

(2001) 03 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No's. 4901, 5011 and 5142 of 2000

Mohansingh Tanwani and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Constitution of India, 1950 — Article 154, 156(3), 166(3), 226, 243U

Maharashtra Government Rules of Business, 1975 — Rule 15

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 313, 313(1), 77

Citation : AIR 2002 Bom 39 : (2002) 1 ALLMR 818 : (2001) 3 BomCR 285 :
(2001) 3 MhLj 339

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : R.N. Dhorde, for D.S. Bagul and R.B. Raghuwanshi, for the
Appellant; V.D. Sapkal, AGP, for the Respondent

Final Decision : Allowed

Judgement

Marlapalle, J.—All these petitions have assailed the legality, validity and propriety of the order dated 29th of November, 2000 passed by the Minister of State for Urban Development. Government of Maharashtra u/s 313(1)(a), (b), (c) and (e) of the Maharashtra Municipalities Nagar Panchayats and Industrial Townships Act, 1965 (for short, Municipalities Act), By the said order the Municipal Council at Dhule came to be superseded by the Government. The Writ Petition No. 4901 of 2000 has been filed by two sitting Councillors and Writ Petition No. 5142 of 2000 has been filed by the three sitting Councillors, whereas Writ Petition No. 5011 of 2000 has been filed by the President of the Municipal Council, Dhule, By our interim order dated 1st December, 2000 the impugned, order was stayed and, therefore, the elected body continued to be in office, including its President, during the pendency of these petitions.

2. On behalf of the State Government the Joint Secretary from the Urban Development Department of the State Government has filed an affidavit in reply

in Writ Petition No. 5011 of 2000 to which the petitioner has filed his rejoinder. The said reply by the Government has been adopted in all the petitions as they challenge the same order. The concerned file from the urban Development Department, has been made available to us and the Chief Executive Officer of Municipal Council, Dhule has also made available the file maintained by him. All the three petitions are being decided by this common Judgment.

3. Elections to the Municipal Council. Dhule were held in December, 1996 and 65 Councillors came to be elected. The petitioner in Writ Petition No. 5011 of 2000 came to be elected as President of the said Council on 15th March, 1999 and the new Council was constituted on 15th March, 1997. A show cause notice dated 7th April, 2000, u/s 313(1)(e) of the Municipalities Act came to be issued against the President of the Municipal Council levelling in all six charges calling upon the President to submit a reply. In the said notice it was also stated that in case any documents were required, to submit the reply, the same could be obtained from the office of Collector, Dhule and Chief Officer, Municipal Council and submit the reply to the show cause notice within ten days after receiving the documents. This notice was purportedly received by the President on 17th April, 2000 at about 4.00 p.m. and on 20th April, 2000 he submitted an application to the Chief Officer, Municipal Council as well as the Collector requesting copies of the documents stated therein to be made available to him. A copy of the said letter was also forwarded to the Joint Secretary in the department of Urban Development at Mantralaya, Mumbai. Again on 28th June, 2000 the petitioner addressed yet another letter to the Collector reminding him to supply the documents. On the next day he addressed another letter to the Desk Officer in the Department of Urban Development, Mantralaya requesting for extension of time to submit the reply to the show cause notice. By letter dated 21st July, 2000 he communicated to the Desk Officer that he did not receive copies of the documents he had asked for from the Collector as well as the Chief Officer, Municipal Council, Dhule. However, by letter dated 25th September, 2000, addressed to the Collector, he acknowledged that part of the documents requested by him were made available to him two days before. On 11th October, 2000 one Shri N.K. Teneja, who is the petitioner in Writ Petition No. 4901 of 2000 and is a sitting Councillor, responded to the show cause notice dated 7th April, 2000 and specifically requested that before any order is passed, dissolving the Municipal Council, each and every Councillor should be heard and any order, without hearing the Councillors, would be illegal. On 10th October, 2000 a written representation was submitted by a body called Maharashtra Yuva Federation and this representation came to be forwarded by the Collector, Dhule to the Additional Secretary in the Department of Urban Development on 12th October, 2000. This representation stated that for a long time the demand of dissolution of the Municipal Council at Dhule was pending and it required to be considered by the State Government on priority so as to give justice to the citizens of Dhule. It was also demanded that an Administrator should be appointed forthwith by dissolving the Council and the tenure of the Administrator

should be for a period of six years.

