

A THE STATE OF MAHARASHTRA AND ANR.
v.
THE JALGAON MUNICIPAL COUNCIL AND ORS.

FEBRUARY 14, 2003

B [R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Municipalities:

C *Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965/Bombay Provincial Municipal Corporation Act, 1949: Sections 2, 3 and 6/3—Conversion of Municipal Council to Municipal Corporation.*

D *Hiatus between—Whether violative of Part IX A of Constitution—Held, since hiatus between abolition of Municipal Council and constitution of Municipal Corporation is an unavoidable event which must take place in conversion thus not violative of Constitution—Constitution of India, 1950 Part IX A.*

E *Conversion notification on publishing of provisional population total figure and not final—Validity of—Held, since population crossed the benchmark of 3 lakhs, thereby providing requisite foundation for State Government to take decision of constitution of Municipal Corporation and also no act, rule being issued contemplating publication of final total population after provisional list, action of State Government not premature.*

F *Effective opportunity to raise objections, whether denied—Held, since amendment resulted into curtailing of period appointed for inviting objections done only for achieving larger public interest, principles of natural justice not violated—Administrative Law.*

G *Municipal Corporation—Want of consultation with Municipal Council—Scope of—Held: consultation with Municipal Council mandatory since conversion involves specification of large urban area and constitution of Municipal Corporation of the city and also involves whole of the local area comprising municipal area of city ceasing to be a municipal area with effect from the date of change.*

H *Jalgaon was an urban area administered by a Municipal Council*

constituted under the provisions of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965. Appellant-State Government proposed conversion of it from Municipal Council into Municipal Corporation. Thereafter, appellants published two proclamations under the Bombay Provincial Municipal Corporation Act, 1949 and the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965. Respondents filed writ petition challenging the notifications. High Court allowed the petition quashing the notifications. Hence the present appeal.

Respondents relying on the provisions of Article 243U(3)(a) of the Constitution contended that the steps for constitution of Municipal Corporation should be planned and scheduled, well in advance of time of the date by which the term of existing Municipal Council is coming to an end so as to see that successor Municipality—Municipal Corporation proposed to be constituted, is ready to take over from the Municipality—Municipal Council proposed to be abolished without there being any hiatus in-between necessitating the appointment of an administrator to take charge in the interregnum of the two events; and that the figures of census published by the Director of Census Operation, Maharashtra were only provisional and could not have been acted upon unless the final population totals were published.

Appellants contended that the process of conversion of an area from Municipal Council to Municipal Corporation would necessarily involve a hiatus which is an unavoidable necessity; and that the steps for constitution of Municipal Corporation fell within the purview of section 3 of the 1949 Act which requires the specification of larger urban area, and constitution of Municipal Corporation therein to be preceded by a notification subject to the condition of previous publication.

Allowing the appeals, the Court

HELD: 1.1. The hiatus between abolition of Municipal Council and constitution of Municipal Corporation is an unavoidable event which must take place in the process of conversion of Municipal Council into a Municipal Corporation. Reliance on Article 243U of the Constitution is misconceived. The use of expression 'a municipality' in sub-article (3) of Article 243U in the context and in the setting in which it is employed suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a

A consequence of term of the previous municipality coming to an end. Article 243U cannot be applied to a case where the area of one description is converted into an area of another description and one description of municipality is ceased by constituting another municipality of a better description. Article 243U(3) cannot be pressed into service to claim on that an election to constitute a municipal corporation is required to be completed before the expiry of duration of a municipal council.

[1138-C-E]

1.2. The constitution of Municipal Corporation would require notification of larger urban area and a Municipal Corporation to govern it. The area shall have to be divided into wards with the number of corporators specified and reservations made. The Corporation would need to nominate councilors. The territorial limits may need to be altered. The State Election Commission cannot conduct election without specifying numbers and boundaries of wards. New rules, bye-laws shall need to be framed and municipal tax structure may need to be recast. The statutory provisions do not contemplate a situation where the same area may be called a smaller and larger area simultaneously and process of constitution of Municipal Corporation being commenced and completed though the Municipal Council continues to exist. Such an action would result in anomaly and confusion if not chaos. [1138-F-H]

1.3. The law does not permit holding of an office as an Administrator by any officer/officers beyond the first meeting of the Corporation or a period of six months from the date of specification of an area as a larger urban area. Thus the maximum period for which an Administrator may be in office shall be six months and within this period the State Government and the State Election Commission shall positively bring the Municipal Corporation in existence so as to take over the administration from the Administrator. [1148-D-E]

2. A decision of constituting a Municipal Corporation so as to replace a Municipal Council is dependent on the figure of population of the urban area. Neither the Constitution nor any other relevant provision of any statute prescribes or defines the source or material wherefrom the State Government shall form an opinion as to the population existing in any urban area. The only requirement is of the population crossing the bench mark of three lakhs. The correctness of the figure of population in Jalgaon urban area having reached the figure of 3,68,579 as on 13.8.2001 as

published by the Director of Census Operation Maharashtra in the document 'Provisional Population Totals' is not disputed by anyone. So long as the correctness of the fact that the population had crossed the bench mark of three lakhs—and thereby provided the requisite foundation for the State Government to take a decision of constitution of a Municipal Corporation by treating Jalgaon as a larger urban area—cannot be disputed much less doubted. So also no act, rule or any instruction issued by the Government of India or any competent authority has been brought to the notice which contemplates a 'Final Population Total' being published after the publication of the so-called provisional list. It cannot be said that the State Government should have awaited for the publication of a "Final Population Totals" and should not have acted on provisional totals. [1141-G-H; 1142-A-C]

3.1. It is true that sub-section (3) of Section 3 of the 1965 Act prescribes for inviting objections by affording two months' time and that was done. However, the statutory provision was amended by Ordinance and the period of 'two months' stood substituted by a period of 'not less than 30 days'. The statutory provision has to be read as amended. The petitions filed before the High Court did not lay any challenge to the vires of the ordinance either on the ground of un-reasonability or on the possible ground of curtailing a vested right to prefer objections or on the ground of un-reasonability. In the absence of any challenge having been laid, the constitutional validity of the amendment cannot be gone into. The validity of the action i.e. the notice inviting objections has to be tested in the light of the statutory requirement that the period of notice statutorily prescribed is of a duration of 'not less than 30 days' which in the case at hand it is. Thus the notification satisfies the requirement of the principles of natural justice as also of the procedure statutorily prescribed. [1145-A-C]

3.2. Whosoever wished to prefer the objections would not necessarily wait for the last day though he has a right to do so. The amendment ordinance and the notifications dated 15.11.2001 issued thereunder did not abruptly close the invitation to objections, only the period was shortened. Those, over and above the 239 who had already preferred objections, could still have preferred the objections if they intended to do so. On the totality of the facts and circumstances of the case, neither the principles of natural justice have been violated nor is there any breach committed of the procedural requirements prescribed by Section 3(3) read with Section 6 of the 1965 Act as amended by the ordinance. [1146-F, G]

A 3.3. The statement accompanying the Ordinance spells out the need
for its promulgation. General elections to four (including Jalgaon) out of
the seven Municipal Councils were scheduled to be held in the first week
of December 2001. The term of those Municipal Councils was coming to
an end in the month of December, 1 2001 itself. The new Municipal
B Councils were mandatorily required to be constituted before the expiry
of the term of the existing councils. If the proposal of the Government to
establish Municipal Corporations in those four areas was not finalized
before the expiry of the said term of the existing Councils the State
Government would have been required to undertake the elections which
would have involved substantial expenditure of public money and wastage
C of time and energy of government machinery—all avoidable. It was this
consideration of public interest which persuaded the State Government
to curtail the period of two months to such period not being less than 30
days so that decision on constitution of Municipal Corporation, either way
but finally could be taken earlier and at an appropriate time and to
D proceed thereafter either with Municipal Council elections or the process
of constituting Municipal Corporation consistently with the decision taken.
One of the principles of good governance in a democratic society is that
smaller interest must always give way to larger public interest in case of
conflict. The amendment resulting into curtailing of the period appointed
for inviting objections though restricted the period, by shortening it to the
E extent necessary in the then circumstances, it was done only for achieving
larger public interest. No fault can be found therewith. The period allowed
for inviting objections conforms to the statutory provision and is not shown
to have caused any prejudice to any one. [1146-H; 1147-A-D]

F *Russell v. Duke of Norfolk*, (1949) 1 All ER 109, 118 and *Lloyd v. McMohan*, (1987) AC 625, 702, referred to.

