

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2843 OF 2011**

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 21928 OF 2010)

Afjal Imam

...Appellant

Versus

State of Bihar and others

...Respondents

JUDGMENT

Gokhale J.

Leave granted.

By the order passed by us on April 1, 2011, we had allowed this appeal. We had, further, observed that we will indicate our reasons by a separate judgment. We do so herein.

2. The Bihar Municipal Act, 2007, like other Municipal Acts, provides for the election of the Municipal Councillors, the Mayor or Chief Councillor and the Deputy Mayor/Deputy Chief Councillor. It also provides for an Empowered Standing Committee to exercise the executive power of the Municipality. This committee is supposed to consist of the Mayor, the Deputy Mayor and seven other Councillors nominated by the Mayor/Chief Councillor under section 21 (3) of this Act. Section 27 of this Act provides that the term of office of the Mayor/Chief Councillor and the members of the Empowered Standing Committee

shall be co-terminous with the duration of members of the Municipality. The Act provides for the removal of the Mayor/Chief Councillor and the Deputy Mayor/Deputy Chief Councillor under section 25 (4) of the Act by a vote of no confidence, which can be moved only after two years from taking over of the charge of the post. Section 23 (3) of the Act provides for the election of a new Mayor/Chief Councillor when a vacancy arises in the office of Mayor/Chief Councillor on account of death, resignation, removal or otherwise. There is, however, no specific provision for the removal of the members of the Empowered Standing Committee appointed by the earlier Mayor or for nomination of new members on the Committee in their place by the newly elected Mayor/Chief Councillor, thereby leading to an anomalous situation, namely that the Municipal Council will have a new Mayor/Chief Councillor having the confidence of the house, but the members on the Committee nominated by the previous Mayor/Chief Councillor who has lost the confidence of the house will continue to remain on the committee.

3. **Questions of Law arising in this appeal**

A question, therefore, arises as to whether the members of the Empowered Standing Committee nominated by a Mayor/Chief Councillor continue in their office or vacate it by implication, when a vacancy arises in the post of a Mayor/Chief Councillor either on account of death, resignation, removal or otherwise, and when a new Mayor/Chief Councillor is elected in that vacancy. This appeal raises the consequential question as to whether section 27 of the Act

should be read as it is and without reference to other connected sections, meaning thereby whether the members of the Empowered Standing Committee will continue to hold office (for the entire period of the municipal body) even if the nominator Mayor/Chief Councillor is no longer in the office? Or, whether such a reading of section 27 treats a newly elected Mayor dissimilarly, and therefore, whether section 27 of the Act is ultra vires the Constitution of India? In that event, can it be saved by reading it down harmoniously by implication in line with and subject to sections 25 (4), 23 (3) and 21 (3) of the Act, thereby holding that the term of nominated members shall be co-terminous with the nominating Mayor, and they will automatically vacate their office when the Mayor nominating them is no longer in the office, and that the newly elected Mayor/Chief Councillor will have the authority to nominate seven members of his choice on the Empowered Standing Committee?

4. Facts leading to this appeal:-

The Election to the Patna Municipal Corporation was held sometime in May/June, 2007. The Municipal Corporation has 72 members. After the election of the Municipal Corporation, the councillors elected one Shri Sanjay Kumar as the Mayor and one Shri Santosh Mehta as the Deputy Mayor. Two years later, no confidence motions were moved against both of them on 13.6.2009, and were passed on 14.7.2009. As far as the motion against the Mayor is concerned, we are informed that 42 members voted in favour thereof

and 28 opposed it. One member is reported to have remained absent being in jail, and one had died.

5. The above referred Sanjay Kumar challenged the decision on the no confidence motion by filing a Writ Petition bearing No. 8603 of 2009. A Learned Single Judge of the Patna High Court who heard the petition, initially granted a stay on the fresh election being held to fill the vacancy in the post of Mayor arising out of the no confidence motion. Ultimately the petition was allowed. That decision was challenged in an appeal to the Division Bench of the Patna High Court, and the Division Bench set aside that order by its judgment dated 14.5.2010. Shri Sanjay Kumar challenged the decision of the Division Bench by filing Special Leave Petition No. 16578/2010. A prayer was made to this Court that the election to fill the vacancy should not be permitted. This Court did not grant that prayer, but vide its order dated 31.5.2010 directed that the subsequent election will be subject to the decision on this SLP. (It is relevant to place it on record at this stage that this Writ Petition came to be dismissed by this bench by its separate order passed on 3.2.2011).

6. In view of the order passed by this Court on 31.5.2010, a notice was given on 3.6.2010, and a meeting was accordingly convened on 14.7.2010 wherein the appellant was elected as the Mayor of the Municipal Corporation. We are informed that he obtained 44 votes and Shri Sanjay Kumar 18 votes, a third candidate 9 votes and 1 vote was rejected. The appellant was given the oath of his office on the same day. On his election, he nominated 7 councillors

to be the members of the Empowered Standing Committee of the Municipal Corporation as per the provision of section 21 (3) of the Bihar Municipal Act. He requested the District Magistrate (D.M.) of Patna to give them oath of secrecy as per section 21 (4) read with section 24 of the Act, but the D.M. declined to do so, in view of the decision of a Full Bench of the Patna High Court dated 11.5.2010 in LPA No.618 of 2010 holding that such nomination by the Mayor is only a one time Act. In that decision, the Full Bench had upheld the Govt. Memo No.6020 dated 12.12.2009 to the effect that notwithstanding change of Mayor/Chief Councillor, the Empowered Standing Committee as nominated earlier shall continue.

7. The facts leading to the decision of the Full Bench:-

A similar problem had arisen in another Municipal Corporation of Bihar, viz. Ara Municipal Corporation. One Jagdish Singh who was elected as a councillor of Ara Municipal Corporation, filed a Writ Petition bearing CWJC NO. 9380 of 2008 to challenge the constitutional validity of the above referred section 27, on the ground that although there was a provision for the removal of the Chief Councillor (or Mayor) in section 25 of the Act, there was no similar provision for removal of the members of the Empowered Standing Committee. Once the councillors were nominated to the Empowered Standing Committee, they continued to be members of that committee so long as they remained councillors. There was a lack of any provision for removal of members of the Empowered Standing Committee, and the members of such committee had been

given unguided and unbridled power. The Division Bench negated that contention by holding that a member of the Municipal Council, if he is nominated as a member of the Empowered Standing Committee, can either be recalled under section 17 of the Act, or if he incurs disqualification for holding the post as a member, and an order of removal for such disqualification is passed under section 18 (2), his membership of the Empowered Standing Committee ipso facto comes to an end. The bench, therefore observed:-

"In this view of the matter, even if there was no specific provision for removal of the members of the Empowered Standing Committee, there is enough mechanism under the Act, 2007 that cessation of membership to the municipality automatically brings to an end the membership of the Empowered Standing Committee".

