

(2021) 06 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition (ST) No. 10544, 10801, 10828 Of 2021

Bhagwan Shankar Bhalerao

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Bombay Provincial Municipal Corporation (Conduct Of Election For The Post Of Chairman Of Standing Committee, Transport Committee, Ward Committee, Etc.) Rules, 2007 — Rule 2(3)
Municipal Corporations Act, 1949 — Section 6, 20, 20(2), 20(3), 20(4), 20(5), 21, 21(1), 21(3), 21(5), 451

Citation : (2021) 06 BOM CK 0028

Hon'ble Judges : S.J. Kathawalla, J; Surendra P. Tavade, J

Bench : Division Bench

Advocate : Sharan Jagtiani, Shradha Achliya, Minal J. Chandnani, N. R. Bubna, R. S. Kohli, Vikram Chavan, Chandni Bhatt, Tasneem Khata, P. J. Gavhane, Suresh M. Kamble, Mandar V. Limaye

Final Decision : Disposed Of

Judgement

S.J.Kathawalla, J

1. The above three Writ Petitions pertain to the reconstitution of the Standing Committee and election of a Chairman to the Standing Committee of

Ulhasnagar Municipal Corporation (the Corporation). The Petitioners in each of the three Petitions are elected Councillors of the Corporation

and either present or former members of the Standing Committee. Although the reliefs sought in Writ Petition (St) No. 10544 of 2021 are different

from the reliefs sought in Writ Petition (St) No. 10801 of 2021 and Writ Petition (St) No. 10828 of 2021, they arise out of common set of facts and

have a direct bearing on each other and raise common questions of law. In view thereof, we considered it desirable to hear all these Petitions

together.

2. By consent of parties, these Writ Petitions were heard finally at the admission stage and are being disposed of by this common Order.

3. Writ Petition (St) No.10801 of 2021 has been filed by Shri Bhagwan Bhalerao (â??Shri Bhaleraoâ??), who is an elected Councilor of the

Corporation. Shri Bhalerao was appointed as a member of the Standing Committee of the Corporation w.e.f. 1st April, 2021, pursuant to a resolution

dated 22nd March, 2021 passed by the Corporation at its general body meeting. Respondent No.1 is the State of Maharashtra through its Under

Secretary, Urban Development Department, Government of Maharashtra (â??State Governmentâ?). Respondent No.2 is the Divisional

Commissioner, Navi Mumbai (â??the Divisional Commissionerâ?). Respondent No.3 is the Collector, Thane (â??the Collectorâ?). Respondent No.4

is Ulhasnagar Municipal Corporation through its Commissioner. Respondent No.5 is Ulhasnagar Municipal Corporation through its Secretary

(â??Municipal Secretaryâ?).

3.1 By the said Resolution dated 22nd March, 2021, 8 members of the Standing Committee retired and 8 new members were appointed in place of the

retiring members. This was consistent with the mandate of the Maharashtra Municipal Corporations Act, 1949 (â??the Actâ?), and specifically

Section 20 that deals with the constitution of the Standing Committee of a Municipal Corporation. The reconstituted Standing Committee with the 8

new members was to take effect from 1st April, 2021.

3.2 After constitution of the new Standing Committee w.e.f. 1st April, 2021, the Municipal Secretary with the consent of the Collector, issued a Notice

dated 8th April, 2019 calling for a Special Meeting of the Standing Committee on 15th April, 2021, for election of the Chairman of Standing

Committee. The election of a Chairman of the Standing Committee is provided for by Section 21 of the Act.

3.3 However, the State Government vide its direction dated 9th April, 2021 directed all Municipal Corporations, Collectors, etc. to postpone the

election for appointment of Chairman and members to the Standing Committee till further orders, in view of the strict lockdown imposed by the State

Government on 4th April, 2021 due to huge rise in the number of cases due to second wave of Covid-19 pandemic. Upon receiving the aforesaid

direction dated 9th April, 2021 from the State Government, the Collector vide its letter dated 9th April, 2021 addressed to the Corporation, postponed

the election for Chairman of the Standing Committee, scheduled on 15th April, 2021.

3.4 Pursuant thereto, the State Government after re-considering the Covid- 19 situation, by an order dated 6th May, 2021 informed all Municipal

Corporations that the tenure of the Chairman and members of the Standing Committee who had retired, shall stand extended until further orders.

According to the Petitioner in Writ Petition St. No. 10801 of 2021, despite a new Standing Committee having already taken charge of their office w.e.f.

1st April, 2021, the aforesaid letter/order was issued by the State Government to the Corporation.

3.5 In view thereof, the Petitioner filed the said Petition challenging the said order dated 6th May, 2021 and sought the following reliefs :

â??a. That this Honâ??ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the

respondents 1 and 4 for not implementing the said Order issued by Respondent No.1 bearing reference number Corona-2020/Sr.No.76/UD-

14, dated 06/05/2021 relating to Standing Committee which has already been reconstituted in form of Appointment of New Members &

Retirement of Old Members, as the said Order is NOT APPLICABLE to Ulhasnagar Municipal Corporation. b. That this Honourable Court

be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 3 & 4 to conduct the

democratic election process for Chairman of Standing Committee either in form of ONLINE or OFFLINE so that one of members among 16

newly appointed body of Corporators as Standing Committee within a stipulated period not beyond 7 days as prescribed u/s 21(5) of the

Maharashtra Municipal Corporation Act 1949.â??

4. Writ Petition (St) No. 10828 of 2021, has been filed by Shri Deepak Sirvani (â?? Shri Sirvaniâ?), who is an elected Councilor of the

Corporation. Shri Sirvani was also appointed as a member of the Standing Committee of the Corporation w.e.f. 1st April, 2021, pursuant to the

aforesaid resolution dated 22nd March, 2021 passed by the Corporation. By the aforesaid Writ Petition, Shri Sirvani is also challenging the order dated

6th May, 2021 issued by the Urban Development Department on the ground that the said order is not applicable to the Corporation as a Standing

Committee has already been constituted w.e.f. 1st April, 2021.