Administrative Law, Wade & Forsyth, Eighth Edition 2000 pp. 491, 492, 493, 543-544, referred to.

G 4. Consultation is not one of the requirements of Section 3 and
therefore, the High Court erred in holding that for want of consultation,
the process of constitution of Municipal Corporation of the city of Jalgaon
was vitiated. The Jalgaon Municipal Council was already in existence,
Jalgaon being smaller urban area. It was proposed to be converted into a
larger urban area. This process would involve abolition of 'municipal area'
H as defined in clause (24) of Section 2 of 1965 Act. Any of the events

provided by clauses (a), (b), (c) and (d) of sub-section (1) of Section 6 must satisfy the requirement of consulting the Municipal Council provided for by proviso to sub-section (1) before issuing the notification and before that, notification should also follow the procedure prescribed by Section 3 *mutatis mutandis*. Section 6(1)(d) covers within its scope any event, the declaration whereof has the effect of the whole of any area comprising a municipal area ceasing to be a municipal area. Thus conversion of Jalgaon Municipal Council into Municipal Corporation involves not only specification of large urban area and constitution of Municipal Corporation of the city of Jalgaon, it also involves the whole of the local area comprising the municipal area of Jalgaon ceasing to be a municipal area with effect from the date of change. Therefore, consulting the Municipal Council is mandatory. However, no provision of law has been brought to the notice which requires even a proposal for constitution of Municipal Corporation cannot be published without consultation. Consultation must take place at any one stage before the finalisation of the proposal. By the time the writ petitions came to be filed before the High Court all that had taken place was the publication of notification proposing to constitute Municipal Corporation of the city of Jalgaon. Objections were invited. The final decision was yet to be taken which was stayed by the High Court. The requirement of consultation could have been satisfied at any time before publishing the final notification. The High Court was not right in finding fault with the process of the constitution of the Municipal Corporation of the city of Jalgaon for want of consultation at the stage to which it had reached when the writ petitions came to be filed in the High Court. [1147-F-H; 1148-A-D]

5. It is unfortunate that the litigation stalled the process of Municipal Corporation of the city of Jalgaon being constituted. The expenditure, the time and the energy of State machinery which was intended to be avoided by the State Government came to be wasted and the elections had to be held for constituting the successor Municipal Council. As on the day the Municipal Council is in place. Inasmuch as it has been held that the process for constituting the Municipal Corporation of the city does not suffer from any infirmity upto the stage to which it has proceeded, the State Government may now take a final decision and issue final notification depending on the formation of its opinion. The process of consultation within the meaning of proviso to Section 6(1) of the 1965 Act shall now be completed if not already done. Needless to say the objections preferred by the Municipal Council of Jalgaon and 239 other objections shall be

A considered and disposed of in accordance with law if not already done.

[1148-F-H; 1149-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1296-1297 of 2003.

B From the Common Judgment and Final Order dated 10.12.2001 and 11.12.2001 passed by High Court of Judicature of Bombay Bench at Aurangabad in WP. No. 4730/2001 and W.P. No. 4830/2001.

C R. Sundravardan, Rakesh Dwivedi, U.U. Lalit, Arun Pednenkar, S.S. Shinde, V.N. Raghupathy, A.S. Bhasme, Manoj Kumar Mishra, Shivaji M. Jadhav, Subrat Birla, S.C. Birla, Himanshu Gupta and T. Raja for the appearing parties.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. Leave granted in both the SLPs.

D In the year 2001, Jalgaon, a city situated in the State of Maharashtra, was an urban area administered by a Municipal Council constituted under the provisions of the Maharashtra Municipal Council Nagar Panchayat and Industrial Townships Act 1965 (hereinafter, 'the M.R. Municipal Council Act', for short). The term of the Municipal Council as existing then was to end on 16th December, 2001.

E In this judgment we would also be making reference to the provisions of the Bombay Provincial Municipal Corporation Act 1949 which for the sake of convenience and brevity will be referred to as B.P. Municipal Corporation Act.

F Part IXA came to be inserted into the Constitution of India by Seventy Fourth Amendment w.e.f. 1.6.1993. This Part contemplates constitution of Nagar Panchayats, Municipal Councils and Municipal Corporations in every State. The three tools of local self government are contemplated by the Constitution to administer a transitional area, a smaller urban area and a larger urban area respectively. Article 243Q(2) defines these three areas to mean such areas as the Governor may having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as the Governor may deem fit specify by public notification for the purpose of Part IXA. We are concerned

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with smaller or larger urban areas based whereon a Municipal Council or a Municipal Corporation, respectively, shall be constituted. It is not disputed that so far as the factor of population is concerned, the bench mark dividing the areas to be administered by Municipal Council or by Municipal Corporation, as the case may be, is the population of three lakhs. The urban area having population less than three lakhs is a smaller urban area to be administered by Municipal Council and an urban area having a population of not less than three lakhs is a larger urban area to be administered by a Municipal Corporation.

On 13.8.2001, the Directorate of Census Operations, Maharashtra, published Census of India 2001, Series 28 Maharashtra, Provisional Population Totals, Paper-2 of 2001, Rural Urban Distribution of Populations. According to the Census 2001, the urban population of Jalgaon, the city having the status of Municipal Council, was 3,68,579 persons. The Census also classifies the said total figure of persons by reference to age groups and literacy levels with which we are not concerned. The factum of publication of population totals as on 13.8.2001 and the correctness of the figure of population is not disputed by any of the parties.

The proposal for converting the constitution of Jalgaon city from Municipal Council into a Municipal Corporation was under consideration of the State Government for quite some time. According to the appellants of Maharashtra, ever since 1997 the thought was receiving consideration of the State Government that looking to all the relevant factors Jalgaon was appropriately suited to be upgraded to the status of a Municipal Corporation. Consultation in that behalf with the Municipal Council of Jalgaon by the State Government had been going on since 1993 but did not materialize as the official figures of population of Jalgaon urban area, as evidenced by the preceding Census of 1991, had not touched the bench mark of three lakhs.

On 16th October, 2001, the State Government published two proclamations, respectively under the provisions of the B.P. Municipal Corporations Act and M.R. Municipal Council Act reproduced as under:-

"NOTIFICATION

Urban Development Department Mantralaya,
MUMBAI 400 032.