4. On 10th November, 2000 a supplementary show cause notice came to be issued levelling an additional charge against the elected body and this notice was addressed to the Municipal Council, Dhule through its President. It was stated in the said notice to submit the reply in defence before 21st November, 2000. Pursuant to the said notice, the President addressed a letter to the District Collector, Dhule on 16th November, 2000 asking for copies of the documents. By a communication dated 16th/ 18th November, 2000 the President was given notice for hearing to be held before the Honourable Minister on 23rd November, 2000. The President appeared before the Minister alongwith an Advocate on 23rd November, 2000 and prayed for adjournment for filing a detailed reply as the copies of the documents sought for were still not supplied in toto and it is the contention of the President that this request was granted. It is required to be noted, at this stage, that no notice of hearing was given to any of the sitting Councillors by the State Government, except the President. It is also contended that the next hearing was posted to 16th of December, 2000 but, in the meanwhile, the winter session of the Maharashtra Legislative Assembly commenced at Nagpur from 27th November, 2000 and on the very next day the Honourable Chief Minister, in a written reply, had informed the House that hearing in respect of the show cause notice issued against the Municipal Council, Dhule u/s 313 of the Municipalities Act was in progress and action would be taken as per law thereafter. It is further submitted that on 29th November, 2000 a statement was made, on the floor of the House by respondent No. 2 that the Dhule Municipal Council was dissolved by invoking the powers u/s 313(1) of the Municipalities Act with immediate effect. This petition came to be moved before us on 1st December, 2000 and the motions, taken out on the earlier two occasions by the learned Counsel of the President, have been mentioned in our interim order.

5. The charges levelled against the Municipal Council, vide the show cause notice dated 7th April, 2000 and 10th November, 2000 are, as under :

(i) The income of the municipal council as on 31st March, 1999 was to the tune of Rs. 9,96,44,121/- as against the liabilities amounting to Rs. 72,65,15,600/- and the liabilities were eight times the income. The detailed statements, in this regard, were attached in Schedule-A.

(ii) The Municipal Council was in arrears of payment of Education Board's dues to the tune of Rs. 15,18,206/-. In addition, the municipal council had not paid the dues of Education Cess and Employment Guarantee Scheme Cess for the financial year 1996-97 till 31st October, 1999 and an amount of Rs. 24,19,997/- was due from the Municipal Council to the State Government.

(iii) For the financial year 1995-96 till 31st March, 1999 an amount of Rs. 19,25,835/- was due from the Municipal Council and the yearly installment of Rs. 8,06,247/- towards the said amount was not paid. Schedule B, giving the details,

was attached.

(iv) The Municipal Council had borrowed a huge amount from the Maharashtra Jeevan Pradhikaran for installation of water supply scheme and the water tax collected by the Municipal Council was much less than the financial liability on the water supply scheme in respect of which the municipal council vowed a huge amount of loan to be repaid to the State Government.

The total financial liabilities of the Municipal, Council to be paid to the State Government, in respect of the charges at serial Nos. 1 to 4 were shown, as under :

(a) Maharashtra Jeevan Pradhikaran Loan Installments.

...Rs. 44,80,27,000/-

(b) Arrears payable to the Maharashtra State Electricity Board.

...Rs. 13,69,64,000/-

(c) Arrears of Irrigation Department

?Rs. 59,46,000/-

(d) Maharashtra Education Cess and Employment Guarantee Scheme

?Rs. 24,63,000/-

(e) Urban Development Loan. Installments

?Rs. 10,00,000/-

(f) Maharashtra Pollution Control Board

?Rs. 24,00,000/-

(g) Municipal Council Education Board Share .

?Rs. 59,18,000/-

?Rs. 60,28,18,000/-

(v) From 1993-94 the water supply to the Dhule town was from Tapi river and the expenses of the Municipal Council went up. The income was much less than the expenditure on the scheme. For instance, the income from water tax was to the tune of Rs. 65,05,808/- whereas the average expenditure was Rs. 7,47,31,315/- thereby making a deficit of Rs. 6,80,25,507/-.