The High Court therefore repelled the challenge to the constitutionality of Section 27 of the Act. This Division Bench rendered its decision on 14.11.2008 which is reported in 2009 (2) PLJR at page 394 in the case of Jagdish Singh v. State of Bihar.

8. It so transpired that in another Municipal Corporation, namely Gaya Municipal Corporation, the Mayor of the Municipal Corporation expired, and one Sagufta Parween was elected as a new Mayor in that vacancy. She wanted to nominate her nominees on the Empowered Standing Committee, but was not allowed to do so in view of the above referred Government Direction in Memo No. 6020 dated 18.12.2009, to the effect that notwithstanding the change of Mayor or Chief Councillor, the Empowered Standing Committee of the Municipal

Corporation, as nominated earlier, would continue. Meaning thereby, that the Mayor/Chief Councillor newly elected would not have the power to nominate members of the Empowered Standing Committee of the Corporation in terms of section 21 (3) of the Municipal Act. Smt. Sagufta Parween challenged that Government Direction by filing CWJC No. 1067 of 2010 which was heard by a Single Judge, who held that the aforesaid Government Direction was contrary to the statutory provisions and the statutory scheme. The Learned Single Judge therefore, allowed the Writ Petition and directed that the necessary consequences will accordingly follow. This Judgment of the Learned Single Judge dated 23.2.2010 is reported in **2010 (2) PLJR at page 1072.**

9. Being aggrieved by this judgment of the Single Judge, one Jitendra Kumar Verma and others filed LPA No. 618 of 2010. When this LPA came up before a Division Bench, it took note of the above referred Division Bench decision rendered in Jagdish Singh vs. The State of Bihar & Ors. (Supra), and thought it appropriate that the matter should be heard by a larger Bench. That LPA, therefore, came to be decided by a Full Bench. The Full Bench in its decision dated 11.5.2010 followed the decision of the Division Bench in the case of Jagdish Singh (Supra), and held in paragraph 19 of its judgment reported in **2010 (3) PLJR 285** that the appointment of the members of the Empowered Standing Committee was a one time act. The full bench therefore allowed the appeal and set aside the order passed by the learned Single Judge.

10. On this background, after the appellant in the present appeal was elected as the Mayor of Patna, he nominated his nominees on the Empowered Standing Committee. However, the D.M., Patna declined to administer the oath of office to them. The appellant therefore filed Writ Petition bearing No. 9981 of 2010 for a declaration that section 27 of the Act is ultra vires to the provisions of the Constitution of India and to section 21 of the Act, and alternatively to read down section 27 of the act. The appellant also prayed for a Writ of Mandamus commanding the respondent D.M., Patna to administer oath of office to those nominees. The Division Bench which decided the petition, noted in its order that the petition had sought to challenge the constitutional validity of section 27 of the Bihar Municipal Act, 2007 for being contrary to section 21 of that Act. It, however, noted that the matters at issue were squarely covered by the decision of the Full Bench in *Jitendra Kumar Vs. State of Bihar* (Supra). The bench, therefore, passed an order dated 8.7.2010 that for the reasons recorded by the Full Bench, this petition was dismissed in limine. This order is being challenged in this Appeal by Special Leave wherein the issues which are mentioned at the outset of this judgment have been raised for our consideration.

11. We have heard the learned counsel for the appellant as well as the counsel for the State of Bihar, Patna Municipal Corporation and the counsel for the intervening members of the Empowered Standing Committee who would be unseated if this appeal was to be allowed. We have also gone through the written submissions presented by them.

12. **The relevant Sections of the Bihar Municipal Act, 2007**

In this appeal we are concerned with the interrelation amongst sections 21, 23, 25 and 27 of the Act. The sections of the Bihar Municipal Act relevant for our purposes are as follows:-

"2. Definition:-

(36) **"Empowered Standing Committee"** means the Empowered Standing Committee referred to in Section 21.

Section 21. Constitution of Empowered Standing Committee of Municipality. (1) In every Municipality there shall be an Empowered Standing Committee.

(2) The Empowered Standing Committee shall consist of-

(a) in the case of a Municipal Corporation, the Mayor, the Deputy Mayor, and seven other Councillors;

(b) in the case of a Class 'A' or Class 'B' Municipal Council, the Municipal Chairperson, the Municipal Vice Chairperson, and five other Councillors;

(c) in the case of a Class 'C' Municipal Council, the Municipal Chairperson, the Municipal Vice-Chairperson, and three other Councillors; and

(d) in the case of a Nagar Panchayat, the Municipal President, the Municipal Vice-President, and three other Councillors.

(3) The other members of the Empowered Standing Committee shall be nominated by the Chief Councillor from among the Councillors elected under sub section (1) of section 12 within a period of seven days of his entering office.

(4) The other members of the Empowered Standing Committee shall assume charge after taking the oath of secrecy under section 24.

(5) The Chief Councillor shall be the presiding officer of the Empowered Standing Committee.

(6) The manner of transaction of business of the Empowered Standing Committee shall be such as may be prescribed.

(7) The Empowered Standing Committee shall be collectively responsible to the Municipal Corporation or the Municipal Council or the Nagar Panchayat, as the case may be.

Section 22. Executive power of Municipality to be exercised by Empowered Standing Committee. – *Subject to the provisions of this Act and the rules and the regulations made there under, the executive power of a Municipality shall be exercised by the Empowered Standing Committee.*

Section 23. Election of Chief Councillor and Deputy Chief Councillor. – *(1) The Councillors shall, in the first meeting under section 35, elect in accordance with such procedure as may be prescribed from amongst the Councillors to be the Chief Councillor and Deputy Chief Councillor who shall assume office forthwith after taking the oath of secrecy under section 24.*

(2) If the Councillors fail to elect a Chief Councillor under sub-section (1), the State Government shall appoint by name one of the Councillors to be the Chief Councillor.

(3) In the case of any casual vacancy in the office of the Chief Councillor caused by death, resignation, removal or otherwise, the Councillors shall, in accordance with such procedure as may be prescribed, elect one of the Councillors to fill up the vacancy.