Dated the 16th October 2001

A *Bombay Provincial Municipal Corporation Act, 1949*

No. GEN 1596/194/C.R. 126/96/UD-24—The following draft of notification, which the Government of Maharashtra proposes to make in exercise of the powers conferred by sub-Section (2) of Section 3 of the Bombay Provincial Municipal Corporation Act, 1949 (Bom. LIX of 1949), is hereby published, as required by sub-Section (4) of said Section 3 of the said Act. for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Maharashtra on or after day of 18th December, 2001.

C 2. Any objection or suggestion, which may be received by the Collector of the District of Jalgaon, from any person with respect to the aforesaid draft, before the aforesaid date will be considered by the Government.

NOTIFICATION

D No. GEN 1596/194/C.R. 126/96/UD-24 Whereas the total population of the Jalgaon Municipal Council comprising Jalgaon smaller urban area, District Jalgaon, is according to the provisional figures of the Census of the year 2001, is 3,68,579;

E And whereas, the Government of Maharashtra having regard to the factors mentioned in clause (2) of Article 243-Q of the Constitution of India considers it expedient to declare, under sub-Section (2) of Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949), (hereinafter referred to as "the said Act"), the said Jalgaon smaller urban area of the Jalgaon Municipal Council to be larger urban area;

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G Now, therefore, in exercise of the powers conferred by sub-Section (2) read with sub-Section (2A) of Section 3 of the said Act, and after previous publication of the draft notification as required by sub-Section (4) of said Section 3, the Government of Maharashtra hereby specifies the 18th December, 2001 to be the date from which the area specified in the Schedule appended hereto, which comprises of the whole of the Jalgaon smaller urban area in District Jalgaon, shall be Jalgaon larger urban area, which shall form a city, having a Corporation to be known by the name of "Municipal Corporation of the City of Jalgaon" for the purpose of the said Act.
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SCHEDULE

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Area, which shall form the Jalgaon larger urban area, which shall form a city, having a Corporation to be known by the name of "Municipal Corporation of the City of Jalgaon"

"Jalgaon smaller urban area Dist. Jalgaon"

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By Order and in the name of the Governor of Maharashtra.

Sd/-

(Ramanand Tiwari)

Principal Secretary to Government

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PROCLAMATION

Urban Development Department
Mantralaya, Mumbai 400 032

Dated the 16th October 2001

D

Maharashtra Municipal Councils, Nagar Panchayats

and

Industrial Townships Act, 1965.

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No. GEN 1596/194/C.R. 126/96/UD-24: Whereas by Government Notification, Urban Development Department No. GEN 1596/194/C.R. 126/96/U.D.-24, dated the 16th October 2001, issued in exercise of the powers conferred by sub-Section (2) of Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (Born. LIX of 1949), the Government of Maharashtra has announced its intention to declare the Jalgaon smaller urban area in the Jalgaon District to be a larger urban area which shall form a city and shall have a corporation by the name "Municipal Corporation of the City of Jalgaon".

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Now, therefore, in pursuance of the provisions of sub-Section (3) of Section 3 read with sub-Section (2) of Section 6 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965) (hereinafter referred to as "the Municipal Councils Act"), the Government of Maharashtra hereby announces its intention to issue a notification under clause (d) of sub-Section (1) of Section 6 of the Municipal Councils Act that the existing Jalgaon

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A smaller urban area of the Jalgaon Municipal Council shall cease to be a municipal area within effect from the date of coming into force of the notification issued under sub-Section (2) of Section 3 of the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949), specifying Jalgaon larger urban area, which shall form a city and shall have a Municipal Corporation known by the name "Municipal Corporation of the City of Jalgaon".

B 2. All persons who entertain any objections to the said proposal are required to submit the same, with reasons therefore in writing to the Collector of the District of Jalgaon within two months from the date of publication of this Proclamation in the Official Gazette.

C By Order and in the name of the Governor of Maharashtra.

Sd/-(Ramanand Tiwari) Principal Secretary to Government"

D On 15th November 2001, another two proclamations were issued under the said two acts respectively and by reference to the provisions mentioned therein, which are reproduced hereunder:

PROCLAMATION

Urban Development

E Department Mantralaya, Mumbai 400 032

Dated the 15th November 2001

Maharashtra Municipal Councils, Nagar Panchayats
and

Industrial Townships Act, 1965

F No. GEN 1596/194/CR-126/96/UD-24:

G Whereas by Government proclamation, Urban Development Department No. GEN 1596/194/CR-126/96/UD-24 dated the 16th October, 2001, issued in exercise of the powers conferred by sub-Section (3) of Section 3 read with sub-Section (2) of Section 6 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965 (hereinafter referred to as "Municipal Councils Act"), the Government of Maharashtra invited objections within two months to its proposal to notify that the Jalgaon smaller urban area of Jalgaon Municipal Council shall cease to be a Municipal area within the meaning of the Municipal Councils Act;

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And whereas the provisions of sub-Section (3) of the Municipal Councils Act having been retrospectively amended with effect from the 16th October, 2001, by the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Ordinance, 2001 (Mah. Ord. XXXVII of 2001), with a view to provide that the objection to the proposal shall be entertained within a period of thirty days on such other period not less than thirty days as may be specified by the State Government by a notification in the Official Gazette.

Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 3 of the Municipal Councils Act as amended by the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Ordinance, 2001, the Government of Maharashtra hereby specifies the 21st November, 2001 to be the date on or before which the objections pursuant to the said proclamation shall be entertained.

By Order and in the name of the Governor of Maharashtra.

Sd/-
(Ramanand Tiwari)
Principal Secretary to Government"

"NOTIFICATION

Urban Development Department
Mantralaya, Mumbai 400 032.

Dated the 15th November 2001

Bombay Provincial Municipal Corporation Act, 1949

No. GEN 1596/194/C.R. 126/96/UD-24:-

In exercise of the powers conferred by sub-section (2) of Section 3 read with sub-Section (4) thereof of the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949), and of all other powers enabling it in that behalf, the Government of Maharashtra hereby appoints 21st November, 2001 to be the date on or before which the objections or suggestions in pursuance of the Government Notification Urban Development No. GEN 1596/194/C.R. 126/96/UD-24 dated the 16th October, 2001 shall be received and for that purpose, amends the said notification as follows, namely:-

A In the said notification, for the words and figures "18th day of December 2001", wherever it occurs the words and figures "21st November 2001" shall be substituted.

By Order and in the name of the Governor of Maharashtra.

B Sd/-
(Ramanand Tiwari)
Principal Secretary to Government

C Digressing a little from narration of events, it would be appropriate to notice the relevant Constitutional and statutory provisions as the same would facilitate the appreciation of relevant events which followed. So far as the Constitution is concerned, the following are the relevant articles contained in Part IXA of the Constitution:-

243P. *Definitions.*—In this Part, unless the context otherwise requires,

D xxx xxx xxx xxx xxx xxx xxx

- (d) 'Municipal area' means the territorial area of a Municipality as is notified by the Governor;
- (e) 'Municipality' means an institution of self-government constituted under article 243Q;

E xxx xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx xxx

- (g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

F 243Q. *Constitution of Municipalities.*—(1) There shall be constituted in every State,—

G (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

H (c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

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Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

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(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regarded to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

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243U. *Duration of Municipalities, etc.*—(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

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

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(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

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(3) An election to constitute a Municipality shall be completed,—

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

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

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

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

B On 15th November, 2001, the Governor of Maharashtra promulgated Maharashtra Ordinance No. 37 of 2001. The text of the Ordinance is brief and it would be useful to set out the same in its entirety as under:-

"MAHARASHTRA GOVERNMENT GAZETTE

URBAN DEVELOPMENT DEPARTMENT

C MANTRALAYA, MUMBAI 400 032,

DATED 15TH NOVEMBER, 2001

MAHARASHTRA ORDINANCE NO. XXXVII OF 2001

D AN ORDINANCE

Further to amend the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965

E WHEREAS both Houses of the State Legislature are not in session;

F AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for the purposes hereinafter appearing;

G NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely:

1. Short title and commencement (1) This Ordinance may be called the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Ordinance, 2001.