(vi) The employees salaries for the month of September to November, 1999, to the tune of Rs. 8,00,000/- were not paid and the employees had resorted to agitations which disrupted the administrative work. The Municipal Council had resorted to recruitment of illegal staff from 1987-88 onwards and the Industrial Court had held that the municipal council had engaged in unfair labour practice and directed that such appointees should be given the same benefits as

applicable to the permanent employees. The total number of such employees was 398 (Class-III 71 and Class-IV 327) as against this, 279 additional daily rated employees (46 in Class-III and 233 in Class-IV) were employed.

(vii) One Shri Bhairji Dhanaji Jagtap and three others had submitted an application on 27th December, 1998 and in the council meeting held on 28th December, 1998 the application was discussed as an eleventh hour subject and resolution No. 1270 came to be passed whereby it was resolved that the rights of the municipal council on land of survey No. 122, admeasuring 68 Areas, situated at village Deopur, was given up. Such a subject should not be treated as an eleventh hour subject and the resolution passed was against the provisions of Section 92 of the Municipalities Act.

6. All these factors indicated that the financial condition of the municipal council was precarious and, therefore, the municipal council was called upon to reply as to why the elected body should not be dissolved under the provisions of Section 313 (1) (e) of the Municipalities Act.

7. It has been stated that pursuant to the show cause notice dated 7th April, 2000 hearing was held before the Minister on 27th September, 2000, 23rd October, 2000 and 23rd November, 2000. The supplementary show cause notice is dated 10th November, 2000 which was received by the President on 14th November, 2000. From the record, it is clear, that no hearing had taken place before the Minister on 27th September, 2000 and 23rd October, 2000 and it is contended that the President and his Advocate had sought adjournments on these dates. When the hearing had taken place on 23rd November, 2000 the President purportedly stated that due to non-receipt of the relevant documents he would not be able to defend his case through the lawyer and, therefore, an adjournment was required for filing a detailed reply. From the original file, that has been submitted before us, it appears that during the hearing held on 27th September, 2000 Shri Sham Saner, Vice President alongwith the Chief Officer, Administrative Officer and Accountant of the said council, was present. Shri Saner submitted an application for adjournment on the ground that some of the documents were yet to be received from the Collector and Chief Officer, Municipal Council, Dhule, it was necessary to engage an Advocate and, therefore, two months time be granted; copies of the report submitted by the Collector, Dhule to the State Government were not yet received alongwith other complaints submitted by some individuals to settle political scores.

8. There is a nothing date 6th October, 2000 in the file submitted to the Minister for State and the said nothing reads, as under :

"In the light of the Honourable High Court's directions this case has to be disposed of within three months. Honourable High Court has directed that reasonable opportunity should be given to the Municipal Council. In the light of these (sic) discussions with Honorable Minister it has been decided to fix the date of final hearing on 20-10-2000."

However, the file does not show that any proceedings were, in fact, held on 20th October, 2000. Thereafter, notice dated 16th November, 2000 has been addressed to the President regarding the hearing fixed on 23rd November, 2000.

In the file, there is nothing regarding the proceedings of hearing purportedly held on 23rd November, 2000. It is also revealed that one Shri Rajwardhan Kadambande had submitted a representation to the Honourable Chief Minister on 27th June, 1997 regarding maladministration of the Municipal Council, Dhule and requested for its dissolution. This representation was gone into by the Director, Municipal Administration who submitted a detailed report to the State Government. This report did not clearly indicate whether there was a case for dissolution of the municipal council. The note further states that fresh elections to the Municipal Council were held only on 1st December, 1996, the new body was constituted on 15th March, 1997 and, therefore, a body which has been there for seven to eight months should not be dissolved, The report submitted by the Director, Municipal Administration had dealt with all the issues regarding the financial conditions of the municipal council as well as the alleged illegal appointments, The note also clearly indicated that these appointments were made in the earlier period and it was not possible to identify the persons responsible for the same. The note recommended an action u/s 55A of the Municipalities Act. This was, as on 24th October, 1997. This Mr. Kadambande repeated with his complaints on 17th November, 1997 and 20th November, 1997 to the Honourable Chief Minister again requesting for dissolution of the municipal council. These representations were examined and further reports were called for. The Director, Municipal Administration, appears to have submitted, a fresh report on 4th January, 1999. Shri Kadambande lost the Legislative Assembly elections held in August, 1999 and submitted a fresh representation on 15th September, 1999 reiterating his demand for dissolution of the municipal council. As per the note dated 6th November, 1999 a report from the Collector was called before 31st October, 1999. On 3rd March, 2000 Mrs. Vaishali Kadam, the Desk Officer in the Department of Urban Development, put up a detailed note regarding the financial conditions of the municipal council, Dhule for the period from 1995-96 to 1998-99 and clearly stated that the financial condition was precarious. The note recommended dissolution of the municipal council u/s 314 of the Municipalities Act. This note has moved from the Deputy Secretary up to the Chief Minister in the month of March, 2000 and ultimately resulted in the show cause notice dated 7th April, 2000.