Section 25. Removal of Chief Councillor/Deputy Chief Councillor. – *(1) The Chief Councillor/Deputy Chief Councillor shall cease to hold office as such if he ceases to be a Councillor.*

(2) The Chief Councillor may resign his office by writing under his hand addressed to the Divisional Commissioner and Deputy Chief Councillor may resign his office by writing under his hand addressed to the Chief Councillor.

(3) Every resignation under sub-section (2) shall take effect on the expiry of seven days from the date of such resignation, unless within the said period of seven days he withdraws such resignation by writing under his hand addressed to the Divisional Commissioner or the Chief Councillor, as the case may be.

(4) The Chief Councillor/Deputy Chief Councillor may be removed from office by a resolution carried by a majority of the whole number of Councillors holding office for the time being at a special meeting to be called for this purpose in the manner prescribed, upon a requisition made in writing by not less than one-third of the total number of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed:

"Provided that a no confidence motion shall not be brought against the Chief Councillor/Deputy Chief Councillor within a period of two years of taking over the charge of the post:

Provided further that a no confidence motion shall not be brought again within one year of the first no confidence motion:

Provided further also that no confidence motion shall not be brought within the residual period of six months of the municipality.

(5) "Without prejudice to the provisions under this Act, if, in opinion of the Divisional Commissioner having territorial jurisdiction over the Municipality the Chief Councillor/Deputy Chief Councillor absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Divisional Commissioner may, after giving the Chief Councillor/Deputy Chief Councillor a reasonable opportunity for explanation, by order, remove such Chief Councillor from office.

(6) The Chief Councillor/Deputy Chief Councillor so removed shall not be eligible for re-election as Chief Councillor/Deputy Chief Councillor or Councillor during the remaining term of office of such Municipality.

Appeal shall lie before the State Government against the order of the Divisional Commissioner."

Section 27. The term office of the Chief Councillor and the members of Empowered Standing Committee.- *The term of office of the Chief Councillor and the members of Empowered Standing Committee shall be coterminous with the duration of members of the Municipality."*

13. As seen from section 22 above, the Executive power of the Municipality is to be exercised by the 'Empowered' Standing Committee, and in the case of a Municipal Corporation, their committee consists of the Mayor, the Deputy Mayor and seven other Councillors under section 21 (2) (a) of the Act. These seven members are to be nominated under section 21 (3) of the Act by the Mayor or the Chief Councillor from amongst the Councillors.

14. **Changes brought in by the Present Act**

It would be relevant to refer to the other connected provisions to enable us to decide the question of law which is raised in this appeal. As far as Patna Municipal Corporation is concerned, it was earlier governed under the Patna Municipal Corporation Act, 1951 (which has been repealed by section 488 of the Bihar Municipal Act, 2007). It is material to note that under section 36 of the repealed Act, the principal committee of the Municipal Corporation was known merely as the 'Standing Committee', and the members of the Standing

Committee were directly elected under section 37 of the Act by the full house of the Municipal Corporation, and their tenure was for two years. They were not nominated by the Mayor. Under the present Act, they are nominated by the Mayor. Now, the principal committee of the Municipal Corporation is known as the 'Empowered Standing Committee' under section 22 of the Act.

15. **Delegation of Powers**

Section 28 (1) of the present Act provides for delegation of the powers and functions of the Municipal Corporation to the Empowered Standing Committee, and under section 28 (2), the Empowered Standing Committee may delegate its powers and function to the Chief Councillor or to the Chief Municipal Officer. This section 28 reads as follows:-

"28. Delegation of Powers and Functions.-(1) The Municipality may, by resolution, delegate, subject to such conditions as may be specified in the resolution, any of its powers or functions to the Empowered Standing Committee.

(2) The Empowered Standing Committee may, by order in writing, delegate, subject to such conditions as may be specified in the order, any of its powers or functions to the Chief Councillor or to the Chief Municipal Officer.

(3) Subject to such standing orders as may be made by the Empowered Standing Committee in this behalf –

(a) the Chief Councillor may, by order, delegate, subject to such conditions as may be specified in the order, any of his powers or functions to the Deputy Chief Councillor or the Chief Municipal Officer;

(b) the Chief Municipal Officer may, by order, delegate, subject to such conditions as may be specified in the order, any of his powers or functions, excluding the powers or functions under sub-section (2) of section 354 or section 365, to any officer or other employee of the Municipality; and

(c) any officer of the Municipality, other than the Chief Municipal Officer, may, by order, delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, the Empowered Standing Committee, the Chief Councillor, the Chief Municipal Officer, or the other officer referred to in clause (C) of sub-section (3), shall not delegate –

(a) any of its or his powers or functions delegated to it or him under this section, or

(b) such of its or his powers or functions as may be specified by regulations.”

16. **Collective responsibility**

The Empowered Standing Committee is expected to function on the principle of collective responsibility. This element of collective functioning is introduced in Municipal Governance under sections 57 and 59 of the Act. Under section 57 (1), A Councillor may, subject to the provisions of sub-section (2), ask the Empowered Standing Committee, questions on any matter relating to the administration of the Municipality or municipal governance. Sub-section (2) of this section lays down the conditions subject to which this right to ask the

question is to be exercised. This section is divided into six sub-sections, though for our purpose it is section 57 (1) which is relevant which reads as follows:-

"57. Right of Councillors to ask questions. - (1) A Councillor may, subject to the provisions of sub-section (2), ask the Empowered Standing Committee questions on *any matter relating to the administration of the Municipality or municipal governance*, and *all such questions* shall be addressed to the Empowered Standing Committee and *shall be answered either by the Chief Councillor or by any other member of the Empowered Standing Committee.*"

(emphasis supplied)

In continuation of this Section 57, Section 59 provides for asking for a statement from the Empowered Standing Committee on any urgent matter relating to administration of the Municipality. This section reads as follows:

"59. Asking for statement from Empowered Standing Committee. - (1) Any Councillor may ask for a statement from the Empowered Standing Committee on an urgent matter relating to the administration of the Municipality by giving notice to the Municipal Secretary at least one hour before the commencement of the meeting of the Municipality on any day.

(2) *The Chief Councillor or a member of the Empowered Standing Committee may either make a brief statement on the same day or fix a date for making such statement.*

(3) *Not more than two such matters shall be raised at the same meeting and, in the event of more than two matters being raised priority shall be given to the matters which are, in the opinion of the Chief Councillor, more urgent and important.*

(4) *There shall be no debate on such statement at the time it is made.*"

As has been seen, section 57 (1) clearly uses the phrase '**Municipal Governance.**' Besides, as seen from these provisions, questions

about the Municipal Administration can be asked to the Empowered Standing Committee and any member of the Empowered Standing Committee can answer such questions.

