may determine, provide that if during such period authorised municipality is

re-established. the term of office of the nominated members of the school board, as determined by the State Government under Cl (b) of sub-sec. (10) express. the members shall continue in office until members of a new school board are elected. appointed or nominated as the case may be it is contended on behalf of the petitioners that the power to nominate conferred by sub-sec (10) of S. 4 can be exercised only when electing authorised municipality is superseded and cannot be exercised when the authorised municipality is dissolved or when the members of the electing authorised municipality cease to hold office prematurely by any other reason. It was contended that dissolution and supersession are two different things and this distinction is recognized by proviso to sub-sec. (9) of S. 4 of the Bombay Primary Education Act.

16A. Section 179 of the Bombay District Municipal Act which is referred to in the above context reads as follows - "179 (1) :- If in the opinion of the State Government, any Municipality are not competent to perform. or persistently make default in performance of the duties imposed on them or by or under this Act, or otherwise by law. or exceed or abuse their powers, the State Government may, by an order published with reasons for making it. In the official Gazette declare the Municipality to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and may dissolve such Municipality or the order. Such period may be longer than the Municipality would have held office under S. 17. if the Municipality had not been superseded under this section."

(2) On the dissolution of a Municipality under sub-sec. (1), the term of office of the councillors of such Municipality shall terminate and elections of councillors shall be held under the provisions of this Act or rules made there under applicable thereto . on or before a date to be specified by the State Government in this behalf in the aforesaid order.

(3) When the Municipality is superseded under sub-sec. (1) the following consequences shall ensue

(a) all councillors of the Municipality shall, as from the date of the order, vacate their offices as such councillors:

(b) all powers and duties of the Municipality shall during the period of supersession. be exercised and performed by such person or persons as the Commissioner from time to time appoint in that behalf;

(c) all property vested in the Municipality shall, during the period of suppression vest in Government.

(4) If after enquiry made by the State Government so directs, the period of supersession with all the consequences aforesaid shall from time be continued by an order published as aforesaid until such date as may be fixed by the State Government for the re-establishment of the Municipality.

(5) The Municipality shall be re-established by the election or appointment of new Councillors under the provisions of this Act applicable thereto;



(a) If no direction had been made under sub-sec. (4), then on the expiration of the period specified in the order of supersession under sub-sec. (1); and

(b) if a direction has been made under sub-sec (4), then on such date as is fixed under that section for the re-establishment of the Municipality."

It is pertinent to note that the words may dissolve such Municipality' were added in sub-sec (1) and sub-sec. (2), which mentions the consequences' of dissolution of Municipality were inserted by S. 7(1) and S. 7(2) of Bombay Act. No. 4 of 1924 and sub-sec. (2) to (4) were re-numbered as sub-secs. (3), (4) and (5). However, the caption of the section, viz. 'Power of the State Government to supersede Municipality in case of incompetency, default or bause of powers', remained unaltered. The circumstances in which the State Government could dissolve or supersede Municipality were identical. Moreover, even though supersession contemplated by sub-sec. (1) of S. 179 was for a period to be specified in the order, such period could be longer than the term for which the councillors of the Municipality would have held office, if the Municipality had not been superseded and that sub-sec. (4) empowered the State Government to continue the period of supersession until such date as may be fixed by the State Government for re-establishment of the Municipality. Re-establishment contemplated was, as provided by sub-sec. (5), by election or appointment of new Councillors. Moreover, Cl. (a) of sub-sec. (3) specifically provided that when Municipalities are superseded under sub-sec. (1), all Councillors of the Municipaloity shall as from the date of the order vacate as such Councillors. There was thus no question of the Councillors re-assuming the office on revocation of the supersession. It will be seen that so far as the consequences of the action of the State government under sub-sec. (1) of S. 179 are concerned, the only difference between dissolution and supersession was that in case of dissolution, elections of the Councillors were required to be held on or before the date to be specified by the State Government in the order by which the Municipality is dissolved, while, supersession contemplated re-establishment of the Municipality either by election of new councillors or appointment of new Councillors under the provisions of the Act. It is pertinent to note that the appointment of new Councillors contemplated by sub-sec. (5) was expected to be under the provisions of the Act. The only provision which empowered the provincial or the State government to appoint new Councillors was contained in Cl. (b) of sub-sec. (1) of S. 10 of the Bombay District Municipal Act, 1901. this provision which empowered the provincial Government to nominate some Councillors was deleted by Bombay Act No. 9 of 1938. Moreover, there was no provision which empowered the State Government to appoint new Councillors in place of Councillors who were expected to be elected. Sub-sec. (2) of S. 179 also contemplated elections of the members or Councillors who were expected to be elected. It will, thus, be seen that there was no material distinction between dissolution and suppression of the Municipality contemplated by sub-sec. (1) of S. 179. Only distinction was that in case of dissolution elections of the councillors were expected to be held on or before the date specified in the order of dissolution, while in the case of suppression, the period of suppression could be continued without any limit and the elections could be postponed till the date fixed by the State Government for re-establishment of the Municipality. The dissolution contemplated by S. 179 was thus a species of suppression. that is why perhaps caption of S. 179 was not altered.