5. Writ Petition (St) No. 10544, has been filed by Shri Vijay Chahu Patil (â??Shri Patilâ?), who is an elected Councilor of the Corporation from Ward

19. Shri Patil was elected as a member of the Standing Committee of the Corporation in 2019 and was also elected as the Chairman of the Standing

Committee on 29th October, 2020. Shri Patil retired as a member of the Standing Committee from 1st April, 2021 pursuant to the Resolution dated

22nd March, 2021 passed by the Corporation at its general body meeting. In this Petition, Respondent No. 1 is the State of Maharashtra, through the

Principal Secretary Urban Development Department, Government of Maharashtra. Respondent No. 2 is the Corporation through its Municipal

Commissioner. Respondent No. 3 is the Municipal Secretary.

5.1 This Petition challenges the Notice dated 8th April, 2021 issued by the Municipal Secretary calling for a Special Meeting of the Standing

Committee on 15th April, 2021, for election of its new Chairman. However, there is no challenge to the Resolution of 22nd March, 2021, which

provides for the retirement of 8 members (including this Petitioner) and appointment of 8 new members to the Standing Committee with effect from 1st

April, 2021.

5.2 According to Shri Patil the said Notice is illegal, pre-mature and void ab initio as he was appointed as the Chairman of Standing Committee on 29th

October, 2020 and his tenure of one year has not yet concluded and no new Chairman can be appointed before that. Being aggrieved by the said

Notice dated 8th April, 2021, Shri Patil has filed this Writ Petition inter alia seeking the following reliefs :

â??(a) That this Honâ??ble Court after having ascertained the facts in the case in hand and in light of the relevant provisions of law be

pleased to hold and declare that the actions of the Respondent No.3 in issuing the Impugned Notice dated 8th April, 2021 being Exhibit

â??Aâ?? to the petition, is per se illegal, unconstitutional and void ab initio;

(b) That this Honâ??ble Court be pleased to issue a writ of certiorari and/or any other writ and/or order and/or direction in the nature of

certiorari thereby quashing and setting aside the impugned Notice dated 8th

April, 2021 bearing outward no. UMP/SK/1/2021 issued by

Respondent No.3 (being Exhibit A to the present Petition);

(c) That this Hon'ble Court be pleased to pass appropriate orders and/or directions thereby directing the Respondent No.3 to refrain

from issuing any such notice/s calling for Standing Committee meeting for election of the Chairman of the Standing Committee until the

expiry of the term of the Petitioner's appointment as the Chairman of the Standing Committee i.e. 28th October 2021.

6. An oral intervention application was sought to be made at the final hearing of the aforesaid Writ Petitions by the remaining seven members of

the erstwhile Standing Committee (Intervenors), who had retired pursuant to the Resolution dated 22nd March, 2021 passed by the Corporation.

By the said intervention application, the Intervenors sought to challenge the appointment of a new Chairman of the Standing Committee and have

adopted the submissions made by Shri Kohli, Advocate on behalf of Shri Patil.

7. The facts necessary for deciding the aforesaid Writ Petitions are briefly set out hereunder :

7.1 The general elections of the Corporation were held in February 2017, when 78 councilors including Shri Bhalerao, Shri Sirvani and Shri Patil were elected.

7.2 After the general elections, the first meeting of the Corporation was held on 5th April, 2017 and a Standing Committee of the Corporation, consisting of sixteen members, was appointed.

7.3 On 1st April, 2018, one half of the Standing Committee members i.e. 8 members out of the 16 members retired and 8 new members were appointed in place of the retiring members.

7.4 On 1st April, 2019, one half of the Standing Committee members i.e. 8 members out of the sixteen members retired and eight new members were appointed in place of the retiring members. Shri Patil was one of the newly appointed members of the Standing Committee.

7.5 In March 2020, there was an outbreak of Covid-19 pandemic and a lockdown was imposed in the country.

7.6 In view of the said lockdown, a general Body Meeting of the Corporation for appointment of new Standing Committee w.e.f. 1st April, 2020, could

not be held in March 2020.

7.7 Thereafter, a new Standing Committee was appointed in October 2020.

7.8 Pursuant to appointment of the new Standing Committee, a Notice dated 22nd October, 2020 was issued by the Municipal Secretary, calling upon

a Special Meeting on 29th October, 2020 for election of the Chairman of the Standing Committee.

7.9 A Special Meeting of the Standing Committee was held on 29th October, 2020 and Shri Patil was appointed as the Chairman of the Standing Committee.

7.10 Thereafter, a Notice dated 12th March, 2021, was issued by the Corporation informing all its members that a general body meeting shall be held

on 22nd March, 2021 inter alia for appointment of 8 new members to the Standing Committee in place of the 8 members who were to retire from 1st

April, 2021.

7.11 On 22nd March, 2021, the general body meeting of the Corporation was held and a resolution was passed by the Corporation, accepting the

appointment of 8 new members, including Shri Bhalerao and Shri Sirvani, to the Standing Committee in place of the 8 retiring members (including Shri

Patil). This Resolution itself states that the reconstituted Standing Committee will take effect on 1st April, 2021.

7.12 Pursuant thereto, on 1st April, 2021, the 8 erstwhile members (including Shri Patil), retired as members of the Standing Committee and 8 new

members (including Shri Bhagwan Bhalerao and Shri Dipak Sirvani), took charge of their office.

7.13 After appointment of the Standing Committee, a Notice dated 8th April, 2021, was issued by the Municipal Secretary with the permission of the

Collector, calling for a Special Meeting of the Corporation on 15th April, 2021, for election of the Chairman of Standing Committee.

7.14 However, on 9th April, 2021, the State Government issued a letter to all Municipal Commissioners, Divisional Commissioners, Collectors, etc.

inter alia stating that a strict lockdown had been imposed by the State Government on 4th April, 2021 in view of the huge rise in the number of cases

due to second wave of Covid-19 pandemic. In view thereof, by the said letter the State Government directed that the election of Chairman and

members of the Municipal Corporation, Nagar Parishad and Nagar Panchayat be

postponed until further orders.

7.15 Upon receiving the aforesaid direction, the Collector addressed a letter dated 9th April, 2021 to the Corporation inter alia informing them that in

view of the aforesaid direction received from the State Government, the election for Chairman of the Standing Committee scheduled on 15th April,

2021 shall stand postponed.