17. **Relevant provisions of the Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010**

(i) Apart from these provisions in the Act, separate rules have been framed under Section 419 of the Act read with Sections 22 and 63 thereof, to regulate the exercise of this executive power under Section 22 of the Act,. These rules are known as **Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010**. Rule 6 of these rules provides for the quorum of the meeting of the committee, Rule 7 provides for the notice for the meeting, and the items to be taken up for consideration, and it specifically lays down that except with the assent of the majority of members present, no business other than those included in the list shall be transacted in the meeting. **Rule 7** reads as follows:-

"7. The notice for the meeting shall be issued by the Chief Municipal Officer with the approval of the Chairman, at least four days before the date of the meeting, but in case of an emergency meeting the notice may be issued at least 48 hours before the meeting, The Chief Municipal officer shall send to each member of the committee at least 24 hours previous to the meeting; a list of business as approved by the Chairman. Except with the assent of the majority of members present, no business other than those included in the list shall be transacted in the meeting."

(ii) **Rule 10** of these rules speaks about the executive power of the Empowered Standing Committee. This rule reads as follows:-

"10. *The Executive Powers of the Municipality shall vest in the Empowered Standing Committee. **Executive Powers shall be used collectively.***

Provided that administrative control on the Staffs of Municipality shall vest in Chief Executive Officer/Executive Office. Resolution shall be passed in the light of orders/directions issued time to time by State Government.

Officially brought agenda shall contain the following-

- (a) *items relating to the establishment as per provision of the Act, which includes appointments promotions, benefits, transfers, disciplinary actions etc. of the employees of the Municipality.*
- items relating to the collection of taxes and fees.*
- (b) *items relating to the financial position of the Municipality.*
- (c) *development activities undertaken and to be undertaken by the Municipal body.*
- (d) *items necessary for effective implementation of the provision of the Act.*

Provided that all items are to be placed before the committee by the Chief Municipal officer and shall be in the form of memorandum which will include the subjects, the status and the proposal to be approved by the committee. A separate sheet is to be attached under the signature of the Chief Municipal officer specifying the period by which the proposal approved by the committee shall be implemented.

(4) *The Empowered Standing Committee shall not discuss and pass a resolution in*

- (a) *any matter/issue which is against the rules, laws and directives of the State Government.*
- (b) *any issue which is sub-judice in any court of law and which may affect the interest of Municipality adversely.*

(5) All issues passed by the committee shall be placed before the Municipality in its next meeting."

(iii) **Rule 14** lays down that the business of the committee will be decided by majority and this rule reads as follows:-

"14. *All business which may come before the Committee at any meeting shall be decided by the majority of the members present by voting at the meeting and in case of equality of votes, the Chairman shall have a second or casting vote."*

These rules make it clear that the executive power vests in the Empowered Standing Committee. Though the Mayor nominates the members of the Empowered Standing Committee, the decisions of the Empowered Standing Committee are to be taken by majority, and the committee members have to function on the basis of collective responsibility.

18. **Submissions on behalf of the appellant**

The counsel for the appellant therefore submits that consequently if a vote of no confidence is passed against the Mayor and a new Mayor is elected in his place, it should be read by implication that the members of the Empowered Standing Committee nominated by him shall vacate their seats and the new Mayor will have the authority to nominate his nominees on the committee. Otherwise, the new Mayor will not be able to function in unison with the other members on the committee. On the other hand, if section 27 is read as it is, without being read in line with and subject to sections 25 (4), 23 (3) and 21 (3) of the Act, the councillors nominated by the earlier Mayor will continue on

the Empowered Standing Committee. Thus, although the Mayor will be one who will have the confidence of the House, the other members of the Empowered Standing Committee will be those who have been nominated by the earlier Mayor who has lost confidence of the House. The functioning on the basis of collective responsibility will be difficult. There is a clear possibility of a conflict between the new Mayor and the other members of the Empowered Standing Committee, and the new Mayor who is elected by the House will not be able to carry the municipal governance as per the desire of the House, since his proposals could be opposed by the members of the Empowered Standing Committee who are nominated by the erstwhile Mayor. This straight reading of section 27 thus leads to an anomalous position. The counsel for the appellant submits that although there is no difference in the position of the newly elected Mayor and the earlier Mayor, if literal interpretation is accepted, the newly elected Mayor will be treated dis-similarly as against the earlier elected Mayor, and the entire municipal governance will come under strain. He therefore submits that section 27 is ultra-vires section 21 of the Act and Article 14 of the Constitution of India. Section 27 should therefore be either struck down, or if it is to be saved, it should be read down harmoniously with sections 25 (4), 23 (3) and 21 (3) of the Act.

19. **Submissions on behalf of the Respondents:**

The counsel for the respondents, on the other hand, submit that as held by different benches of the Patna High Court, the appointment of the

members of the Empowered Standing Committee is a one time Act. A statutory provision should be read as it is, and the court should not add anything to the statute. They submit that the municipal administration is supposed to be run on a non-political basis, and it is immaterial that another Mayor is elected in place of the previous one, since all of the Councillors are supposed to work harmoniously with each other for the benefit of all the citizens.

20. **Reference to the provisions in Municipal Laws of other States**

The respondents submit that the Local Government is a subject in the **State List** under the Constitution of the India **(being entry No.5 in list II of the Seventh Schedule thereof)** and it is for the State Government concerned to make necessary statutory provisions. The provisions as enacted should be given due respect.

(i) Thus the respondents point out that different States have made different provisions in this behalf. In the neighbouring State of West Bengal under the system of 'Mayor-in-council' under the **Howrah Municipal Corporation Act, 1980 and Calcutta Municipal Corporation Act, 1980**, the Mayor is elected by the corporators but the Deputy Mayor and the council members are nominated by the Mayor under section 6 (2) of the Howrah Act and section 8 (2) of the Calcutta Act. Under section 7 (d) of the Howrah Act and section 9 (d) and (e) of the Calcutta Act, members of the Mayor-in-council have

to vacate their seats when a newly elected Mayor enters into the office in place of the earlier Mayor. The Mayor has the power to remove the Council member/Deputy Mayor under section 7 (c) of the Howrah Act and section 9(c) of the Calcutta Act. The West Bengal Municipal Corporation Act, 2006 applies to corporations other than Howrah and Calcutta in the State of West Bengal. It also creates a 'Mayor-in-Council' system and under section 41 of the Act, the executive power of the corporation vests in the Mayor-in-Council. The Deputy Mayor and members of the council are nominated by the Mayor under section 19 (2) of the Act and their tenure is co-terminous with that of the Mayor under section 20 (d) of the Act.