9. Shri Raghuwanshi, learned counsel for the petitioner President, has, to begin with, attacked the impugned order of dissolution of municipal council, on the grounds of non-compliance of mandatory requirements and in the second limb of his arguments has put forth the challenge on merits. It is contended by him that the impugned order is in violation of the principles of natural justice, the order has been passed without giving adequate opportunity to the petitioner to submit his reply to the show cause notice and without hearing the petitioner or any other council members, the impugned order was not published in the official

gazette stating the reasons for dissolution of municipal, council as is mandated u/s 313 (1) of the Act and the order is in utter disregard to the law laid down by this Court in the case of *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, . On the point of merits it is urged by Shri Raghuwanshi that the impugned order is politically motivated inasmuch as the present body belongs to the Bhartiya Janata Party and the Democratic Front alliance Government was determined to capture the municipal council by hook or crook, the reasons stated for dissolution are ill-founded and farfetched. The State Government has not applied its mind to the real situation regarding the financial position of the municipal council for the last about ten years or so. If the reasons given in the order are to be accepted as just and proper, majority of the municipal councils in the State will have to be dissolved and the State Government has resorted to pick and choose. The charges levelled against the municipal council are false and concocted and on the other hand the present body, which was put in office only in March, 1997 has done its best, in the prevailing circumstances, to improve the financial position, of the municipal council as well as to reduce the unwanted temporary staff. It is particularly emphasised that the present body cannot be held responsible for excess, recruitment as the said staffing pattern has been in existence prior to the present body came in office and even the financial position, which has been painted to be precarious, is a legacy of the earlier body and, the mismanagement of financial allocations by the State Government. Shri Dhorde, the learned counsel appearing for the petitioner in writ petition No. 4901 of 2000 submitted that when the petitioner corporator appeared before the minister on two occasions and submitted his written say and pleaded for an opportunity of being heard before any adverse order was passed against the municipal council, no cognizance was taken of his written requests. It is mandatory for the State Government to hear every councillor before an order of dissolution is passed as such order results into civil consequences and it not only affects the municipal council or the President taut indeed all the Councillors as well as the citizens by and large. The power exercised by the State Government u/s 313 of the Municipalities Act is quasi judicial in nature and, therefore, the municipal council, as a body, ought to have been heard before the impugned order was passed. In support of their respective contentions the petitioners have relied upon the following decisions :--

- (1) *S.L. Kapoor Vs. Jagmohan and Others*, .
- (2) *Municipal Council, Malkapur v. State of Maharashtra*, (supra)
- (3) *Niranjan Dass Vs. State of Punjab and others*, .
- (4) *Vidarbha Nagarpalika Parishad and Others etc. Vs. State of Maharashtra and Others etc.*, .
- (5) *Surinder Prakash Goel Vs. The State of U.P. and others*, .

10. Shri Sapkal, the learned A.G.P. on the other hand has taken a preliminary objection regarding the maintainability of the petition on the ground that the

petitioner President has filed the petition in his individual capacity and there is no resolution passed by all the councillors authorising the President to file the petition challenging the impugned order on behalf of all the councillors. He has further contended that the impugned order has been passed by following the procedure as laid down u/s 313 of the Municipalities Act and it does not suffer from any infirmities, The councillors were given adequate opportunity by issuing a show cause notice addressed to the President, who, in turn, ought to have placed the show cause notice before every member by calling a special meeting and submitted a reply to the said show cause notice on behalf of the municipal council. In spite of sufficient opportunity having been given and the relevant documents have been made available to him, the President failed to file his reply to the show cause notice. The council was given due opportunity to appear before the Minister of State so as to put up their defence and for some reason or the other the Advocate on behalf of the President or the Councillors sought adjournment from time to time. The hearing was completed on 23rd November, 2000 and when the Chief Minister gave a reply to a question on the floor of the Assembly during the Nagpur session on 28th November, 2000, the hearing was already completed and decision of the competent authority was awaited. The impugned order has been simultaneously published in the extraordinary gazette on 29th November, 2000 under the signature of Principal Secretary to Government, The learned A.G.P. also contended that individual councillors are not required to be given a notice and an opportunity of hearing and in any case no councillor appeared before the Minister on the given dates in spite of sufficient notice in that regard. In support of his defence to the impugned order he has relied upon the following decisions :