7.16 In view thereof, the Corporation vide its letter dated 12th April, 2021, informed all its members that the election for the Chairman of Standing

Committee, scheduled on 15th April, 2021 shall stand postponed in view of aforesaid letter dated 9th April, 2021 received from the Collector.

7.17 On 6th May, 2021, the State Government after re-considering the Covid-19 situation, by its letter/order inter alia informed all Municipal

Corporations (including the Ulhasnagar Municipal Corporation) that the tenure of the Chairman and members of the Standing Committee who had

retired, shall stand extended until further orders. A copy of the said letter/order dated 6th May, 2021 was also issued to the Corporation.

7.18 In view of the above Shri Bhalerao and Shri Sirvani fled Writ Petition Nos. 10801 and 10828 inter alia impugning the said letter / order dated 6th

May, 2021.

8. On 19th May, 2021, when the aforesaid Writ Petitions came up for hearing, a statement was made by the Advocate appearing for the State

Government, on instructions of the Under Secretary, Urban Development Department, Government of Maharashtra that the said order dated 6th May,

2021 issued by the State Government was not applicable to the newly elected members of the Standing Committee of the Corporation and the

members of the earlier Standing Committee will not be allowed to continue as its members where fresh elections have already been held and declared.

We accepted the said statement made on behalf of the State Government and passed the following Order :

1. The Learned AGP on instructions states that the Order dated 6th May, 2021 passed by the State Government will not be made

applicable to the newly elected members of the standing committee i.e. the members of the earlier standing committee will not be allowed to

continue as members of the standing committee where fresh elections of the standing members are already held and declared. The statement

is accepted. Prayer Clause (a) of the Writ Petition is therefore rendered infructuous.

2. Consequently prayer clause (b) has to be allowed. However, Advocate Kohli states that he has filed a Petition being (St.) No.10544 of

2021 on behalf of the earlier Chairman which Writ Petition needs to be heard alongwith the above Writ Petition. Advocate Kohli undertakes

to serve a copy of his Writ Petition on the Advocates for the Petitioners in the above two Petitions and also on the Advocate for the

Corporation. By consent, the above Petition alongwith Petition (St) No.10544 of 2021 are placed for hearing on 21st May, 2021, High on

Board.â??

8.1 In view of the aforesaid statement made on behalf of the State Government, prayer clause (a) as sought by Petitioner in Writ Petition (L) No.

10801 of 2021 became infructuous inasmuch as even the State Government that had issued the impugned direction or notification of 6th May, 2021

accepted that it would not apply to the reconstituted Standing Committee of the Ulhasnagar Municipal Corporation, which reconstitution had come into

effect on 1st April, 2021. Consequently, what remained for consideration was prayer clause (b) therein, being a direction to the Collector and

Corporation for holding election for appointment of a Chairman of the Standing Committee. Whilst we had expressed that the grant of prayer (b) must

follow from the statement made by the State Government, since it was being opposed by Shri Kohli, learned Advocate appearing for Shri Patil in Writ

Petition (St) No. 10544 of 2021, we directed that his Petition be listed on the next date.

8.2 In view thereof, before passing any direction to the Collector and Corporation for holding election of Chairman to the Standing Committee of the

Corporation, we considered it necessary to hear all the parties on prayer clause (b) as sought by Shri Bhalerao in his Writ Petition (L) No. 10801 of

2021. Accordingly, by consent of parties, all the Writ Petitions were heard together finally on 21st May, 2021.

9. In order to decide whether Shri Bhalerao is entitled to grant of prayer clause (b), as sought in his Writ Petition (St) No. 10801 of 2021, the

following issues will have to be considered :

(i) Issue No.1 : Whether the tenure of Shri Patil as the Chairman of the Standing

Committee has concluded by reason of him retiring as a member of the Standing Committee?; Consequently, whether his office as Chairman can continue only upto his membership of the Standing Committee ?

(ii) Issue No.2 : Whether the Standing Committee constituted as of 1st April, 2021 is barred, under Section 21(5) of the Maharashtra Municipal

Corporation Act, 1949 (the said Act) from appointing a Chairman of the Standing Committee by reason of thirty days from the date of its reconstitution having elapsed ?

10. As regards Issue 1 set out in paragraph 9 above, Shri R.S. Kohli, learned Advocate appearing on behalf of Shri Patil submitted that due to outbreak of Covid-19 pandemic in March 2020, there was a delay in appointment of the new members and Chairman of the Standing Committee.

Subsequently, the new Standing Committee was appointed in October 2020. After the Standing Committee was appointed, the elections of

appointment of Chairman of the Standing Committee were held on 29th October, 2020 and Shri Patil was appointed as its Chairman. According, to

Shri Kohli, the tenure of Shri Patil as Chairman was for a period of one year from the date of his appointment and the same would expire in October

2021. In view thereof, Shri Kohli submitted that the Notice dated 8th April, 2021 issued by the Municipal Secretary calling for a Special Meeting for

appointment of new Chairman of Standing Committee is illegal, pre-mature and void ab initio and no new Chairman of the Standing Committee can be

appointed before October 2021, as sought by Shri Patil.

10.1 Shri Sharan Jagtiani, learned Senior Advocate, and Shri N.R. Bubna learned Advocate, opposed the aforesaid contention raised by Shri Kohli and

submitted that the tenure of Shri Patil as Chairman of the Standing Committee has already concluded. Shri Jagtiani and Shri Bubna submitted that

under Section 21(1) of the said Act, a Chairman of a Standing Committee is required to be appointed from amongst its sixteen members. Further,

under Section 21(3) of the said Act, if a Chairman ceases to be a member of the Standing Committee, he is required to immediately vacate his office as

a Chairman. He submitted that in the present case, Shri Patil admittedly retired as a member of the Standing Committee w.e.f. 1st April, 2021,

pursuant to the resolution passed by the Corporation at its General Body Meeting held on 22nd March, 2021. Further, according to him as Shri Patil

has not challenged the said resolution, he has thereby accepted his retirement as a member of the Standing Committee. In view thereof, Shri Jagtiani

submitted that the tenure of Shri Patil as a Chairman of the Standing Committee has ceased upon his retirement as a member of the Standing

Committee w.e.f. 1st April, 2021 and having retired as a member of the Standing Committee on 1st April, 2021 Shri Patil could not have continued

and/or cannot continue to be its Chairman thereafter.