H (2) It shall be deemed to have come into force on the 16th October, 2001.

2. Amendment of section 3 of Maharashtra XI of 1965 In section 3 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Municipal Council Act") in sub section (3) for the words "two months" the words "not less than thirty days" shall be substituted. A

3. Removal of doubt For the removal of doubt it is hereby declared that sub-section (3) of Section 3 of the Municipal Councils Act having been amended retrospectively, with effect from the 16th October, 2001 by the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Ordinance, 2001 (hereinafter, in this section, referred to as "the said Ordinance") and accordingly C

(i) any Government Proclamation Notification Order or Instrument issued or purported to have been issued in exercise or in pursuance of the provisions of sub-section (3) of section 3 read with sub-section (2) of section 6 of the Municipal Councils Act on or after the 16th October, 2001 till the date of publication of the said Ordinance, shall be and shall be deemed to have been issued under the said sub-section (3) as amended by the said Ordinance (hereinafter, referred to as "the amended sub-section(3)"); and D

(ii) the two months period specified for entertaining any objections to a proposal contained in such Government Proclamation, Notification, Order or Instrument shall be read and shall always be read as a period being not less than the period of thirty days as specified or may be specified under the amended sub-section (3), in such Proclamation, Notification, Order or Instrument, as the case may be, for the date of publication of such Proclamation, Notification, Order or Instrument in this Official Gazette; and E F

(iii) it shall be lawful for the State Government to consider any objections that might have been received within the period or amended period as specified in such Proclamation, Notification, Order or Instrument, as the case may be, from the date of publication of such Proclamation, Notification, Order or Instrument in the Official Gazette, and thereafter after considering the same, issue the final Notification, Order or Instrument, in respect of the same, as the State Government may deem fit; and G

(iv) no such final Notification, Order or Instrument issued by the H

A State Government after considering any such objection after the said period, shall be called in question or deemed to be invalid only on the ground that the State Government had issued such final Notification. Order or Instrument. before the expiry of the period specified for entertaining any objections in any such Government Proclamation, Notification. Order or Instrument, before its amendment as provided by section 2.”

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The Ordinance is accompanied by a statement, parts 2 and 3 whereof are relevant and hence are extracted and reproduced hereunder:-

C “2. Sub section (2) of section 3 of the Bombay Provincial Municipal Corporations Act, 1949, empowers the State Government to specify, by notification in the Official Gazette, any urban area with a population of not less than three lakhs as a larger urban area which shall be a city and shall have a Municipal Corporation under the said Act. The provincial census figures for the census held in the year D 2001 shows that the population of the Municipal Councils of Mira Bhayandar, Bhivandi Nijampur, Malegaon, Ahmednagar, Dhule and Jalgaon is more than three lakhs. Therefore, as provided in sub-section (2) of section 3 of the said Act, the Government has decided to constitute a Municipal Corporation for each such area and therefore has issued six different preliminary notifications on the 16th October, E 2001 inviting objections within a period of two months from the publication of the proposal to constitute Municipal Corporations for those areas. The said period would therefore, expire on the 15th December, 2001.

F 3. The general elections to four out of the said Municipal Councils, that is to say to the Municipal Councils of Bhivandi-Nijampur, Malegaon, Ahmednagar and Jalgaon, are scheduled to be held in the first week of December, 2001. If the proposal of the Government to establish Municipal Corporations in those four areas is finalized in the meanwhile, the expenditure for holding the elections of those four G Municipal Councils would be an avoidable expenditure of public money, and avoidable wastage of time and energy of Government machinery. The Government, therefore, considers it expedient to provide that the period within which objections to the issuance of a notification shall be entertained should be curtailed from a period of H two months to such period being not less than thirty days, by suitably amending the relevant provision of the Municipal Councils Act. Such

amendment is aimed at enabling the Government not to be compelled to hold the ensuring elections of the said Municipal Councils and thereby stop the wasteful expenditure on holding of two elections that is to say of the said Municipal Councils, and then for Corporations." A

It is not disputed that the two proclamations dated 15th November, 2001 extracted and reproduced hereinabove were published in the Government Gazette dated 15th November, 2001. However, in the newspaper the proclamations were published only on 19th November, 2001. The time prescribed for preferring the objections came to an end on 21st November, 2001. B

The Ordinance was repealed and replaced by an Act in due course of time. The provisions of the Act are the same as that of the Ordinance. C

As soon as the proclamations setting out the intention of the State Government to constitute a Municipal Corporation replacing the Municipal Council for the city of Jalgaon came to the notice of Jalgaon Municipal Council, a meeting of the Municipal Council was convened to be held on 21.10.2001. It appears that several corporators had invited the attention of the Municipal Council to consider the issue so as to place on record suggestions and objections of the Municipal Council as regards the proposed change and forward the resolution for the consideration of the State Government. Resolution No. 429A dated 21.10.2001, unanimously passed by majority of the Councillors voting for the resolution, is a long one which need not be reproduced in extenso. Suffice it to state that the resolution displays conscious consideration of the Municipal Council of the factors like: (i) population, (ii) area and development of the city, (iii) financial aspect, (iv) administrative aspect, (v) Government schemes, (vi) educational requirements of population, and (vii) development works in progress, etc. The gist of the opinion, as recorded in the resolution, is that the Municipal Council was working well, had successfully augmented its resources so as to be financially in surplus, was well administered and if on account of conversion into Municipal Corporation, the government aid so far enjoyed by the Municipal Council is discontinued, it will not be good for such educational institution schemes and activities as are depending on the financial support of the government. In particular it is stated that the Municipal Council had undertaken several development works for the welfare of the community which will suffer an adverse impact on account of the change. At the end there is a passing reference without any particulars that the decision of conversion into a D E F G H

A Corporation was taken in “political interest” and under pressure of “some political leader”. Two points need to be noted: firstly, the resolution does not dispute the population of Jalgaon urban area having crossed the bench mark of three lakhs. and secondly, the resolution does not also dispute the availability of anyone of the relevant factors referred to in sub-Article (2) of Article 243Q of the Constitution, the factors on the availability whereof depends the decision of the Governor to classify an area into “a transitional area”, “a smaller urban area” or “a larger urban area”.

It is also not disputed that within the period appointed for preferring the objections by virtue of the two sets of proclamations read together, i.e. between 16.10.2001 and 21.11.2001, 239 objections were received. The objections in substance highlighted only two issues: firstly, that the development activities in progress and undertaken by the Municipal Council will be hampered by switching over to constitution of a Municipal Corporation and secondly, the constitution of Municipal Corporation would result in imposition of newer and higher taxes casting additional financial burden on the inhabitants of the area. Here again it is pertinent to mention that none of the 239 objections disputes the correctness of the figure of population having crossed the bench mark of three lakhs or the availability of any of the relevant factors contemplated by Article 243Q(2).