(ii) Similar is the provision in Madhya Pradesh under section 37 of the **Madhya Pradesh Municipal Corporation Act, 1956** (the section in the present form is since 1998 Amendment). The Mayor, who is elected by the Councillors from amongst themselves, nominates his Mayor-in-Council members. Section 37 (3) provides that the members shall hold office during the pleasure of the Mayor. Section 37 (8) provides that the new Mayor (i.e., elected after the office of the Mayor is declared vacant) has the choice to continue the old Council members or appoint new members in their place.

(iii) The same is the effect and import of section 70 (in place since the 1998 Amendment) of the **M.P. and Chattisgarh Municipalities Act, 1961**. Section 70 deals with President-in-Council of the Municipal Council and is in pari materia with section 37 of the Madhya Pradesh Municipal Corporation Act, 1956.

(iv) In the **Mizoram Municipalities Act, 2007**, there is a provision for an Executive Council similar to the Empowered Standing Committee. The tenure of the members of the Executive Council is co-terminous with that of the Chairman under section 21 (d) of Mizoram Municipalities Act, 2007.

(v) Somewhat similar are the provisions under sections 52, 64 and 66 of the **Goa Municipalities Act 1968**. Under section 66 (1) of the Act, the term of office of the members of the Standing Committee is co-terminous with the term of the Chairperson during whose period they are elected. The Chairperson of the Municipal Council and the members of the Standing Committee under that Act are, however, elected by the councillors, and not nominated by the Chairperson.

(vi) It is therefore, submitted by the respondents that it is for a State Legislature to lay down the law as to what should be the provision in this behalf, and in its wisdom the Bihar Legislature had not made the term of the councillors co-terminous with that of the Mayor, and it should be read as it is.

21. In this connection, it is material to note that by the 74th Amendment to the Constitution of India, the Municipalities have been given a status under the Constitution. **Part IX A** has been introduced concerning the Municipalities and their powers and functions are laid down under the **Twelfth Schedule** of the Constitution. Article **243R** provides for the composition of the Municipalities, and the same is to be done by the Legislature of a State by law.

Article **243R** (2) (b) provides for the manner of election of the Chairperson of a Municipality. Article **243S** provides for the constitution and composition of the Wards Committees, and sub-article (5) thereof provides for constitution of Committees in addition to the Wards Committees. Article **243U** assures the Municipalities a term of five years. Thus, it is true that it is for the State Legislature to make necessary provisions concerning the municipal administration. However, the enactments of different States relied upon by the respondents, in fact, point out that whenever the Mayor-in-Council or on analogous pattern is adopted, the term of the members on the Council or the Standing Committee is co-terminous with that of the Mayor or the Chairperson.

22. The respondents submitted that the approach of the appellant amounted to legislation and should not be permitted. They relied upon various judgments to submit that the court is expected to interpret the law and not legislate. Firstly, they relied upon the judgment of this Court in **State of Jharkhand and Anr. Vs. Govind Singh**, reported in **2005 (10) SCC 437**, which was a case under Forest Act, 1927. The High Court had read into sections 52 (3) of the Act, the power to direct release of seized vehicles on payment of fine in lieu of confiscation, when there was no such specific provision in the statute. This Court held that casus omissus cannot be readily inferred by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. The decision was rendered in view of the facts of the case and the relevant provisions of the Forest Act 1927, and while so

doing, the court did make it clear that if literal construction of a particular clause leads to manifestly absurd or anomalous results, a literal interpretation may not be preferred. The proposition of law laid down in this case, is thus quite clear and does not help the respondents. In para 21 of the judgment this Court (per **Arijit Pasayat, J**) observed as follows:-

*"Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in *Artemiou v. Procopiou*¹⁸ (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* where at AC p. 577 (All ER p. 664 I) he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges.]"*

23. The respondents relied upon the judgment in **Union of India and Another Vs. Shardindu**, reported in **2007 (6) SCC 276**, wherein this Court set aside the premature repatriation of the respondent to his parent cadre. The appointment of the respondent in that case was a tenure appointment under a

statute, and it was contented on behalf of the appellant that same is governed under the 'Doctrine of Pleasure' available under the Constitution. In that context, this Court laid down that when it was an appointment under a statute as against a constitutional appointment, the court could not bring in such concept, and could not supply the omission under the statute. The judgment will have to be read in that context.

24. The respondents then relied upon the judgment of this Court in **Satheedevi Vs. Prasanna and Anr.** reported in **2010 (5) SCC 622** to submit that the intention of the legislature must be read in the words used by the legislature itself. It was submitted that if words that are used are capable of one construction it was not open to courts to adopt any other hypothetical construction on the grounds that it is more consistent with the alleged object and policy of the Act. It is however, material to note that in paragraph 12 thereof this judgment also accepts that when the words used in the statute are capable of two constructions, the question of giving effect to the policy or object of the act can legitimately arise.

25. **Consideration**

Constitutional Provisions concerning the Municipalities

Before we deal with the rival submissions, we may note that the Municipalities are expected to render wide-ranging functions. They have now been enumerated in the Constitution. Article **243W** lays down the powers of

the Municipalities to perform the functions that are listed in **Twelfth Schedule**

It reads as follows:-

"243W. Powers, authority and responsibilities of

Municipalities, etc. – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow –

- (a) *the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-*
 - (i) *the preparation of plans for economic development and social justice;*
 - (ii) *the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*
- (b) *the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."*

Twelfth Schedule reads as follows:-

TWELFTH SCHEDULE
[Article 243W]

1. *Urban planning including town planning.*
2. *Regulation of land-use and construction of buildings.*
3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and, commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*

9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds and electric crematoriums.*
15. *Cattle ponds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.*

26. **The scheme of the Bihar Municipal Act, 2007**

The provisions of the Bihar Municipal Act, 2007 will have to be looked into on this background. The Act is a detailed Act running into 488 sections which are divided into VIII parts and 44 chapters and they govern all the aspects of Municipal Governance and Administration. **Part I** contains the preliminary provisions. **Part II** deals with the Constitution of the Government of the Municipal Bodies some of which provisions we have already referred to namely those contained in Sections 21 to 59. **Part III** deals with the Financial Management of Municipalities. **Part IV** is on the Municipal Revenue. **Part V** is on the Urban Environmental Infrastructure and Services which contains the following chapters.