10.2 Without prejudice to his aforesaid argument, Shri Jagtiani submits that the contention of Shri Patil that his tenure as a Chairman of Standing

Committee is of one year from the date of his election i.e. 29th October, 2020 is thoroughly misconceived. According, to Shri Jagtiani, from a conjoint

reading of Sections 20 and 21 of the said Act, it is clear, that the tenure of the Standing Committee is of one year to be reckoned, in the first instance,

from the first date of the month in which the first meeting after a general election for appointing a Standing Committee and for period of one year for

every successive year thereafter. Its constitution changes every year when one half of its members retire, in the same month in each succeeding year,

in which the first meeting of the Corporation after its General election was held. Thus, according to Shri Jagtiani, irrespective of the date of

appointment/election of the members and Chairman of the Standing Committee, the date of their retirement is fixed under the said Act, being the first

day of the month in which the first meeting of the Corporation after its General election was held, and the same cannot be altered. He further

submitted that, even if the members or the Chairman of the Standing Committee are appointed late, for any reason, whatsoever, it would not extend

the term of their office beyond the aforesaid period.

10.3 Shri Jagtiani submitted that in the present case, the general elections of the Corporation were held in 2017 and the first meeting of the Corporation

after its general elections, was held on 5th April, 2017. Thus, as per Section 20(3) of the said Act, every succeeding year, one half of the members of

the Standing Committee and its Chairman retired on first day of April and these members were substituted with fresh members under Section 20(5) of

the said Act. However, in 2020, due to outbreak of Covid-19 pandemic, the Standing Committee and its Chairman were appointed in October 2020.

Despite their appointment in October 2020, 8 members of the Standing

Committee retired on 1st April, 2021 in accordance with Section 20(3) of the said Act and a new Standing Committee was appointed from 1st April, 2021. Thus, according to Shri Jagtiani, even though Shri Patil was appointed on 29th October, 2020, his tenure as the Chairman of the erstwhile Standing Committee concluded on 1st April, 2021.

10.4 In support of its aforesaid contention, Shri Jagtiani relies upon the judgment of this Court in Prashant Prabhakar More v State of Maharashtra &

Ors. 2010 (3) Mh.L.J. 497 wherein the issue that arose for consideration before this Honâ??ble Court was whether the tenure of a Standing

Committee appointed in June would continue till June of next year or whether the same would expire in March of the succeeding year, being the

month in which the first meeting of the Corporation after its general elections was held. Shri Jagtiani submitted that after considering the purport of

Sections 20 and 21, this Court upheld the latter view, as that is the invariable mandate of the law.

11. As regards Issue No.2 set out in paragraph 9 above, Shri Kohli on behalf of Shri Patil submitted that under Section 21(5) of the said Act, the

Standing Committee was required to appoint a Chairman within 30 days from the date of its appointment i.e., 1st April, 2021. The Standing Committee

having failed to appoint the Chairman within 30 days, the Corporation was required to call for a Special Meeting to appoint the Chairman within 15

days from the expiry of the aforesaid 30 days period. Shri Kohli submitted that as both the Standing Committee and Corporation failed to appoint the

Chairman within the time stipulated under Section 21(5), the Standing Committee is barred by limitation to appoint a new Chairman and no new

Chairman can be appointed now.

11.1 Shri Jagtiani and Shri Bubna opposed the aforesaid contention and submitted that after appointment of the Standing Committee on 1st April, 2021,

the Standing Committee immediately took steps for appointment of a Chairman. A Notice dated 8th April, 2021 was issued by the Municipal Secretary

with the consent of the Collector for holding election of the Chairman of the Standing Committee on 15th April, 2021. However, the said election was

postponed in view of the letter/order dated 9th April, 2021 issued by the State Government directing the Municipal Corporations, Collectors to

postpone the election of Chairman and members of Standing Committee until

further orders, in view of huge rise in the number of cases due to Covid-19 pandemic. Thereafter, on 6th May, 2021, the State Government issued a letter/order directing that the tenure of the Chairman and members of the Standing Committee who had retired, shall stand extended. Till the clarification issued during the course of these proceedings, it was understood by all that 6th May, 2021 was intended to apply even to the newly reconstituted Standing Committee of the Ulhasnagar Municipal Corporation.

11.2 Shri Jagtiani submitted that after filing of the Writ Petition (L) No. 10801 of 2021 by Shri Bhalerao, a statement was made on behalf of the State

Government on 19th May, 2021, that the aforesaid letter/order dated 6th May, 2021 issued by them was not applicable to the Corporation as a new

Standing Committee of the Corporation had already been appointed. Shri Jagtiani submitted that applying the same analogy, the State Government

could also not have issued the direction dated 9th April, 2021, postponing the election of the Chairman of the Standing Committee, as the Standing

Committee had already been appointed on 1st April, 2021. Further, he submitted that the power of the State Government to issue the direction dated

9th April, 2021 is not relatable to Section 451 of the said Act and that is no one's submission. Thus, Shri Jagtiani submitted that the said direction

dated 9th April, 2021 issued by the State Government postponing the election of the Chairman of the Standing Committee was without any authority of

law and cannot now deprive the Standing Committee of its right to appoint its Chairman.

11.3 Shri Jagtiani submitted that under the said Act, the State Government does not have any power to cancel or suspend the election for appointment

of the Chairman of Standing Committee. He submitted that infact under Rule 2(3) of the Bombay Provincial Municipal Corporation (Conduct of

Election for the post of Chairman of Standing Committee, Transport Committee, Ward Committee, etc.) Rules, 2007 (the said Rules), once the

meeting for election of Chairman is scheduled, the same cannot be cancelled or postponed.

11.4 Shri Jagtiani further submitted that under Section 21(5) of the said Act, a Standing Committee is required to appoint a Chairman, within 30 days

from the date of its appointment. However, if the Standing Committee, fails to do so, the Corporation is required to appoint the Chairman within 15

days from the expiry of the aforesaid 30 days period. The Corporation has not initiated any such steps because even the Corporation has not

understood the 30 days period for election of a Chairman as being over, in the facts of the present case.