- (1) Pioneer Motors Ltd., Tirunelveli and Others Vs. O.M.A. Majeed, Mirania Motor Service, Tirunelveli and Others, .
- (2) Anjar Municipality and Others Vs. J.M. Vyas and Others, .
- (3) Jyotiben R. Pathak and Others Vs. Rafigsa Chammansa Fakir and Others, .
- (4) R.S. Saini Vs. State of Punjab and Others, .

11. By the Constitution (74th Amendment) Act, 1992 Part-IXA has been inserted in the Constitution relating to Municipalities in terms of Article 243P to 243ZG. Article 243U states that every municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. The proviso thereto states that a municipal council shall be given a reasonable opportunity of being heard before its dissolution. Article 243-ZF states that notwithstanding anything contained in Part IX-A any provision of any law relating to municipalities in a State immediately before the commencement of the Constitution (74th Amendment) Act, 1992, which is inconsistent with the provisions of the said part shall continue to be in force until amended or repelled by a competent legislature or other competent authority until the expiration of one year or such commencement

whichever is earlier. Consequently, the relevant provisions of the Municipalities Act have also been amended, Section 40 (1) of the Municipalities Act states that every council, unless sooner dissolved, shall continue for a period of five years from the date appointed for its meeting and no longer and as per Section 41 the term of office of the councillors shall be coterminous with the duration of the council. Section 55B provides for disqualifications for continuing as councillor or becoming councillor on removal as President or Vice-President and Section 44 deals with the disqualification of councillor during his term of office. Whereas Section 55 deals with removal of President by Councillors and Section 55A for the removal of President and Vice-President by the Government. Section 77 sets out the powers and duties of Chief Officer and as per Sub-Section (1) of the said section the Chief Officer is responsible to exercise such powers and perform such duties and functions as may be conferred by Government upon him or allotted to him by or under the Act, subject to the control, direction and supervision of the President.

12. Chapter XXIII of the Municipalities Act deals with the provisions in respect of the State Government's control over the municipalities. Section 306 deals with the powers of inspection and supervision, Section 307 empowers the Director or the Collector to call for returns and reports, Section 308 empowers the Collector to suspend the execution of orders and resolution of the council on certain grounds, whereas Section 309 gives extraordinary powers to the Collector, in case of emergency, for execution of certain works, Section 310 empowers the Director to prevent extravagance in the employment of establishment. Section 311 empowers the State Government to order an inquiry to be held by any officer appointed by it into any matters concerning the municipal administration or any matters with respect to which sanction, approval or consent of the State Government is required under the Act. Such an inquiry officer has been vested with the powers of a Court under the Code of Civil Procedure, 1908 in respect of the matters enumerated under Sub-Section (2). Whereas Section 312 states that when the Collector is informed, on a complaint made or otherwise, that default has been made in the performance of any duty imposed on a council by or under the Act or by or under any enactment for the time being in force, the Director, if satisfied after due inquiry that the alleged default has been made, may by order fix a period for performance of that duty and communicate such order to the council. Section 313 (1) of the Act, under which the impugned action has been taken reads as under :

"313. Power to dissolve a Council. (1) If, in the opinion of the State Government.-

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

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

(bb) a Council has made a default in the performance of its duty under Clause (s-1a) of Sub-Section (2) of Section 49, or

(c) exceeds or abuses its powers, or

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

(e) the financial position and the credit of the Council is seriously threatened the State Government may, after giving the Council a reasonable opportunity of being heard by an order published in the Official Gazette, stating the reasons therefor, dissolve the Council."

This section obviously gives powers to the State Government to dissolve the municipal council for any of the reasons enumerated in Clause (a) to (e).