There were seven urban areas including Jalgaon which were sought to be upgraded by the State Government from Municipal Council to Municipal Corporation. While the final notification was yet to be issued, several writ petitions came to be filed in the High Court laying challenge to the proposal of the State Government. We are told that the writ petition relating to Jalgaon Municipal Council has been disposed of by the High Court vide the impugned judgment and so far as the other writ petitions are concerned they are pending in the High Court presumably awaiting the outcome of the present appeal. So far as the case at hand is concerned, the writ petition was to be filed on 20th November, 2001. By an interim order made on 21.11.2001, the High Court directed rule to issue and hearing to take place peremptorily on 27th November 2001 as the first item on board. The pleadings were directed to be completed on or before 26th November, 2001. The High Court also directed:-”

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3. The Authority who has invited objections pursuant to the notification issued under section 3 of the Bombay Provincial Municipal Corporations Act, 1948, shall give hearing to all the objectors. After

hearing all the objections (who remain present and willing to appear before the Authority on the date given), it is understood that hearing of objections need not be adjourned on any count. In case the hearing of objection is concluded on 26th November, 2001, the authority concerned shall not take any decision. A

4. Petition is to be heard finally on 27th November, 2001. B

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6. All further actions in the matter, will be subject to final outcome of this petition.”

In view of the abovesaid interim order passed by the High Court, the State Government has not taken any final decision in the matter. The process of constitution of Municipal Corporation was therefore stalled. However in-between the State Election Commission had announced elections for the constitution of the next Municipal Council being held on 9th December, 2001, which elections were held as announced and the newly elected Municipal Council has assumed office on 17.12.2001, soon on the expiry of the term of the preceding Municipal Council and such new Municipal Council is in place as on the day. C D

The writ petition was heard by a division Bench of the High Court and disposed of by the impugned judgment dated 10/11.12.2001. The writ petition has been allowed and the two sets of notifications/proclamations dated 16.10.2001 and 15.11.2001 in respect of the Municipal Council, Jalgaon have been directed to be quashed and set aside. Soon on the pronouncement of judgment, the learned counsel for the State of Maharashtra made an oral application for staying the operation of the judgment which prayer was refused by the High Court on the ground that the election to the Municipal Council, Jalgaon had already been held, the results announced and the elected body was scheduled to assume office on 17.12.2001 and therefore there was no justification for staying the operation of the judgment. E F

A perusal of the judgment of the High Court shows that in substance four grounds have prevailed with the High Court for granting the relief to the writ petitioners: firstly, that the constitutional scheme of Part IXA of the Constitution contemplates the Municipal Council being taken over and succeeded by a Municipal Corporation without any hiatus in-between and as the term of the then existing Municipal Council was coming to an end on 16.12.2001 while the State Government/State Election Commission had not H

A taken any steps for constitution of new Municipal Corporation so as to be in place and in existence ready to take over from the Municipal Council as its successor. the same was subversive of the spirit of Part IXA of the Constitution which contemplates the areas being administered by a Municipality (as defined in clause (e) of Article 243P as an institution of self government constituted under Article 243Q): the hiatus would result in administrator necessarily and per force of the events stepping in and taking over the Municipal Council: secondly, the census figure of August, 2001 on which was founded the action of the State Government were only "provisional" and not final and hence the action was premature; thirdly, the population of the area was denied an effective opportunity of raising objections in view of the set of proclamations dated 15.11.2001 curtailing the period appointed by set of proclamations dated 16.10.2001; the action was vitiated by throttling of the principles of natural justice, the observance whereof was statutorily mandated, and lastly, there was no consultation with Municipal Council as contemplated by proviso to sub-Section (1) of Section 6 of M.R. Municipal Councils Act.

D The submissions before this Court made with forensic ability and precision by the learned senior counsel and counsel for the parties centered around the four issues projecting from the abovesaid four findings of the High Court. We would take up each one of the said issues seriatim for consideration. Let the relevant statutory provisions, which shall be required to be referred to, be now set out:

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The Maharashtra Municipal Council Act, 1965

"2. Definitions.

In this Act, unless the context otherwise requires,—

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(24) "municipal area" means the territorial area of a Council or a Nagar Panchayat.

3. Specification of areas as smaller urban areas.

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(1) A Council for every municipal area existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994 specified as a smaller urban area in a notification issued under clause (2) of article 243-Q of the Constitution of India in respect thereof, shall be deemed to be a duly constituted Municipal Council known by the name. Municipal

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Council.

(2) Save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in clause (2) of article 243-Q of the Constitution of India, specify, by notification in the Official Gazette, any local area as a smaller urban area:

Provided that no such area shall be so specified as a smaller urban area unless the State Government, after making such inquiry as it may deem fit, is satisfied that,—

(a) the population of such area is not less than 25,000; and

(b) the percentage of employment in non-agricultural activities in such area is not less than thirty-five per cent.

(2A) For every smaller urban area so specified by the State Government under sub-section (2), there shall be constituted a Municipal Council known by the name . Municipal Council;

(3) Before the publication of a notification under sub-section (2), the State Government shall cause to be published in the Official Gazette, and also in at least one newspaper circulating in the area to be specified in the notification, a proclamation announcing the intention of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same in writing with the reasons therefor to the Collector of the District within two months from the date of the publication of the proclamation in the Official Gazette.

Copies of the proclamation in Marathi shall also be posted in conspicuous places in the area proposed to be declared as a municipal area.

(4) The Collector shall, with all reasonable despatch, forward any objection so submitted to the State Government.

(5) No such notification as aforesaid shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid.

6. Alteration of the limits of a municipal area.

(1) Subject to the provisions of sub-section (2) of section 3, the State Government may by notification in the Official Gazette—

A (a) alter the limits of a municipal area so as to include therein or to exclude therefrom such local area as may be specified in the notification; (b) amalgamate two or more municipal areas so as to form one municipal area;

B (c) split up any municipal area into two or more municipal areas; (d) declare that the whole of any local area comprising a municipal area shall cease to be a municipal area;

C Provided that, no such notification shall be issued by the State Government under any of the clauses of this sub-section without consulting the Municipal Council or Councils and other local authorities concerned.

(2) Prior to the publication of a notification under sub-section (1), the procedure prescribed in sub-sections (3) (4) and (5) of section 3 shall mutatis mutandis be followed."

D *Bombay Provincial Municipal Corporations Act, 1949*

"3. *Specification of larger urban areas and constitution of Corporations.*

E (1) The Corporation for every City constituted under this Act existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a larger urban area in the notification issued in respect thereof under clause (2) of Article 243-Q of the Constitution of India, shall be deemed to be a duly constituted Municipal Corporation for the larger urban area so specified forming a City, known by the name "The Municipal Corporation of the City of";

F (2) Save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in clause (2) of Article 243-Q of the Constitution of India, specify by notification in the Official Gazette, any urban area with a population of not less than three lakhs as a larger urban area;

G (2A) Every larger urban area so specified by the State Government under sub-section (2) shall form a City and there shall be a Municipal Corporation for such larger urban area known by the name of the Municipal Corporation of the City of.....;

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(3)(a) Subject to the provisions of sub-section (2), the State Government may also from time to time after consultation with the Corporation by notification in the Official Gazette, alter the limits specified for any larger urban area under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification. A

(b) Where any area is included within the limits of the larger urban area under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the larger urban area shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the City. B
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(4) The power to issue a notification under this section shall be subject to the condition of previous publication. D

5. Constitution of Corporation.

(1) Every Corporation shall, by the name of "The Municipal Corporation of the City of", be a body corporate and have perpetual succession and a common seal and by such name may sue and be sued. E