11.5 Shri Jagtiani, without prejudice to his aforesaid argument also submitted that the period from 15th April, 2021 onwards cannot be included in the

30 days period as prescribed under Section 21(5) of the said Act and the Standing Committee is therefore well within the period of limitation as

prescribed under Section 21(5) of the said Act, to appoint its Chairman.

11.6 Strictly without prejudice to its aforesaid contentions, Shri Jagtiani submitted that on purposive and harmonious reading of Sections 20 and 21, the

valuable right of a Standing Committee to appoint its Chairman cannot be taken away unless the failure to appoint a Chairman was attributable to the

Standing Committee. He submitted that as the delay in appointment of the Chairman was not attributable to the Standing Committee, it cannot be

deprived of its right to appoint a Chairman and therefore prayer clause (b) as sought by Shri Bhalerao ought to be granted.

11.7 Shri Mandar Limaye representing the Intervenors has adopted all the submissions made by Shri Kolhi representing Shri Patil in WP (ST)No.

10544 of 2021.

12. We have considered the facts in the above Petitions and the submissions advanced by the learned Advocates before us. The issues that arise for

consideration relate primarily to the provisions of Sections 20 and 21 of the Act. For convenience, these provisions in their entirety are reproduced

below :

â??20. Constitution of the Standing Committee:

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

(2) The Corporation shall at its first meeting after general elections appoint sixteen persons out of its own body to be members of the Standing

Committee.

(3) One-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which the first

meeting of the Corporation mentioned in sub-section (2) was held :

Provided that all the members of the Standing Committee in office when general

elections are held shall retire from office on the election of a new Committee under sub-section (2).

(4) The members who shall retire under sub-section (3) one year after their election under sub-section (2) shall be selected by lot at such time previous to the date for retirement specified in sub-section (3) and in such manner as the Chairman of the Standing Committee may determine, and in succeeding years the members who shall retire under this section shall be those who have been longest in office:

Provided that, in the case of a member who has been reappointed, the term of his office for the purposes of this sub-section shall be computed from the date of his reappointment.

(5) The Corporation shall at its meeting held in the month preceding the date of retirement specified in sub-section (3) appoint fresh members of the Standing Committee to fill the offices of those who are due to retire on the said date.

(6) Any Councillor who ceases to be a member of the Standing Committee shall be eligible for reappointment.

21. Appointment of the Chairman of the Standing Committee:

(1) The Standing Committee shall at its first meeting after its appointment under sub-section (2) of section 20 and at its first meeting in the same month in each succeeding year appoint one of its own number to be the Chairman.

(2) The Chairman shall hold office until his successor has been appointed under sub-section (1) but shall be eligible for reappointment.

(3) Notwithstanding the provisions of sub-sections (1) and (2) the Chairman shall vacate office as soon as he ceases to be a member of the Committee.

(4) If any casual vacancy occurs in the office of the Chairman, the Standing Committee shall, as soon as conveniently may be after the occurrence of the vacancy, appoint one of its number to fill such vacancy and every Chairman so appointed shall continue in office so long only as the person in whose place he is appointed would have held it if such vacancy had not occurred.

(5) If for any reason the Standing Committee does not appoint the Chairman under sub-section (1) or (4), within a period of thirty days from the date of its appointment under sub-section (2) of section 20, or from the date following the date of retirement of one-half of the members specified in sub-

section (3) of that section, or from the date on which a casual vacancy occurs in the office of Chairman, as the case may be, the appointment of the

Chairman, after the expiry of the said period, shall be made by the Corporation, from amongst the members of the Standing Committee, at a special

meeting called and held for the purpose within fifteen days from the expiry of the said period of thirty days. At such meeting, the question shall be

decided by a majority of votes of the Councillors present and voting and if there be an equality of votes, the presiding authority shall have and exercise

a second or casting vote. Every Chairman so appointed, shall continue in office so long only as the Chairman appointed by the Standing Committee

would have continued in office.â??

13. We will now deal with Issue No. 1 which is once again reproduced hereunder for ready reference :

Whether the tenure of Shri Patil as the Chairman of the Standing Committee has concluded by reason of him retiring as a member of the Standing

Committee?; Consequently, whether his office as Chairman can continue only upto his membership of the Standing Committee?

13.1. As regards Issue No. 1 the submission of Shri Kohli on behalf of Shri Patil is that his office as Chairman for the previous Standing Committee

must continue for one year from the date of his appointment as Chairman in October 2020. As noted above, Shri Patil has in his Petition not

challenged his retirement as a member of the Standing Committee by the Resolution of 22nd March, 2021, w.e.f 1st April, 2021.

13.2 Considering that Shri Patil has retired as a member of the Standing Committee as one of the 8 retiring members, as part of the process of

reconstituting the Standing Committee every year, as contemplated by Section 20(2) and 20(3) of the Act, the submission that he must however

continue as Chairman of the Standing Committee is wholly untenable and without merit. There can be no manner of doubt, on a bare perusal of

Sections 20 and 21 of the Act, that a Chairman of the Standing Committee must first and foremost be a member of the Standing Committee.

Admittedly, Shri Patil is not a member of the Standing Committee having retired on 1st April, 2021.

13.3 In this view of the matter, there is absolutely no legal basis for the contention that he must be deemed to continue as Chairman and by necessary

implication as a member of the Standing Committee because he has not completed a term of one year from October 2020, when he was elected as

Chairman of the previous Standing Committee.

13.4 We are supported in this view by Section 21(1), which requires the Standing Committee appoint "one of its own" as a Chairman. Obviously,

that Chairman can not be Shri Patil who is not a member of the Standing Committee with effect from 1st April, 2021. Section 21(3) of the Act has a

direct bearing on this matter and clearly stipulates that the Chairman shall vacate office as soon as he ceases to be a member of the Committee. This

completely concludes the matter against Shri Patil and precludes any continuation as a Chairman if Shri Patil is not a member of the Standing

Committee itself.