13. The scheme of Chapter XXIII provides for appropriate steps to be taken by the State Government either through the Director or the Collector for proper functioning of the municipal council and for remedial measures in case the municipal council is found to be lacking in discharge of its duties or indulging in maladministration of its resources or acting contrary to any provisions of law. If the Municipal Council concerned does not correct itself inspite of steps taken by the State Government, as contemplated under the provisions of Sections 306 to 312 of the Municipalities Act, the State Government is empowered to use its last weapon of dissolving the municipal council u/s 313 of the Municipalities Act. It, therefore, implies that the powers u/s 313 of the Municipalities Act are not invoked at the first instance and they are required to be invoked after all other measures, as stipulated under Chapter XXIII have failed and the municipal council refuses or persistently fails to correct itself in discharge of its duties under the Act. As per Section 317 when a council is dissolved u/s 313, general elections shall be held to constitute the council on such date as may be specified by the State Election Commissioner, provided that election to constitute the council shall be completed before the expiration of a period of six months from the date of dissolution of the council. In case, the municipal council has passed any resolution the Collector is empowered to inquire into the said resolution and he is empowered to suspend the execution of such resolution if it is found to be contrary to the provisions of the Act or against the public interest. The Collector is, thus, the arm of the State Government available at the district headquarters to exercise close supervision over the affairs of the municipal council. He is the eyes and ears of the State Government and is, therefore, required to take timely steps to ensure that the municipal administration does not get derailed and continues to perform its duties under the Act in the interest of the citizens as well as it does not go against the law. Section 318 of the Act gives powers of revision to the State Government over the orders passed by or the proceedings of any council or of any officer subordinate to such council. The provisions of Chapter XXIII are, thus, built in measures to ensure that the elected body of the municipal council functions smoothly and for the welfare of the citizens and

completes its tenure stipulated u/s 40 of the Act.

14. In the case of The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another, this Court inter alia held that :

(i) the powers exercised by the State Government u/s 313 (1) of the Act are quasi judicial;

(ii) it contemplates formation of an opinion by the State Government regarding the grounds and the matters enumerated in Clauses (a) to (e);

(iii) obligation is cast upon the State Government to publish the order of dissolution simultaneously in the official gazette stating the reasons for making the order;

(iv) an opinion cannot be formed by the State Government for dissolution of the municipal council unless there is material before it and reasons for making an order cannot be recorded in the order itself unless those reasons exist and unless all these formalities are followed the order passed u/s 313 cannot be said to be a valid and legal order nor it can come into operation.

(v) Further the Municipal Council, Councillors and the citizens are entitled to know the reasons or grounds for taking action. Therefore, having regard to the scheme of Section 313 and the consequences of the action which are drastic, in our opinion, even if there is no express provision in Section 313 of the Act that an opportunity should be given to the Municipal Council to show cause against the proposed action, the principles of natural justice require that a reasonable opportunity should be given to the council to explain the charges and to put forward its case before an action is taken against it u/s 313 of the Act

(vi) But then what will justify an action u/s 313 of the Act is the incompetency of the Municipal Council and not wrongful act of the President. It has not been alleged that the Municipal Council as a whole was a party to this alleged wrongful act of the President.

(vii) In its wisdom as elected representative of the people with an intention to avoid the monopoly in the trade, rightly or wrongly, decision was taken by the Municipal Council which was not found to be correct by the Collector and, therefore, he suspended the resolution. It is not shown that this resolution was passed by the Municipal Council mala fide or the decision in that behalf was not honestly taken. Therefore, only because the said resolution was suspended and for the reasons disclosed in the explanation ultimately the auction was to be held through a revenue officer, it cannot be said that there was a persistent default on the part of the Municipal Council or they had disobeyed to carry out the directions or orders issued by higher authorities.

(viii) In a democratic society it is of the essence that democratic institutions which are part and parcel of the scheme of decentralisation of power are allowed to function and not superseded on charges inadequately brought home or

unreasonably accepted.