(2) Each Corporation shall consist of,—

(a) such number of councillors, elected directly at ward elections, as is specified in the table below:- F

TABLE

Population	Number of Councillors
(i) Above 3 lakhs and upto 6 lakhs	The minimum number of elected councillors shall be 65. For every additional population of 15,000 above 3 lakhs, one additional councillor shall be provided, so however that the maximum number of elected councillors G H

- A shall not exceed 85.
- (ii) Above 6 lakhs and upto 12 lakhs The minimum number of elected councillors shall be 85.
- B For every additional population of 20,000 above 6 lakhs, one additional councillor shall be provided, so however, that the maximum number of elected councillors shall not exceed 115.
- (iii) Above 12 lakhs and upto 24 lakhs The minimum number of elected councillors shall be 115.
- D For every additional population of 40,000 above 12 lakhs, one additional councillor shall be provided, so however, that the maximum number of elected councillors shall not exceed 145.
- (iv) Above 24 lakhs The minimum number of elected councillors shall be 145.
- E For every additional population of 1 lakh, one additional councillor shall be provided so that the maximum number of elected councillors shall be 221.
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- F (b) such number of nominated councillors not exceeding five, having special knowledge or experience in Municipal Administration to be nominated by the Corporation in such manner as may be prescribed;
- G (3) The State Election Commission shall, from time to time, by notification in the Official Gazette, specify for each City the number and boundaries of the wards into which such City shall be divided for the purpose of the ward election of councillors so that, as far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figures shall approximately be the same. Each of the wards shall elect only one councillor:
- H Provided that, no notification issued under sub-section (3), whether

before or after the commencement of the Maharashtra Municipal Corporations, Municipal Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 1995, shall have effect except for the general election held next after the date thereof and for subsequent elections. A

Provided also that, before any notification is issued under subsection (3), a draft thereof shall be published in the *Official Gazette*, and in such other manner as in the opinion of the State Election Commissioner is best calculated to bring the information to the notice of all persons likely to be affected thereby, together, with a notice specifying the date on or before which any objections or suggestions will be received, and the date after which the draft will be taken into consideration." B C

Q.1. *Whether any hiatus between abolition of Municipal Council and constitution of Municipal Corporation is violative of Constitution Part IXA?*

The High Court has held that keeping in view the object and purpose of enacting Parts IX and IXA of the Constitution which intended to achieve the Gandhian dream of local self-government it is necessary that before the term of Municipal Council comes to an end the Municipal Corporation should be available and in existence so as to take over the administration of the urban area from the Municipal Council. There should be no interregnum or hiatus between the dissolution of the Municipal Council and the date of Municipal Corporation coming into existence; for such hiatus would necessarily involve a government officer being appointed an administrator and that will be subversive of the principles of democracy and local self-governance. The learned counsel for the writ petitioner-respondents placed reliance on the provisions of Article 243U (3)(a) which mandates that an election to constitute a 'municipality' shall be completed before the expiry of its duration specified in clause (1) of Article 243U which is 5 years from the date appointed for its first meeting and no longer. A municipality for the purpose of Part IXA is defined by clause (e) of Article 243P as meaning an institution of self-government constituted under Article 243Q. Article 243Q speaks of such three institutions, namely, Nagar Panchayat, Municipal Council and Municipal Corporation. All the three are included within the definition of 'municipality'. The learned counsel for the respondents submitted that the steps for constitution of Municipal Corporation should be planned and scheduled, well in advance of time of the date by which the term of existing Municipal Council is coming to an end so as to see that successor municipality, D E F G H

A i.e. Municipal Corporation proposed to be constituted, is ready to take over from the municipality. i.e. Municipal Council proposed to be abolished without there being any hiatus in-between necessitating the appointment of an administrator to take charge in the interregnum of the two events. The learned counsel for the appellants submitted on the other hand that the process of conversion of an area from Municipal Council to Municipal Corporation would necessarily involve a hiatus which is an unavoidable necessity. Both the learned counsel read out several provisions of Part IXA of the Constitution and the two relevant statutes trying to cull out the underlying scheme each in support of their respective submissions.

C Having heard the learned counsel for the parties at length on this aspect we are of the opinion that the said hiatus is an unavoidable event which must take place in the process of conversion of Municipal Council into a Municipal Corporation. Reliance on Article 243U by the learned counsel for the respondents in this context is misconceived. The use of expression 'a municipality' in sub-Article (3) of Article 243U in the context and in the setting in which it is employed suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a consequence of term of the previous municipality coming to an end. Article 243U cannot be applied to a case where the area of one description is converted into an area of another description and one description of municipality is ceased by constituting another municipality of a better description. Article 243U(3) cannot be pressed into service to base a submission on that an election to constitute a municipal corporation is required to be completed before the expiry of duration of a municipal council.

F The constitution of Municipal Corporation would require notification of larger urban area and a Municipal Corporation to govern it. The area shall have to be divided into wards with the number of corporators specified and reservations made. The Corporation would need to nominate councillors. The territorial limits may need to be altered. The State Election Commission cannot conduct election without specifying numbers and boundaries of wards. New rules, bye-laws etc. shall need to be framed and municipal tax structure may need to be recast. The statutory provisions do not contemplate a situation where the same area may be called a smaller and larger area simultaneously and process of constitution of Municipal Corporation being commenced and completed though the Municipal Council continues to exist. Such an action would result in anomaly and confusion if not chaos. Care has been taken by the Legislature by engrafting Section 452A into the body of BMPC Act by

Bombay Provincial Municipal Corporations (Amendment and Validation) Act, 1995 (at Maharashtra Act 4 of 1995) which reads as under:-” A

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

(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 : C

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

(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 : E

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. F

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

The abovesaid provision was engrafted based on an experience learnt by the State Government from the stalemate created in the city of Kalyan where the administrator had already continued to be in office for more than the permissible period and the Municipal Corporation of the city of Kalyan H

A was yet to be constituted. The State Legislature also kept in view the provisions of Part IXA of the Constitution and utilized the opportunity for drafting Section 452A in such manner as would take care of the stalemate created in the city of Kalyan and also of situation which was likely to creep in any area sought to be converted from Municipal Council into a Municipal Corporation.

B We are not herein concerned with the city of Kalyan. The relevant part of Statement of Objects and Reasons is extracted and reproduced hereunder:

C “3. The said Act, as amended by the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994 (Mah. XVI of 1994), for giving effect to the provisions of Part-IXA of the Constitution of India incorporated in the Constitution, by the Constitution (Seventy-fourth Amendment) Act, 1992, -

(a) does not provide for appointment or continuance of an Administrator after the expiry of the normal term of office of Councillors; and

D (b) provides for constitution of duly elected corporation in consonance with the said Constitutional provisions relating to composition, reservation, etc. and further provides that the elections to the Municipal Corporations shall be conducted in the prescribed manner by the State Election Commissioner appointed under Article 243-K of the Constitution.

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F 4. The requisite reservation rules prescribing the number of seats to be reserved for the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women and the manner of rotation of such reserved seats for holding elections to the Municipal Corporation were framed by the State Government in consonance with the Constitutional provisions. However, pending holding of election for the Corporations whose terms had already expired and where, the Administrator appointed had been continued, it was necessary to take power to the State Government to resolve the legal and the procedural stalemate. The Government of Maharashtra therefore considered it expedient to suitably amend the Bombay Provincial Municipal Corporations Act, 1949, providing for appointment of Government officer or officers to exercise the powers and to perform all the functions and duties of the Corporation until the first meeting of the duly elected and constituted Corporation or for a period of six months

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from the 31st May, 1994, whichever was earlier. It was also considered expedient to make a deeming provision providing for continuance of an Administrator appointed for a Municipal Corporation who was in office on the 31st May, 1994, as the officer appointed under this Act for managing the affairs of the Corporation till the first meeting of such Corporation as well as for validating the acts or things done by the Administrator who was continued in the office to manage the affairs of the Municipal Corporation of the City of Kalyan, during the period commencing from the date on which the aggregate period of ten years of his appointment expired and ending on the 31st May, 1994.”