13.5 The submission of Shri Kolhi that the period of one year for determining the duration of the office of Chairman (or for that matter the duration of

the term of a Standing Committee member) should be reckoned from October 2020, is equally misconceived. This submission is contrary to the clear

mandate of Section 20(2) and 20(3) of the Act and the settled position as held in the case of Prashant Prabhakar More (supra).

13.6 As per Section 20(2), after every general election, the Corporation shall at its first meeting appoint 16 persons out of its own body to be members

of the Standing Committee. This Standing Committee will have a term of about one year. One half of the members of the Standing Committee shall,

as per Section 20(3) of the Act, retire "at" every succeeding year at noon on the first day of the month in which the first meeting of the Corporation

mentioned in sub-section (2) was held: "at". It is thus clear that the period of one year, which is the term of the Standing Committee before it is

reconstituted after 8 persons retiring and 8 fresh appointments, must be determined from the first day of month in which the first meeting of the

Corporation to appoint its Standing Committee took place and every succeeding year thereafter as determined from this date. In the present case,

there is no dispute that after the last general elections of the Ulhasnagar Municipal Corporation in 2017, the first meeting of the Corporation was in

April, 2017. Therefore, 1st April, of year 2017 and every succeeding year thereafter must be taken as the date on which 8 members of the Standing

Committee are to retire and 8 new members are appointed, as per Section 20(3)

read with Sections 20(4) and 20(5) of the Act. If in a particular year the reconstitution and appointment of new members to the Standing Committee is delayed, as may have happened in 2020 on account of the Covid 19 Pandemic, that cannot have the effect of extending the term of the members of that Standing Committee beyond 1st April of the next succeeding year. There is nothing in the Act which says that the one year duration before reconstitution of the Standing Committee must be determined from the date of the last reconstitution of the Standing Committee. It is perhaps for this reason that Shri Patil has not challenged Resolution of 22nd March, 2021 by which his retirement comes into effect on 1st April, 2021. That being so, his term as Chairman cannot be extended beyond 1st April, 2021.

13.7 We are supported in this view by the judgment in Prashant Prabhakar More (supra), relied upon by Shri Jagtiani. In paragraphs 13 to 20, a Division Bench of this Court, in interpreting Section 20 of the Act, have held as follows :

“13. That takes us to the principal question to be decided by us. Before we proceed further, we think it apposite to reproduce Section 20 of the Act, which has direct bearing on the point in issue. Section 20 reads thus : -

“1. .

We have the advantage of the decision of our High Court in case of Nitin Manga Shirsat (Supra) which had occasion to examine the purport of

Section 20. It will be useful to reproduce the relevant discussion in this decision which has considered the purport of Section 20, in the context of point in issue. The same reads thus :

“So far as election of the Chairman of the new Standing Committee every year, the starting point is the date of retirement of half of the

members specified in sub section (3) of that section. Consequently, the second clause is required to be read with sub-section (3) of section

20. On reference to the said provision, it is evident that the legislation in its wisdom has not left the date of retirement at the option of the

member of the Standing Committee. Half of the members of the Standing Committee, at the end of first year, by procedure of drawing lots

and at the end of succeeding years, the senior half members of the Standing Committee stand retired on the first day of the month in which

the first meeting of the Corporation, as mentioned in sub section (2) of section

20, was held. Thus, even if the first meeting of the Corporation for election of first Standing Committee was held after expiry of major portion of the calendar month, that will not enable the first Standing Committee to continue to be Standing Committee exactly for a period of one year and up to the date of the same calendar month of the succeeding year on which they were elected immediately after general elections. If they are elected on the first day of the calendar month, the tenure of the members of the first Standing Committee may be exactly 365 days. But if they are elected in the general body meeting of the Corporation held on later date of the month the life of the first Standing Committee shall stand curtailed to that extent from exact period of one year. If they are elected on the last day of the calendar month, their tenure practically would be only 11 months. By sub section (3) of section 20, legislation has left no option to the members of the Standing Committee, and they retire on the first day of the month of the succeeding year in which they were elected at the first meeting of the Corporation under section 20(2).â??

(Emphasis supplied)

We are in agreement with the above said opinion. The plain language of sub section (2) leaves no manner of doubt that it is mandatory to appoint 16 persons out of its own body to be members of the Standing Committee â??at its first meetingâ? of the Corporation after general elections. In other words, the Corporation has no option but to appoint 16 persons out of its own body to be members of the Standing Committee â??at its first meeting after general elections.â? That decision cannot be postponed or deferred to some other meeting at all. This is obviously to ensure that the term of the Standing Committee so constituted is co-terminus with the term of the newly elected members of the general body of the Corporation. The term of the general body is circumscribed by the provisions of Constitution of India read with Section 6 of the Act of 1949. That term commences from â??the first meeting after general elections.â? The first meeting of the general body after general elections has to be convened within a reasonable time and in any case before the maximum term of the outgoing general body expires. Lest, it would result in a void situation. The law circumscribes the maximum term of the outgoing general body. Obviously, therefore, to ensure that the term

of the Standing Committee (which is constituted by election of 16 members amongst the general body of the newly elected members of the Corporation) should be co-terminus with the term of the general body which has constituted it, the mandate of sub section (2) is to elect 16 persons thereon in its first meeting after general elections. This is the expectation of law as legislated by the State Legislature.

14. The purport of sub section (3) mandates that one-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of the month in which the first meeting of the Corporation mentioned in sub section (2) was held...This sub section deals with two aspects.

Firstly, that one-half of the members of the Standing Committee shall retire at the prescribed time. Secondly, the proviso envisages that all the

members of the Standing Committee in office shall retire from the office on the election of the new committee under sub section (2). From this provision

it is amply clear that the term of the Standing Committee has to be co-terminus with the term of the outgoing general body which had constituted the

said Standing Committee in its first meeting after the general elections so that the new general body would elect the members out of its own body to be

members of the Standing Committee.

15. In so far as sub-section (4) is concerned, that deals with the right of the members who would retire due to expiry of their term specified in sub-

section (3). Indeed, it provides that the members would retire "one year after" their election under sub section (2), to be eligible for being re-appointed

and their continuation in the office for specified period. Proviso to sub-section (4) envisages that a person is re-appointed, the term of his office for the

purposes of the said sub-section shall be computed from the date of his re-appointment.