17. The Bombay District Municipal Act, 1901 stood repealed by S. 343 of the Maharashtra Municipalities Act, 1965. Section 313 of the New Act confers powers on the State Government to appoint an Administrator in the following circumstances :-

"313(1) If, in the opinion of the State Government :-

(a) a Council is not competent to perform duties imposed upon it by or under this Act or any other law for the time being in force, or

(b) persistently makes default in the performance of such duties, or in complying with the lawful directions and orders issued by the Collector, the Director, the State Government or any other authority empowered under law to issue such diffraction's or orders to a Council, or

(c) exceeds or abuses its powers, or

(d) a situation has arisen in which the administration of the Council cannot be carried out in accordance with the provisions of this Act, or

(e) the financial position and the credit of the council is seriously threatened, the State Government may, by an order published in the Official Gazette, appoint a Government Officer as the Administrator of the Council for a period not exceeding three years. The order shall state the reasons for making the order."

Section 314 lays down that when an Administrator is so appointed under S. 313(1), all the powers and functions vesting in or exercisable by the Council, the President, the Vice President, the various Committees, the Councillors and the Chief Officer under this Act or any other law for the time being in force, shall vest in and be exercisable by the Administrator, to the exclusion of their exercise and performance by the Council, the President, the Vice President, the Chief Officer. It is pertinent to note that neither in S. 313 nor in S. 314 the word 'suppression' is used either in the caption or in the substantive provision. However, such an action is described as 'suppression' by a Division Bench of this court in the case of the Municipal Council, Malkapur v. State of Maharashtra, . Furhter, these two provisions do not lay down that all Councillors of the Municipality shall vacate their offices and all the properties vesting in the Municipality shall vest in the Government, consequent upon the appointment of the Administrator. This, as mentioned above, was the effect of suppression contemplated by sub-sec. (1) of S. 179 of the Act of 1901.

18. As laid down by sub-sec. (1) of S. 315 of the Maharashtra Muniucipalities Act, 1965, every administrator is expected to submit quarterly report to the Director of Municipal Administration and sub-sec. (2) contemplates review of the position by the State Government on the report of the Director at the end of every six months or earlier, only in cases where Administrator has been appointed for the reasons stated in Cl. (d) or (e) of sub-sec. (1) of S. 313 and to determine whether the reasons leading to the appointment of the Administrator have ceased to exist and pass suitable orders. Sub-sec(2) further provides that if the State it is in the interest of municipal administration to extend the term of office of the administrator, the State Government may, notwithstanding that