Chapter 21 on Private Sector Participation Agreement and Assignment of Other Agencies,

Chapter 22 on Water-supply,

Chapter 23 on Drainage and Sewerage,

Chapter 24 on other provisions relating to Water-supply, Drainage and Sewerage,

Chapter 25 on Solid Wastes,

Chapter 26 on Communication Systems which deals with the public streets and street lighting,

Chapter 27 on Markets, Commercial Infrastructure and Slaughter Houses.

Part VI deals with Urban Environmental Management, Community Health and Public Safety.

Chapter 28 is on local agenda for Urban Environmental Management,

Chapter 29 on Environmental Sanitation and Community Health,

Chapter 30 on restraint of infection,

Chapter 31 on disposal of the dead,

Chapter 32 on Urban Forestry, Parks, Gardens, Trees and Playgrounds.

Part VII deals with the Regulatory Jurisdiction, and contains chapters on Development Plans, Improvement, Public Streets, Buildings, Municipal Licences, Vital Statistics, Disaster Management and Industrial Townships.

Lastly **Part VIII** deals with the Powers, Procedures, Offences and Penalties.

27. Thus, it will be seen that the Bihar Municipal Act is quite a comprehensive Act, and as noted earlier the executive powers of the Municipality are vested in the Empowered Standing Committee under section 22 of the Act. The members of this Empowered Standing Committee are nominated by the Mayor. After a Mayor is removed, and another Mayor is elected in his place, if

the new Mayor is not allowed to nominate his nominees on the Empowered Standing Committee, it is likely to result into a situation of conflict. This is apart from the fact that the new Mayor will be treated dissimilarly with the earlier Mayor, although both of them are elected by the same full House and there is no justifiable reason for making any distinction. The fact that a councillor is elected as the Mayor immediately after the general election to the Municipality, and he nominates seven councillors on the Empowered Standing Committee, cannot make this act of nomination as a one time act, nor does the enactment say so. After a Mayor is removed under section 25 (4) of the Act, a new Mayor is to be elected under section 23 (3) of the Act. This section does not say that the newly elected Mayor will not have the powers of nominating the other members on the Empowered Standing Committee which is available to the Chief Councillor or Mayor under section 21 (3) of the Act. Thus, in fact, by stating that the nomination of the members on the Empowered Standing Committee is a one time act, the respondents are adding words in section 21 (3) of the Act. Thus, in a way, they are supplying in section 21 (3) the words '**only by the first Chief Councillor and not by his successors in office**' in place of '**the Chief Councillor**' after the words '**shall be nominated**' in section 21 (3) of the Act. Thus, they want section 21 (3) to read as follows:-

*"(3) The other members of the Empowered Standing Committee shall be nominated '**only by the first Chief Councillor and not by his successors in office**' from among the Councillors elected under sub section (1) of section 12 within a period of seven days of his entering office."*

Such a reading and resultant situation will be contrary to the basic principle of parliamentary democracy, viz. that those in office ought to be representative of and responsible to the House. Therefore, if the house has lost confidence in the earlier Mayor, it is all the more necessary that the members of the Empowered Standing Committee should be made to step down alongwith him and a newly elected Mayor be permitted to have his nominees on the Empowered Standing Committee.

28. **The concept of Executive Power and Article 14**

As seen above, the term executive power has been specifically used in section 22 of the Act and section 57 specifically uses the term Municipal Governance. The concept of executive power has been read widely by Constitution Bench of this Court way back in **Rai Sahib Ram Jawaya Kapur & Ors. Vs. The State of Punjab**, reported in **[AIR 1955 SC 549]**, wherein this court has observed:-

"12. It may not be possible to frame an exhaustive definition of what executive functions means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away....."

13.The executive function comprises both the determination of the policy as well as carrying it into execution....."

This being the breadth of the executive power of the Empowered Standing Committee, the newly elected Mayor will not be able to exercise the

same effectively and the entire municipal governance will come in jeopardy, if the other members on the Committee are not his nominees.

29. Apart from the aforesaid resultant administrative difficulty, if a literal interpretation of section 27 is followed alongwith adding words in section 21 (3) as pointed out above, the newly elected Mayor will be treated dissimilarly for no justifiable distinction. In that case, as against the earlier elected Mayor he will not be permitted to have his nominees on the Empowered Standing Committee. A literal interpretation of section 27 of the Act will clearly bring it in conflict with section 21 (3) of the Act, and will also be violative of Article 14 of the Constitution of India as held by the Constitution Bench of this Court way back in **State of West Bengal Vs. Anwar Ali Sarkar**, reported in **[AIR 1952 SC 75]**. In that matter, in his leading judgment, **B.K. Mukherjea, J.** (as he then was) observed in para 46 as follows—

..... "If a legislation is discriminatory and discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as "hostile" in the sense that it affects injuriously the interests of that person or class. Of course, if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain. But if it is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position. I do not think that it is incumbent upon him, before he can claim relief on the basis of his fundamental rights, to assert and prove that in making the law, the legislature was actuated by a hostile or inimical intention against a particular person or class."

30. **The correct approach towards interpretation**

What should be then the approach towards interpreting the provisions in such a situation? Guidance can be had from three passages quoted herein below:-

(a) In **Reserve Bank of India Vs. Peerless Corp.** reported in **[AIR 1987 SC 1023] = 1987 (1) SCC 424, O. Chinnappa Reddy, J.** has observed as follows (in para 33):-

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. **That interpretation is best which makes the textual interpretation match the contextual.** A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. **No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.** It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in *Srinivasa* and we find no reason to depart from the Court's construction."