16. Taking clue from the opening part of sub section (4), it was argued on behalf of the Respondents that there is guarantee of one year term of the

member of the Standing Committee after the election under sub section (2). Therefore, the sweep of sub section (2) will have to be harmonised with

the said guarantee of one year term as member of the Standing Committee after his election. This submission will have to be stated to be rejected. In

the first place the subject dealt with by sub section (4) is not to guarantee the term of office of the members, but the substance of that provision is that

the outgoing member may offer himself to be reappointed for the specified period. Whereas, sub section (2) is a substantive provision as to when the term of the member of the Standing Committee would expire. There is hardly any option available to the newly elected general body but to appoint 16 persons out of its own body to be members of the Standing Committee at its first meeting after general elections. The emphasis in sub section (2) is to appoint persons as members of the Standing Committee at its first meeting after general elections and not at any point of time as general body may like or other fortuitous circumstances resulting in deferring appointment of persons as members of the Standing Committee beyond the date of the first meeting after general elections.

17. To get over this position, it was argued on behalf of the Respondents that in the fact situation of the present case, it will have to be held that the

Standing Committee was constituted on 12th June 2007 and the first meeting after election on 15th March, 2007 will have no bearing to reckon the

term of members of the sub Committee, inasmuch as the election of the members was as per the directions issued by this Court in Writ Petition No.

2564 of 2007 decided on April 30, 2007. It is not possible to accede to this submission. For the view that we have already taken that for the purpose of

constitution of the Standing Committee, term will relate back to the date of first meeting of the Corporation after general elections. The fact that the

Standing Committee was not so constituted for whatever reason would not extend the term of office of members beyond the term specified in sub

section (3) which mandates that one-half of the members of the Standing Committee shall retire every succeeding year at noon on the first day of

the month in which the first meeting of the Corporation referred to in sub section (2) was held. Since sub section (3) refers to sub section (2),

both these provisions are intertwined. On reading the provisions separately or for that matter conjointly, the mandate for computing the

commencement of the term of office of the Standing Committee will have to be reckoned from the date of the first meeting of the Corporation after the

general elections. No other interpretation is possible. Taking any other view would result in rewriting of the provision which would be against the

legislative intent. Besides, it may result in an uncertainty and also leaving it to the discretion of the Corporation to appoint 16 members out of its own

body to be members of the Standing Committee at any time, whereas the view that we are inclined to take will not only be purposive construction of the relevant provision but also uphold the legislative intent of specifying the date of commencement of the term of the Standing Committee duly elected by the general body.

18. The argument of the Respondents to take a view that term of office as member of the Standing Committee should be reckoned from the date of election and not from the date of the first meeting after general elections and more so that there is guarantee of term at least of one year after the election as is provided in sub section (4), will have to be rejected for more than one reason. Firstly, as aforesaid, sub section (4) deals with entirely different subject of stipulating that the outgoing member may offer himself to be reappointed. This provision cannot control the purport of sub section (2) or for that matter of sub section (3). It will have to be subservient to the regime provided in those sub sections. The fact that sub section (4) refers to period of one year after elections does not mean that it is a provision to guarantee the minimum term of one year from election, in the office of the member of the Standing Committee, as is contended. Besides, this argument, in any case, is not available to the present set of members of the Standing Committee. At best, such argument could have been invoked by the first set of original members who stood retired in March 2008 as their term were to be curtailed below one year from the date of their election.

19. Accordingly, we have no hesitation in taking a view that the term of the Standing Committee, in the fact situation of the present case, commenced on or from 15th March, 2007 for the purpose of computing the term of office of the members of the present Standing Committee, even though, in fact, the elections were held on 12th June 2007.

20. That takes us to the argument in the context of alternative relief claimed by the Petitioner to hold that the term of 8 members of the present Standing Committee of the Respondent-Corporation would expire on 1st April, 2010 and to direct the Respondent Nos.1 to 3 to hold a meeting for election of fresh members of the Standing Committee (eight in numbers) to fill in such vacancies as soon as possible after 1st April, 2010. It is not in dispute that the election to appoint 16 persons out of the newly elected general body to be members of the Standing Committee was held on 7th April,

2007. Moreover, the meeting in which that election was held was considered as the first meeting of the Corporation after general elections, as was notified in the Agenda as well as the Minutes of that meeting. The fact that the said meeting dated 7th April, 2007 was described as or treated as the first meeting after general elections of the Corporation does not take the matter any further. We have already taken a view that the legislative intent to provide certainty to the date on which Standing Committee should be constituted and more so as the sub section (3) in unambiguous terms provides, one-half of the members of the Standing Committee so constituted would retire every succeeding year at noon on the first day of the month on which the first meeting of the Corporation mentioned in sub section (2) was held. It is indisputable that the first meeting after general elections for the purpose of sub section (2) was held on 15th March, 2007. The fact that the subject of appointing 16 persons to be members of the Standing Committee was not considered in the said meeting and that subject stood deferred to the meeting held on 7th April, 2007 would not extricate from the requirement of reckoning the term of members of the Standing Committee as provided in sub section (2) read with sub section (3) of Section 20 of the Act, which has to be the date of the first meeting after general elections, as that was the meeting held as per sub section (2) of the Act.

13.8 For the reasons set out above, we answer the first Issue (in both its parts) in the affirmative. We therefore find no merit in Writ Petition St. No.

10544 of 2021 filed by Shri Patil. The same is accordingly dismissed.

14. We will now deal with Issue No. 2 which is once again reproduced hereunder for ready reference :

Whether the Standing Committee constituted as of 1st April, 2021 is barred, under Section 21(5) of the Maharashtra Municipal Corporation Act, 1949

(the said Act) from appointing a Chairman of the Standing Committee by reason of thirty days from the date of its reconstitution having elapsed?