(See Maharashtra Gazette dated March 30, 1995 Part V pages 11-13)

Initially an Ordinance was promulgated on the 15th December, 1994 and replaced by the Amendment Act which was published in the Maharashtra Gazette dated April 20, 1995 (Part IV, pp. 83-85).

We do not see any merit in the submission that the Administrator once appointed shall continue to stretch and unreasonably extend his term of office and may be instrumental in obstructing the elections being held. The law does not permit holding of an office as an Administrator by any officer/officers beyond the first meeting of the Corporation or a period of six months from the date of specification of an area as a larger urban area. Thus, the maximum period for which an Administrator may be in office shall be six months and within this much period the State Government and the State Election Commission shall positively bring the Municipal Corporation in existence so as to take over the administration from the Administrator.

Q. 2. *The effect of census figures published being called 'provisional'?*

We see no merit in the submission of the learned counsel for the writ petitioners-respondents that the figures of census published on 13.8.2001 by the Director of Census Operation, Maharashtra were only provisional and could not have been acted upon unless the final population totals were published. A decision of constituting a Municipal Corporation so as to replace a Municipal Council is dependent on the figure of population of the urban area. Neither the Constitution nor any other relevant provision of any statute prescribes or defines the source or material wherefrom the State Government shall form an opinion as to the population existing in any urban area. The only requirement is of the population crossing the bench mark of three lakhs.

- A The correctness of the figure of population in Jalgaon urban area having reached the figure of 3,68,579 as on 13.8.2001 as published by the Director of Census Operation Maharashtra in the document 'Provisional Population Totals' is not disputed by anyone. So long as the correctness of the fact that the population had crossed the bench mark of three lakhs—and thereby
- B provided the requisite foundation for the State Government to take a decision of constitution a Municipal Corporation by treating Jalgaon as a larger urban area—cannot be disputed much less doubted. So also no act, rule or any instruction issued by the Government of India or any competent authority has been brought to our notice which contemplates a 'Final Population Total' being published after the publication of the so-called provisional list. The
- C submission that the State Government should have awaited for the publication of a 'Final Population Totals' and should not have acted on provisional totals is wholly devoid of any merit and the High Court should not have upheld the submission to find fault with the decision of the State Government.

- D *Q.3. Whether the population of Jalgaon was denied an effective opportunity of raising objections and hence the principles of natural justice were violated?*

- E In the opinion of the High Court, the notifications dated 16.10.2001 appointed a period of 60 days for preferring objections against the proposed constitution of Municipal Corporation in place of Municipal Council. This period of 60 days would have expired on 15th December, 2001. However, in between, on 15.11.2001 when a period of only 30 days had expired, an ordinance was promulgated whereby the period of 60 days appointed under Section 6(1)(d) of the Act was reduced from 60 days to 30 days. The ordinance
- F was followed by two notifications amending the earlier notifications dated 16.10.2001 and limiting the period for preferring the objections upto 21.11.2001. The notification is required to be published not only in the Official Gazette but also in the local newspaper. Though the notification was published in the Official Gazette dated 15.11.2001, however, in the local newspaper the publication took place on 19.11.2001 and the time for preferring the objections
- G expired on 21.11.2001. The High Court held that the opportunity of hearing statutorily mandated to be afforded to the people of Jalgaon was drastically curtailed, and in the light of the subsequent notification, for all practical purposes the effective opportunity available was just two days, i.e. commencing 19.11.2001 and expiring 21.11.2001 which cannot, in the facts and circumstances of the cases, be said to be effective opportunity and, therefore,
- H the mandate spelled out by unamended sub-Section (3) of Section 3 of MRMC

Act was violated.

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The finding as to violation of principles of natural justice arrived at by the High Court is founded on two bases: (i) the time of 60 days originally appointed for preferring the objections could not have been curtailed; (ii) looking at the drastic consequences involved on the population of the urban area, by converting the Municipal Council into a Municipal Corporation, the effective opportunity for preferring objections having been made available only for two days i.e. between 19th and 21st November, 2001 was in fact no opportunity in the eye of law. The submission on which these findings are based appears to be attractive but on a little probe and tested in the correct perspective the fallacy in the submission is exposed.

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The requirement of inviting all persons who entertained any objection to the proposal of a municipal area ceasing to be so and being classified as a larger urban area to be administered by a Municipal Corporation as required by sub-Section (3) of Section 3 read with Section 6 of the MRMC Act has to be complied with for two reasons: firstly, it's recognition by statute of the principles of natural justice and, secondly, it is mandatory procedural requirement which must be satisfied as a pre-condition for the validity of subsequent final decision on the principle that if the statute requires a particular thing to be done in a particular manner then it shall be done either in that manner or not at all.

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It is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons sought to be affected adversely must be afforded not only an opportunity of hearing but a fair opportunity of hearing. The State must act fairly just the same as anyone else legitimately expected to do and where the State action fails to satisfy the test it is liable to be struck down by the Courts in exercise of their judicial review jurisdiction. However, warns Prof. H.W.R. Wade that the principle is flexible. "The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that 'it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter'. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibility'. There must also have been some real

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A prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice.” (Administrative Law, Wade & Forsyth, Eighth Edition, 2000, pp.491-492).

The learned authors quote from two authorities in support of preserving flexibility. In *Russell v. Duke of Norfolk*, [1949] 1 All ER 109, 118, Tucker LJ opined, “the requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth”. In *Lloyd v. McMahon*, [1987] AC 625, 702, Lord Bridge stated in his speech, “the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.” (Administrative Law, *ibid*, at p.493)

The caution of associating rules of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision maker. The basic principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situations defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are: (i) the nature of the subject-matter, and (ii) exceptional situations. Such exceptionality may be spelled out by (i) need to take urgent action for safeguarding public health or safety or public interest, (ii) the absence of legitimate exceptions, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, (v) express legislation. There is also a situation which Prof. Wade & Forsyth terms as “dubious doctrine” that right to a fair hearing may stand excluded where the Court forms an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into play. (Administrative Law,

ibid. at pp.543-544)

It is true that sub-Section (3) of Section 3 of MRMC Act prescribes for inviting objections by affording two months' time and that was done on 16.10.2001. However, the statutory provision was amended by Ordinance and the period of 'two months' stood substituted by a period of 'not less than 30 days'. The statutory provision has to be read as amended. The petitions filed before the High Court did not lay any challenge to the vires of the ordinance either on the ground of un-reasonability or on the possible ground of curtailing a vested right to prefer objections or on the ground of un-reasonability. In the absence of any challenge having been laid, the constitutional validity of the amendment cannot be gone into. The validity of the action i.e. the notice inviting objections has to be tested in the light of the statutory requirement that the period of notice statutorily prescribed is of a duration of 'not less than 30 days' which in the case at hand it is. Thus the notification dated 16.10.2001, as amended by the subsequent notification dated 15.11.2001, satisfies the requirement of the principles of natural justice as also of the procedure statutorily prescribed.