the term of the existing Council was due to expire or expired earlier, do so, from time to time, provided that in no case falling under the said Cl. (d) the term is so extended as to exceed total period of three years, but in any case, where the financial position and credit of the council requires it in the opinion of the State Government then notwithstanding anything contained in S. 313, the term for reason to be recorded, be extended even beyond three years, but not so as to exceed a total period of six years. Sub-sec. (3) provides that if in the opinion of the State Government even after the period of three years, or as the case may be of six years, of administration by the Administrator, the grounds on which the Administrator was appointed, still existed, the State Government may by an order published in the official Gazette dissolve the Council. Sub-sec. (4) provides that in case where the Administrator was appointed for reasons set forth in Cls. (a), (b) or (c) of sub-sec. (1) of S. 313 and if his term was to expire after the existing term of the Council is due to expire or expires, the State Government shall curtail the term of the Administrator in such manner as to make his term conterminous with the existing council and in other cases the Administrator shall hand over the administration to the existing council for the unexpired term. Sub-sec. (5) further lays down that whenever an existing Council takes over administration from an Administrator in accordance with sub-sec. (4) the procedure for the election shall be followed as if it were a newly constituted Council after a general election. Section 316 of the said Act enumerates the consequences of dissolution. the said provision read as follows :-

"316 When the Council is dissolved under sub-sec. (3) of the last preceding section, the following consequences shall ensue :-

(a) all councillors of the Council shall, as from the date specified in the order of dissolution, vacate their offices as such councillors.

(b) all powers and duties of the Council shall, during the period of dissolution, be exercised and performed by such person or persons as the State Government from time to time appoint in this behalf (and such person or persons shall receive such remuneration from the Municipal fund as the State Government may from time to time, determine;)

(c) all property vested in the Council shall, during the period of dissolution vest in the State Government."

19. It will, thus, be seen that the Municipal Council can be dissolved only in cases where the Administrator has been appointed for the reasons set forth in Cl. (d) or (e) of sub-sec. (1) of S. 313 and if the said grounds exist even after the period of administration by the Administrator. No dissolution is contemplated on other grounds on which Administrator can be appointed under sub-sec. (1) of S. 313. It is also pertinent to note that the consequences of dissolution mentioned in S. 316 of the Maharashtra Municipalities Act. 1965 are identical with those mentioned in sub-sec. (3) of S. 179 of the Bombay District Municipal Act. 1901. as the consequences of 'suppression' under sub-sec. (1) of S. 179 of the said Act. It is further pertinent to note that as provided in S. 317 of the Maharashtra Municipalities Act. 1965, on the issue of an order of dissolution under sub-sec. (3) of S. 313 general election shall be held and the Council shall be re-established on such date as the State Government may specify in the order of dissolution. This provision is analogous to sub-sec. (2) of S.

179 of the Bombay District Municipalities Act. As mentioned above, consequences of 'suppression' under S. 179(1) were exactly same as the the consequences of dissolution mentioned in S. 316 of the Maharashtra Municipalities Act, 1965. Moreover, every dissolution under S. 315(4) is always preceded by appointment of an Administrator.

20. By virtue of S. 4(2) of the Bombay Provincial Municipal Corporation Act, 1949, the Corporation constituted under the said Act shall be deemed to be an authorised Municipality within the meaning of Bombay Primary Education Act. Section 452 of the Bombay Provincial Corporation Act, 1949, confers powers on the State Government to supersede the Corporation if 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 the Act or any other law for the time being in force or exceeds or abuses its powers. the suppression contemplated is for a period specified in the order and such period may be longer than the term for which the Councillors of the Corporation would have held the office under S. 6 if the Corporation had not been suspended under this section. This Act does not contemplate dissolution though as provided by sub-sec. 2 of S. 542 consequences of suppression under sub-sec. (1) are the same as those of dissolution mentioned in S. 316 of the Maharashtra Municipalities Act, 1965, which are identical with those mentioned in sub-sec. (3) of S. 179 of the Bombay District Municipalities Act, 1901 as the consequences of suppression and which are different from the consequences of appointment of an Administrator under S. 313 (I) of the Maharashtra Municipalities Act. 1965. Sub-sec. (3) of S. 452 empowers the Government to continue the suppression from time to time with all the consequences mentioned in sub-sec. (2). Sub-sec. (4) provides that the corporation shall be re-established on the expiration of the period of suppression as continued from time to time by an order under sub-sec. (3) by the election of councillors at general elections held in accordance with the provisions of the said Act. It will be, thus, clear that even though the suppression contemplated by S. 452(1) of the Bombay Provincial Municipal Corporation Act. 1949, and S. 179(1) of the Bombay District Municipal Act, has all the effects of dissolution mentioned in S. 316 of the Maharashtra Municipalities Act, 1965, including the vacation of the office by the Councillors, it does not contemplate immediate election of the Councillors, as in the case of dissolution under S. 179 (1) of the Bombay District Municipal Act or under S. 315(3) of the Maharashtra Municipalities Act, 1965. The word 'supersession' is thus used in different sense in different enactment's relating to municipalities and will include all cases in which the municipal Councillors vacate their office but no general elections of the authorised municipality is contemplated by therelevant provisions.