14.1 This issue pertains to the appointment of Chairman by the Standing Committee after its reconstitution on 1st April, 2021. Ordinarily this should

follow as a matter of course especially since the State Government has now clarified that the Notification of 6th May, 2021 does not apply to the

Ulhasnagar Municipal Corporation, as noted by us above. However, the objection

to the appointment of Chairman and the grant of prayer (b) in Writ

Petition St. No. 10801 of 2021 is to the effect that since the Standing Committee has not appointed a Chairman within 30 days of its reconstitution, it

can no longer do so and that it is now for the Corporation to appoint the Chairman. Shri Kohli and Shri Limaye have relied on Section 21(5) of the Act

in support of their submission.

14.2 Having considered the specific facts of the present case and the relevant provision, we are of the view that there is no merit in this submission

and the Standing Committee as constituted on 1st April, 2021 cannot be deprived of a very valuable right to appoint its own Chairman. Looking to the

scheme of Section 21 there can be no doubt that it is for the Standing Committee in the first instance to appoint its own Chairman. Section 21(5) of the

Act qualifies this by stating "If for any reason the Standing Committee does not appoint a Chairman within a period of thirty days from

the date of its appointment or from the date following the date of retirement of one-half of the members or from the date on which a

casual vacancy occurs in the office of the Chairman, as the case may be, the appointment of Chairman, after the expiry of the said period,

shall be made by the Corporation, from amongst the members of the Standing Committee, at a special meeting called and held for the

purpose within fifteen days from the expiry of the said period of thirty days."

14.3 Looking to the scheme of the Act and the provisions as a whole and given the importance of the Standing Committee having the opportunity to

appoint its own Chairman in the first instance within thirty days, we are of the view that the expression "If for any reason the Standing Committee

does not appoint the Chairman within thirty days" must be read and understood as a reason attributable to the Standing Committee. If there is

inaction or indecision on the part of the Standing Committee in appointing its own Chairman within thirty days, then the important position of Chairman

is determined by the alternative method of the Corporation appointing a Chairman within 15 days thereafter. In our opinion, the expression "if for

any reason" can have no application and cannot result in the Standing Committee members being divested of this right when the reason for not

appointing a Chairman is in no way attributable to them and the appointment of the Chairman was admittedly postponed at the instance of a direction /

order of the State Government on account of the Covid 19 Pandemic.

14.4 Further, the facts of the present case make it clear that the reason for the Chairman not being appointed by the members of the present Standing

Committee cannot justify the loss of this right and opportunity within Section 21(5) of the Act. As noted above, significantly, on 8th April, 2021 the

Municipal Secretary of the Ulhasnagar Municipal Corporation, issued a Notice for holding elections for appointment of the Chairman on 15th April,

2021. It is therefore clear that the Standing Committee has acted with dispatch and a date for electing its own Chairman well within the stipulated

period of thirty days was fixed. On the very next day, i.e., 9th April, 2021, the State Government issued direction and notice to the Collector and all

Municipal Corporations to postpone the elections of Chairman until further orders on account of the Covid-19 Pandemic. On the same day, the

Collector then issued a notice to Municipal Corporations, including the Ulhasnagar Municipal Corporation, directing that the election of Chairman be

postponed on account of the State Government order. Consequently, on 12th April, 2021 the Ulhasnagar Municipal Corporation issued a direction or

order to its members stating that the election of Chairman stands postponed.

14.5 We are of the view that the elections of Chairman by the members of the Standing Committee could not have been postponed by the Statement

Government on 9th April, 2021. We find merit in the submission that there is no legal basis or authority to issue such a specific direction to Municipal

Corporations and the Collector. No authority in law has been pointed out to us to justify the direction or notice of 9th April, 2021. We have considered

Section 451 of the Act and are of the view that it would have no application in a situation such as this. It is this postponement, which was then acted

upon by the Collector and the Ulhasnagar Municipal Corporation that resulted in the election of Chairman by the present Standing Committee not

taking place on 15th April, 2021 as scheduled. We may clarify that even under the State Government Lock Down Orders, some categories of

essential activities were permitted, and it was for the Ulhasnagar Municipal Corporation and the Standing Committee to determine if the election of

appointment of a Chairman on 15th April, 2021 could have proceeded by way of a physical meeting of the Standing Committee members or if it could

have been done by some other means such as by a virtual meeting. It was not

for the State Government to specifically order and direct its postponement.

14.6 Be that as it may, and even assuming that the State Government was entitled to issue the direction of 9th April, 2021 to postpone the election of Chairman, that cannot be attributable to the Standing Committee. Accordingly, the time lost in appointing a Chairman of the Standing Committee cannot result in Section 21(5) being invoked to result in the members of the Standing Committee losing their entitlement to appoint their own Chairman under Section 21 of the Act. It stands to reason that even if the State Government had the power to issue the order and direction of 9th April, 2021, then that time must be excluded from determining the thirty-day period especially when the State Government order of 9th April, 2021 speaks of postponing the appointment of Chairman by the Standing Committee itself. For this reason, also, we do not find any merit in the submission of Shri Kohli and Shri Limaye that due to a delay of thirty days, the members of the reconstituted Standing Committee have lost their right and entitlement to appoint a Chairman from amongst themselves.

14.7 Lastly, it is to be noted that if the State Government has clarified that the order or direction of 6th May, 2021 (which was also on account of the Covid-19 Pandemic) is not to be applicable to the Ulhasnagar Municipal Corporation, then the 9th April, 2021 order or direction ought not to continue to apply to those Standing Committees that were reconstituted before the 6th May, 2021 direction. In our view, the Standing Committee as reconstituted on 1st April, 2021 must be allowed to function in accordance with Section 21 of the Act and to appoint its own Chairman.

14.8 For the reason stated above we answer the Issue No. 2 in the negative. Prayer (b) of Writ Petition St. No. 10801 of 2021 is allowed. We direct that a meeting of the Standing Committee to appoint its Chairman should be held within 15 days from the date of pronouncement of this Order. Such meeting may be a physical meeting or failing that and subject to there being no prohibition in the applicable Rules, the meeting for appointment of Chairman by the Standing Committee may be held as a virtual meeting. Since the reliefs in Writ Petition St. No. 10828 of 2021 are similar to those in Writ Petition No. 10801 of 2021, we are not considering them separately as that Petition is effectively allowed by the Order in Writ Petition St. No.

10801 of 2021.

15. The above Writ Petitions are accordingly disposed of with no Order as to costs.