15. As per the amendment effected in 1994 in the scheme of Section 313 of the Act the State Government is mandated to give a reasonable opportunity to the municipal council of being heard before such an order of dissolution is passed. This is in keeping with the constitutional requirement as set out under Article 243U of the Constitution. In the case of *Niranjan Dass Vs. State of Punjab and others*, a Division Bench of Punjab and Haryana High Court held that it is a statutory duty of the State Government to afford an opportunity of hearing to an elected body before it is superseded or suspended. Even before the introduction of Article 243U in the Constitution and the consequent amendments in the scheme of Section 40 of the Act the Supreme Court in the case of *S.L. Kapoor Vs. Jagmohan and Others*, has held that the principles of natural Justice mandated that an opportunity of hearing ought to be given to the municipal council before an order of supersession is passed. The Supreme Court more particularly observed, thus :

".....A committee as soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commending respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way has to suffer in public esteem, is certainly to visit the committee with civil consequences. In our opinion, the status and office and the rights and responsibilities to which we have referred and the expectation of the committee to certify its full term of office would certainly create sufficient interest in the Municipal Committee and their loss if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

16. In the case of *Vidarbha Nagarpalika Parishad and Others etc. Vs. State of Maharashtra and Others etc.*, a Full Bench of this Court was called upon to examine the scope and ambit of Section 48-A of the Act which has been, since then, deleted by Maharashtra 41 of 1994. The said section read as under :--

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

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

(b) the person appointed by the State Government, from time to time, shall be

the Administrator to manage the affairs of the Council, during the period from the said date upto the day preceding the date on which the first meeting of the reconstituted Council after the general election is held, where there is a quorum. Such general election shall be held within a period of one year, from the date of publication of the order issued under this sub-section in the Official Gazette :

Provided that this period of one year may be extended, from time to time, by the State Government, in exceptional circumstances, to a period not exceeding two and half years in the aggregate, by notification in the Official Gazette, for reasons, which shall be stated in the notification.

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

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

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

The Full Bench inter alia held that though the power conferred u/s 48-A in favour of the State Government was not arbitrary and violative of Article 14 of the Constitution, such an order affects the rights of councillors as well as the municipal council and it entails civil consequences and, therefore, open to judicial review. The Full Bench further held that it was necessary to give an opportunity of hearing to the council as well as the councillors against the proposed supersession and appointment of Administrator and failure to do so offended the principles of natural justice and the order so passed would be quashed and set aside.

17. In the case of *Surinder Prakash Goel Vs. The State of U.P. and others*, the Division Bench of the Allahabad High Court was examining the scope of similar provisions regarding super session/dissolution of the Municipal Council u/s 48 of the U.P. Municipalities Act. The Division Bench inter alia ruled that when an elected functionary is suspended or removed from office such an order must comply with the principles of natural Justice and the removal should be resorted only in clear cases of flagrant and gross misconduct" and not for some slight and technical misconduct.

18. In the case of *Anjar Municipality and Others Vs. J.M. Vyas and Others*, a Division Bench of the Gujarat High Court upheld the power of the State Government to dissolve the Municipal Council provided such power was exercised against a Municipal Council after giving a reasonable opportunity of being heard and the municipality constituted under any law shall continue for five years from the date appointed for its first meeting unless it is dissolved under the provisions of the Municipalities Act and before such action is taken opportunity of being

heard is afforded to the municipality.

19. Let us first deal with the preliminary objection raised by the learned AGP regarding the maintainability of the petition filed by the President alone i.e. Writ Petition No. 5011 of 2000. Admittedly, the show cause notices on both occasions i.e. 7th April, 2000 and 10th Nov. 2000, were addressed to the President or to the Municipal Council through the President and the President was called upon to submit an explanation on behalf of the Municipal Council. The President is also an elected Councillor and an order dissolving the elected body affects every elected Councillor and visits with civil consequences. When an elected representative is removed from such an elected office by way of an order, penal in nature, passed by a statutory authority, he has the right to bring in question such an action, The President, therefore, has the right to challenge the impugned order of dissolution in his individual capacity as the President as well as an elected Councillor of the Municipal Council. Even in the absence of or in addition to the President, every elected Municipal Councillor also has the right to impugn the order of dissolution by taking the appropriate legal proceedings. It cannot be held that unless the resolution is passed in a meeting, attended by majority of the Councillors to challenge the order of dissolution, the President or any other elected Municipal Councillor has no right to challenge the order of dissolution by approaching this Court in a Writ Petition. The preliminary objection raised by Shri V.D. Sapkal, learned AGP, relying on a judgment in the case of "Durayapapah v. Fernando" (1967) 2 All ELR 152 is unsustainable and the said preliminary objection is hereby rejected.