The date on which the subsequent notification dated 15.11.2001 was published in the government gazette and on 19.11.2001 when the same was published in local newspaper, a period of 30 days or more than 30 days had already elapsed and still some time i.e. a period of 6 days by reference to gazette publication dated 15.11.2001 and 2 days by reference to newspaper publication dated 21.11.2001 was still available for preferring objections. Let a totality of the situation be assessed in the backdrop of the facts and circumstances of the case. The Municipal Council, representative of the entire population of Jalgaon municipal area had collected and consciously discussed the likely objections against the proposal and forwarded the same for the consideration of the State Government. In addition, 239 objections had already been preferred and reached the State Government. There is no grievance raised before the High Court by anyone that there is yet another objection to the proposal which could have been raised but could not be raised on account of curtailment in the period inviting objections. Not one person has come forward to say that he proposed to prefer an objection but was denied the opportunity of preferring objection on account of the period having been abruptly curtailed. There is not one objection which may not have received consideration at the hands of the State Government solely because it was preferred within 60 days calculated from 15.11.2001 but beyond 21.11.2001.

A So far as the objections preferred by the Municipal Council collectively and the individual 239 objectors are concerned, no one has alleged that anyone of the factors contemplated as relevant by Article 243-Q proviso of the Constitution was absent or non-existent. None has disputed the correctness of the population figure as totalled by the census. The contentions raised are that the development works initiated by the Municipal Council may be adversely affected or that the taxes would increase while the quantum of State's financial aid or grant may be reduced. Though it is for the State Government to apply its mind to the relevance and weight of the objections preferred still we may note the submissions made by the learned counsel for the appellant-State Government that a mere change in the constitution of the local self-government does not necessarily entail discontinuance of development projects and there is no reason to apprehend, that they would not be continued. A change in governance is involved at every election though the administration continues with Municipal Council. At the time of an election certain development works would be pending in progress which would naturally be taken over by the successor Municipal Council. Just as every new Municipal Council would take over the on-going projects initiated by the predecessor Municipal Council so also a Municipal Corporation newly brought into being shall take over the continuing projects of previous Municipal Council. Every change in mode of governance needs some readjustments. Need for switching over from Municipal Council to Municipal Corporation mode of administration is occasioned by growth of population and prosperity in any particular urban area. People share the prosperity and so must be prepared to pay the additional price by way of additional taxes, submitted the learned counsel for the State Government and we found substance therein.

Whosoever wished to prefer the objections would not necessarily wait for the last day though he has a right to do so. The amendment ordinance and the notifications dated 15.11.2001 issued thereunder did not abruptly close the invitation to objections, only the period was shortened. Those, over and above the 239 who had already preferred objections, could still have preferred the objections if they intended to do so. On the totality of the facts and circumstances of the case, we are of the opinion that neither the principles of natural justice have been violated nor is there any breach committed of the procedural requirements prescribed by Section 3(3) read with Section 6 of the MRMC Act as amended by the ordinance.

The statement accompanying the Ordinance spells out the need for its promulgation. General elections to four (including Jalgaon) out of the seven

Municipal Councils were scheduled to be held in the first week of December, 2001. The term of those Municipal Councils was coming to an end in the month of December 2001 itself. The new Municipal Councils were mandatorily required to be constituted before the expiry of the term of the existing Councils. If the proposal of the Government to establish Municipal Corporations in those four areas was not finalized before the expiry of the said term of the existing Councils the State Government would have been required to undertake the elections which would have been involved substantial expenditure of public money and wastage of time and energy of government machinery all avoidable. It was this consideration of public interest which persuaded the State Government to curtail the period of two months to such period not being less than 30 days so that decision on constitution of Municipal Corporation, either way but finally could be taken earlier and at an appropriate time and to proceed thereafter either with Municipal Council elections or the process of constituting Municipal Corporation consistently with the decision taken. One of the principles of good governance in a democratic society is that smaller interest must always give way to larger public interest in case of conflict. The amendment resulting into curtailing of the period appointed for inviting objections though restricted the period, by shortening it to the extent necessary in the then circumstances, it was done only for achieving larger public interest. No fault can be found therewith. The period allowed for inviting objections conforms to the statutory provision and is not shown to have caused any prejudice to any one.

Q. 4. Want of consultation with Municipal Council - effect?

The learned counsel for the appellants submitted that steps for constitution of Municipal Corporation fell within the purview of Section 3 of BPMC Act which requires the specification of larger urban area, and constitution of Municipal Corporation therein, to be preceded by a notification subject to the condition of previous publication. Consultation is not one of the requirements of Section 3 and therefore the High Court went wrong in holding that for want of consultation, the process of constitution of Municipal Corporation of the city of Jalgaon was vitiated. With this submission we do not agree. The Jalgaon Municipal Council was already in existence, Jalgaon being smaller urban area. It was proposed to be converted into a larger urban area. This process would involve abolition of 'municipal area' as defined in within the clause (24) of Section 2 of M.R. Municipal Council Act. Any of the events provided by clauses (a), (b), (c) and (d) of sub-Section (1) of Section 6 must satisfy the requirement of consulting the Municipal Council

- A provided for by proviso to sub-Section (1) before issuing the notification and before that, notification should also follow the procedure prescribed by Section 3 *mutatis mutandis*. Section 6(1)(d) covers within its scope any event, the declaration whereof has the effect of the whole of any area comprising a municipal area ceasing to be a municipal area. Thus conversion of Jalgaon Municipal Council to Municipal Corporation involves not only specification of large urban area and constitution of Municipal Corporation of the city of Jalgaon, it also involves the whole of the local area comprising the municipal area of Jalgaon ceasing to be a municipal area with effect from the date of change. Therefore consulting the Municipal Council is mandatory.
- B
- C However, no provision of law has been brought to our notice which requires even a *proposal* for constitution of Municipal Corporation cannot be published without consultation. Consultation must take place at any one stage before the finalisation of the proposal. By the time the writ petitions came to be filed before the High Court all that had taken place was the publication of notification proposing to constitute Municipal Corporation of the city of Jalgaon. Objections were invited. The final decision was yet to be taken which was stayed by the High Court. The requirement of consultation could have been satisfied at any time before publishing the final notification. The High Court was not right in finding fault with the process of constitution of the Municipal Corporation of the city of Jalgaon for want of consultation at the stage to which it had reached when the writ petitions came to be filed in High Court.
- D
- E

For the foregoing reasons we are of the opinion that the judgment of the High Court cannot be sustained on any of the grounds upheld by it.

- F It is unfortunate that the litigation stalled the process of Municipal Corporation of the city of Jalgaon being constituted. The expenditure, the time and the energy of State machinery which was intended to be avoided by the State Government came to be wasted and the elections had to be held for constituting the successor Municipal Council. As on the day the Municipal Council is in place. Inasmuch as it has been held that the process for constituting the Municipal Corporation of the city of Jalgaon in place of Municipal Council does not suffer from any infirmity upto the stage to which it has proceeded, the State Government may now take a final decision and issue final notification depending on the formation of its opinion. The process of consultation within the meaning of proviso to Section 6(1) of M.R.
- G
- H Municipal Council Act shall now be completed if not already done. Needless

to say the objections preferred by the Municipal Council of Jalgaon and 239 other objections shall be considered and disposed of in accordance with law if not already done. A

The appeals are allowed. The impugned judgment of the High Court is set aside. The writ petitions filed before the High Court are directed to be dismissed. B

N.J.

Appeals allowed.