21. The notification dt. 5-2-1981, which is said to have dissolved several municipalities in the State, including the Bhiwandi, Nizampur and Manmad Municipalities, was issued under S. 48A of the Maharashtra Municipalities Act. This provision was incorporated in the said enactment by Act XII of 1981, which came into force of 4th Feb. 1981. This provision which empowers the State Government to appoint an Administrator, neither speaks of suppression nor of dissolution and the power can be exercised when normal term of five years of the office of the Councillors has expired and the State Government is of the opinion that in the changed circumstances, the continuance of such councillors in office is not necessary or expedient. The said section reads as follows :-

"48A (1) Notwithstanding anything contained in Sec. 40 or any other provisions of this Act, where the term of office of five years of the Councillors of any council has expired and the State Government is of opinion that in the changed circumstances the continuance of the such Councillors in office is not necessary or expedient, the State Government may, at any time, even during the period the term stands extended under sub-sec. (1) or (8) of S. 40, by order published in the Official Gazette, direct that :-

(a) all the Councillors of the council (including the President and the Vice President) shall as from the date specified in the order, cease to hold and shall vacate their offices as councillors or otherwise; and

(b) the person appointed by the State Government, from time to time, shall be the Administrator to manage the affairs of the Council, during the period from the said date up to the day preceding the date on which the first meeting of the re-constituted council after the General Election is held, where there is a quorum. Such general election shall be held within a period of one year, from the date of publication of the order issued under this sub-section in the Official Gazette.

Provided that this period of one year may be extended from time to time, in exceptional circumstances to a period not exceeding two and half years in the aggregate.

(2) During the said period, all the powers and duties of the Council and its various authorities under this Act or any other law for the time being in force shall be exercised and performed by the Administrator.

(3) The Administrator may delegate any of his powers and duties to any officer for the time being serving under the Council.

(4) The Administrator shall receive such remuneration from the municipal fund, as the State Government , may from time to time by general or special order, determine.

(Provided that no by-election shall be held or Co-option or nomination made for filling of a casual vancy, if the general elections are due to be held within six months of the occurrence of the vacancy.)"

It will thus be seen that under this section of appointment of an Administrator all councillors cease to hold and shall vacate their office as Councillors. but the re-constitution of the Council by holding general elections can be deferred for a period not exceeding 21/2 years.

22. Interpreting the provisions of cl. (a) of sub-sec. (10) of S. 4 of the Bombay Primary Education Act, in the light of the aforesaid provisions of the Bombay District Municipal Act, 1901, the Maharashtra Municipalities Act, 1965, and the Bombay Provincial Municipal Corporations Act, 1949, it is clear to us that the word 'suppression' has to be given wider meaning to make the provision contained in S. 4(10)(a) applicable to all cases in which term of office of the members of the School Board comes to an end, (I) during the suppression of the authorised municipality or (ii)

after the members of the authorised municipality cease to hold office and no general elections are immediately contemplated by the relevant provision, or (iii) during the time when an Administrator is appointed to excrete the functions of the Councillors for a specified period during which the authorised municipality cannot be re-constituted by holding general elections and consequently the Municipal School Board cannot be constituted by following the procedure prescribed in sub-sec. (1) to (7) of S. 4 of the Bombay Primary Education. Act. Section 4(10)(a) would not be applicable when the Councillors vacate their office as such as a result of action of the State Government under S. 315 (3) of the Maharashtra Municipalities Act or under S. 452(1) of Bombay Provincial Municipal Corporations Act which contemplate of holding general elections for electing Councillors, but elections could not be held. In such cases, S. 4(8) of the Bombay Primary Education Act would be attracted.