(emphasis
supplied)

(b) In **Union of India Vs. Filip Tiago De Gama**, reported in **1990 (1) SCC 277, K. Jagannatha Shetty, J.** observed as follows (in para 16) :-

16. *The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr Justice Holmes has wisely and properly warned. (Towne v. Eisner¹) Learned Hand, J., was equally emphatic when he said: "**Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them.**" (Lenigh Valley Coal Co. v. Yensavage²)."*

(1 245 US 428,425 (1918)

2 218 FR 547, 553)

(emphasis supplied)

(c) In **Anwar Hasan Khan Vs. Mohd. Shafi and others** reported in **2001 (8) SCC 540, R.P. Sethi, J.** quoted the above paragraph in Filip Tiago De Gama with approval prior whereto he observed as follows (in para 8):-

"8. *It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. **It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction.** The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. **The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" is not harmonious construction.**"*

(emphasis supplied)

31. **Removal of anomaly**

This rule of harmonious construction has been adopted by this Court from time to time. In **N.T. Veluswami Thevar Vs. G. Raja Nainar**

reported in **[AIR 1959 SC 422]**, a bench of three Judges of this Court, (consisting of T.L. Venkatarama Aiyer, P.B. Gajendragadkar and A.K. Sarkar JJ.) was dealing with a matter concerning the election to the Legislative Assembly of the then State of Madras held in the year 1957. In this case arising under the Representation of the People Act, 1951, the Supreme Court held that if the Returning Officer had rejected a nomination paper of a candidate on one disqualification, it was open for the Election Tribunal to find the rejection proper on some other ground of disqualification which may not have been raised before the Returning Officer. It was pointed out that if this construction is not placed on section 100 (1) (c) of the Act, the result will be anomalous in that if the decision under section 36(6) of the Returning Officer on the objection on which he rejected the nomination paper is held to be bad, the Tribunal will have no option but to set aside the election under section 100(1) (c) even though the candidate was disqualified and his nomination paper was rightly rejected. In holding so, **Venkatarama Aiyer, J.** observed as follows in para 13:

*....."It is no doubt true that if on its true construction, a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law. **But when on a construction of a statute, two views are possible, one which results in an anomaly and the other not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.**".....*

(emphasis supplied)

32. In **S.V. Kondekar Vs. V.M. Deshpande**, reported in **[AIR 1972 SC 878]**, a Constitution Bench of this Court was concerned with the

construction of section 446 (1) of the Companies Act, 1956 which provides that when a winding up order has been made or the official liquidator has been appointed, no suit or legal proceedings shall be commenced or continued against the company except with the leave of the court, the Supreme Court held that assessment proceedings under the Income-tax Act do not fall within the section. This conclusion was reached on the ground that only such proceedings fall under section 446 (1) which could appropriately be dealt with by the winding up court under section 446 (2). The Court held in para 7 of the judgment for the bench

I.D. Dua, J. observed as follows:-

"It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceeding to itself and assess the company to income-tax."

33. **Making cross-reference to sections to read them harmoniously**

One of the methods adopted in such situations is to make cross-reference to the relevant sections to read them harmoniously. Thus, way back in **Ramkissendas Dhanuka Vs. Satyacharan Lal**, reported in [**AIR 1950 PC 81**], the Privy Council was faced with such a situation in a case arising under the Companies Act, 1913. One of the Articles of Association i.e. 109 of the Company concerned prescribed a maximum of four and a minimum of three directors without any qualifying words. Another Article i.e. 126 authorised the company in a general meeting from time to time to increase or reduce the

number of directors subject to the provisions of section 83A(1) and to alter their qualification and change the order of rotation of the increased or reduced number. The question was whether the power of the company by ordinary resolution to "increase or reduce" the number of directors conferred by Article 126 was only exercisable within the limits set by the maximum and the minimum prescribed by Article 109, and whether a special resolution altering Art. 109 was required to increase the number of directors beyond the prescribed maximum. After considering the relevant Articles, the Privy Council held that Articles 126 and 109 were two textually inconsistent provisions. The proposition that emerges from the judgment is that it is permissible to read words such as "subject to" etc. in order to reconcile two apparently inconsistent provisions. To reconcile Article 109 with Article 126 and to give effective content to them, it was necessary to imply words such as "subject to". The Court therefore, observed in paragraph 5 as follows:-

"The omission to make such cross-references as may be required to reconcile two textually inconsistent provisions is a common defect of draftsmanship. There is thus no insuperable difficulty in reconciling Article 109 with Article 126 either by implying in the former some such opening words as "subject to Article 126" or implying in the latter some such opening words as "notwithstanding anything containing in Article 109."

34. **Reading a section subject to another to realise the real intent of the two provisions**

Recently this Court was concerned with the anomaly between section 23 (3) of the Code of Civil Procedure and section 25 thereof as substituted by the Act No. 104 of 1976 in **Durgesh Sharma Vs. Jayshree** reported in **2008 (9) SCC 648**. The amending Act did not delete or omit section 23 (3) of the Code which provided that where several Courts having the jurisdiction are subordinate to different High Courts, the application for transfer shall be made to the High Court within the local limits of whose jurisdiction the court in which the suit is brought is situate. Section 25 as substituted empowered the Supreme Court to transfer any suit, appeal or other proceedings from one High Court to another High Court or from one Civil Court in a State to any other Civil Court in another State through the Country. The scope of amended section 25 is very wide and plenary and extensive powers have been conferred on this Court as it stands now. In the case of Durgesh Sharma versus Jayshree (supra), this Court held that section 23 must be read subject to section 25 and even if the High Court had the power to transfer a case from one State to another, that must be taken to have been withdrawn from 1.1.1997 when the Amending Act of 1976 came into force. The Amending Act had failed to delete section 23 (3) and therefore this Court had to make it clear that section 23 (3) will be subject to section 25 of the Act. In para 55 of the judgment, **C.K. Thakker, J.** held as follows:-

"It is no doubt true that even when section 25 in the present form was substituted by the Amendment Act of 1976, sub-section (3) of Section 23 of the Code has neither been deleted nor

*amended. That, however, is not relevant. Since in our considered view, Section 23 is merely a procedural provision, no order of transfer can be made under the said provision. If the case is covered by section 25 of the Code, it is only that section which will apply for both the purposes, namely, for the purpose of making application and also for the purpose of effecting transfer. On the contrary, reading of sub-section (3) of section 23 of the Code in the manner suggested by the learned counsel for the respondent wife would result in allowing inroad and encroachment on the power of this Court not intended by Parliament. **Section 23, therefore, in our considered view, must be read subject to Section 25 of the Code.**".....*

(emphasis supplied)

Thereafter in para 57 of that judgment the Court gave a declaration as follows:-

"....We hold that a High Court has no power, authority or jurisdiction to transfer a case, appeal or other proceedings pending in a court subordinate to it to any court subordinate to another High Court in purported exercise of power under sub-section (3) of Section 23 of the Code and it is only this Court which can exercise the said authority under section 25 of the Code....."