23. In the case of Bhiwandi-Nizampur Municipal School Board, the term of office of the members expired during suppression of the authorised municipality. In case of Manmad Municipal School Board, the term expired after the Administrator was appointed for the Maharashtra Municipalities Act, 1965. In case of Pimpri-Chinchwad Municipal Corporation no action is taken under S. 452(1) of the Bombay Provincial Municipal corporations Act but an administrator is appointed by the Government in exercise of powers conferred by cl. (ab) of para 22 of Part IV of Appendix IV to the Bombay Provincial Municipal Corporations Act, 1949. This provision empowers the Government to appoint an administrator on the constitution of a city under S. 3 or at any time, in place of interim authorities mentioned in cl. (a) even though the period or periods for which such interim authorities have been appointed, has not expired, The appointment of the administrator under this provision can be made in the first instance for a period not exceeding one year, but his term of office may be extended for such period or periods, not exceeding three years in aggregate, as the State Government may think fit, but after the expiry of the said term the Administrator shall continue in office until the day immediately preceding the date of the first meeting of the Councillors. Though the Pimpri-Chinchwad Municipality stood dissolved by constitution of the Corporation, no general election was contemplated as an Administrator was appointed under the aforesaid provision. As the term of office of the members of the Pimpri-Chinchwad Municipal School Board expired before the expiry of the term of the Administrator, there was no question of holding election of the councillors and consequently members of the School Board could not be elected. The State Government, therefore was competent to invoke S. 4(10)(a) of the Bombay Primary Education Act for reconstitution all the three School Boards in question by nomination of members.

24. The notification dt. 27th Aug. 1984 in respect of Pimpri-Chinchwad Municipal School Board is challenged also on various to their grounds. The first is non-application of mind. This submission is made because the notification opens with the sentence "whereas the Pimpri-Chinchwad Municipal Corporation is dissolved by notification dt. 5th Oct. 1982 was Pimpri-Chinchwad Municipal Council. This however, is just a clerical mistake and only on this basis it cannot be said that the notification suffers from infirmity of non-application of mind by the concerned authority. Mention of S. 4(10)(a) of the Bombay Primary Education Act in the Notification was also one of the circumstances urged for supporting the charge of non-application of mind, but in view of our findings that the Government was competent to invoke the provisions of S. 4(10)(a) of the Bombay Primary Education Act for nominating the members of the School Board, that ground must fail.

25. It is also difficult to accept the contention that the notification was issued mala fide as a part of the scheme to control every big and small seat of authority so that the official machinery at every level could be utilised for the purpose of the ensuing general Elections. The fact that the nominated members are active members of the ruling party viz. congress (I) is, according to the petitioner, indication of this design. There is no substance in the contention because the notification is issued within a reasonable time after expiry of the term of the Pimpri-Chinchwad Municipal School Board. As mentioned above, the term of the members of the Municipla School Board expired on 17th May 1984 and the notification was issued on 27th Aug. 1984, long before the Lok Sabha elections were held. There is also no substance in the contention that respondents 3 to 14 in Writ Petition No. 3561 of 1984 (Pimpri-Chinchwad Municipal School Board) are not qualified to be nominated as members of the Municipal School Board. It may be that they may not have experience of the system or institution of primary education, as contemplated by cl. (ii) or sub-sec. (4) of S. 4 of the Bombay Primary Education Act, 1947 , but it is not even alleged that they do not possess other qualifications mentioned in cl. (I) of sub-sec. (4) of S. 4 of the Bombay Primary Education Act, 1947.

26. In the result, therefore, the petitions deserve to be dismissed. However, in view of the fact that the general elections to the authorised municipalities in all the cases have been recently held, all the School Boards will have to be freshly constituted as contemplated by sub-secs. (1) to (7) of S. 4 of the Bombay Primary Education Act.

27. The petitions are dismisses. Rules discharged. No order as to costs.

28. Petitions dismissed.