35. **Reading down a section to save it from being ultra vires**

We have noted that the view canvassed by the respondents that the nomination of the members on the Empowered Standing Committee is a one time act, is possible only if the words are added in section 21 (3) of the Act as pointed out above. The intention of the legislature as seen from the provisions of the Act and the Rules is to have a 'Mayor-in-Council' who enjoys the confidence of the Municipal House. The Empowered Standing Committee along with him is vested with the executive power and is expected to run the municipal governance. There is no reason to treat the subsequently elected Mayor differently, and deny him the right to nominate his nominees on the Empowered

Standing Committee which right is available to the duly elected Mayor under section 21 (3) of the Act. Except for the fact that the person who is elected as the Mayor after the no confidence motion is passed against the first Mayor, is elected subsequent to the first Mayor, there is no ground to classify the subsequent Mayor differently from the first Mayor. The view canvassed by the respondents would lead to a conflict between the newly elected Mayor and the other members of the Empowered Standing Committee if they are not nominated by him. That was surely not the intention of the legislature. Considering the powers which are available to the Empowered Standing Committee, if the newly elected Mayor is not read as having the power to nominate his nominees on the Empowered Standing Committee, he will be treated dissimilarly and such an interpretation will make section 27 violative of Article 14 of the Constitution and contrary to the powers of the Mayor under section 21(3) of the Act. The only way, therefore, to save section 27 is to read it down by implication, and to make it subject to sections 25 (4), 23 (3) and 21 (3) of the Act, thereby, holding that the nominated members shall also automatically vacate their office when the Mayor nominating them is no longer in the office. Thus, the newly elected Mayor will also have the authority to nominate seven members of his choice on the Empowered Standing Committee.

36. This has been the approach adopted by this Court in similar cases for instance by the Constitution Bench in **20th Century Finance Corpn. Ltd. Vs State of Maharashtra**, reported in **2000 (6) SCC 12**. Amongst others, in that

matter the Constitution Bench was concerned with the Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985. Explanation to section 2(10) of that Act deemed the transfer of right to use any goods to have occurred in the State of Maharashtra if the goods were located within the State at the time of their use, irrespective of the place where agreement of such transfer of the right is made and therefore included deemed sales (i) which are in the course of inter-State trade and commerce; (ii) sales outside the State of Maharashtra; and (iii) sales which occasioned import of goods into India. Section 3 laid down that subject to the provisions contained in the Act and Rules, tax shall be leviable on the turnover of sales and therefore turnover necessarily has to include outside sale and sale in the course of inter-State trade and commerce and sales which occasioned import of goods. Although Section 8-A of the Act provided that nothing in this Act would be deemed to impose or authorize imposition of any tax on a sale outside the State or in the course of the import or export or inter-state trade or commerce but the explanation has not been amended accordingly. There is a provision for exemption of turnover related to goods in respect of which tax has already been paid under the Bombay Sales Tax Act, 1952, but there is no provision that such exemption would be available in case of goods which have suffered sales tax under the other Sales Tax Laws. In the circumstances, this Court held as follows in para 38 (per **V.N. Khare, J** (as he then was) speaking for the majority on the bench):-

"We are, therefore, of the view that since the explanation has not been amended in conformity with Section 8-A of the Act, the explanation to Section 2(10) of the Maharashtra Act transgresses the limits of legislative power conferred on the State Legislature under Entry 54 of List II and we, thus, instead of striking it down, direct that the explanation to Section 2(10) of the Act shall be read down to this effect that it would not be applicable to the transactions of transfer of right to use any goods if such deemed sale is (i) an outside sale; (ii) sale in course of the import of the goods into or export of the goods out of the territory of India; and (iii) an inter-State sale."

37. **Conclusions**

The above overview clearly shows that after the 74th Amendment to the Constitution, the Municipalities are strengthened and they are given wide ranging powers. The Municipal Laws in other states which we have seen clearly demonstrate that wherever Mayor-in-Council system is adopted, the tenure of the members in the Council is made co-terminus with that of the Mayor. The idea is that the Mayor should have the confidence of the Executive Council or the Empowered Standing Committee, as the case may be, apart from that of the House. The members of the Empowered Standing Committee are authorized to answer the questions on behalf of the Empowered Standing Committee under the Bihar Municipal Act. Thus, there is an element of collective responsibility. The Empowered Standing Committee is supposed to function on the basis of the principle of Democratic Governance in the sense that the decisions are to be taken by the majority. If the new Mayor is not permitted to have his nominees

on the Empowered Standing Committee, the collective functioning will be under jeopardy. Thus, there is a clear omission in the Bihar Municipal Act, 2007 in this behalf.

38. As noted above, the interpretation sought to be placed on section 27 by the respondents requires addition of words in section 21 (3) of the Act. Even after adding the necessary words, the result will be incongruous to a democratic functioning in as much as the nomination on the Empowered Standing Committee will be a one time act and the newly elected Mayor will be at the mercy of the other members of the Empowered Standing Committee. Such a reading will be also be contrary to section 21 of the Act and the newly elected Mayor will be treated dissimilarly as against the earlier elected Mayor for no justifiable reason. Thereby section 27 will be ultra vires to Article 14 of the Constitution. The legislature cannot be attributed such an intent. On the other hand, reading section 27 by making a cross-reference and making the same subject to sections 25 (4), 23 (3), 21 (3) and 21 (4) will lead to a harmonious functioning of the Municipal Corporation and will also save the section from being ultra vires Article 14. The judgment of the Division Bench of the Patna High Court in Jagdish Singh Vs. State of Bihar (supra) and that of the full bench of that Court in Jitendra Kumar Vs. State of Bihar (supra) do not lay down the correct legal position and are overruled.

39. In the circumstances, we allow this appeal. Impugned judgment and order passed by the Division Bench of the Patna High Court in Writ Petition

bearing No. CWJC 9981/2010, dated 8th July, 2010, is set aside. The said writ petition filed by the appellant herein stands allowed in part. Section 27 of the Bihar Municipal Act 2007, shall be read down harmoniously with and subject to sections 25 (4), 23 (3), 21 (3) and 21 (4) of the said Act. The respondent no.3, the District Magistrate, Patna, Bihar is consequently directed to administer the oath of secrecy under Section 24 of the Act to the seven Municipal Councillors nominated by the appellant to the Empowered Standing Committee. The appellant as well as the members of the Empowered Standing Committee shall be entitled to exercise all the powers as the Mayor and the members of the Empowered Standing Committee as provided in the Bihar Municipal Act, 2007, in accordance with law.

40. Parties will bear their own costs of the proceedings.

.....J.
(J.M. Panchal)

.....J.
(H.L. Gokhale)

New Delhi

Dated: 19th April, 2011