20. Part VI of the Constitution pertains to the States and Chapter II thereunder is titled as "The Executive". Article 154 in the said Chapter lays down that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 162 states that subject to the provisions of the Constitution the Executive Power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Article 163 provides for Council of Ministers and states that there shall be a Council of Ministers with the Chief Minister as the Head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion and if any question arises whether any matter is or is not a matter as respects which the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. It further states that the question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be enquired into any Court. Article 166 and Article 167 of the Constitution read as under:

"166. Conduct of business of the Government of a State. -- (1) All executive

actions of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instruments which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his direction.

167. Duties of Chief Minister as respects the furnishing of information to Governor, etc. It shall be duty of the Chief Minister of each State -

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation :

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

21. A Division Bench of the Madras High Court in the case of Pioneer Motors Ltd., Tirunelveli and Others Vs. O.M.A. Majeed, Mirania Motor Service, Tirunelveli and Others, , on examination of the scheme of Articles 154, 162, 163, 164, 166 and 167 of the Constitution and the Business Rules framed by the State Government summarised the constitutional mandate in the following words :

(a) The Governor is the Head and Symbol of the executive administration and it is an order issued by or under his authority that constitutes an order of the Government though no doubt these functions he discharges with the aid and advice of his Ministers who are collectively responsible for the advice they tender.

(b) There is an allocation of business amongst the Ministers and each Minister is assigned some department in regard to which he takes primary responsibility of advice. The advice that is tendered and the decision that is taken by the Minister will not amount to an order of the Government and it acquires this quality only when it is embodied in a formal order passed on the authority of the Governor.

(c) When the Minister passes his order, it is an instruction to the Secretary to issue such an order, which when issued by him or under his authority or by his authorised subordinate officially becomes a Government Order. The order of the Minister is not final, for another Minister may call for the file and bring up the matter before the Council for he is entitled to do so as every Minister assumes

responsibility for that order. Again, the Secretary might disagree with that order and have the matter brought up for consideration of the Ministers.

(d) The Secretaries of the department are directed by the Rules to carry out the orders of the Ministers and in that sense there is a delegation of the functions of the Governor, so that when the advice is followed by issuing an order by the Secretary, it receives, so to speak, the authentication of the Governor and becomes an order of the State Government. The form of this order is laid down by the Article 166(1) viz. that it shall be expressly taken in the name of the Governor. This is in line with Article 154(1) which vests the executive power in the Governor and Article 160(2) provides all these orders so expressed shall be authenticated.

(e) The signature of the Secretary in the first instance embodies the consent of the Governor and indicates to the outside world the acceptance of the advice tendered by the Minister. In addition, it authenticates and provides evidence that the principal requisites for the emergence of the order of the Government have been complied with and the production formalities for emergence of the said order have been complied with and no further investigation is possible or is permitted to the Court.

22. The Supreme Court in the case of State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak, while interpreting the provisions of Article 166(2) of the Constitution, observed :

The order which is expressed in the name of the Governor and is duly authenticated cannot be questioned in any Court on the ground that it is not made or executed by the Governor. The signature of the concerned Secretary or Under Secretary who is authorised under the authentication rules to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the concerned Minister.

In the case of Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others, , the Apex Court, laid down the following principles emanating from the provisions of Articles 154 and 166 of the Constitution of India.

(a) Article 166(1) and (2) expressly envisaged authentication of all the executive actions and shall expressly be taken in the name of the Governor and shall be authenticated in such a manner specified in the rules made by the Governor. Under Article 166(3), the Governor is authorised to make the rules for the more convenient transaction of business of the State and for the allocation amongst the Ministers of the said business in so far as it is not a business with respect to which the Governor is by or under the Constitution required to act in his discretion. In other words, except in cases when the Governor in his individual discretion exercises his constitutional functions, the other business of the Government is required to be conveniently transacted as per the Business Rules made under Article 166(3) of the Constitution. If the action of the Government and the order is duly authenticated as per Article 166(2) and the Business Rules,

it is conclusive and irrebuttable presumption arises that the decision was duly taken according to the Rules.

(b) The decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of Clauses (1) and (2) of Article 166 are complied with. Before the action or the decision is expressed in the name of the Governor in the manner prescribed under the Business Rules and communicated to the party concerned it would always be open by necessary implication to the Chief Minister to send for the file and have it examined by himself and to take a decision, though the subject was allotted to a particular Minister for convenient transaction of the business of the Government. The subject, though exclusively allotted to the Minister, by reason of the responsibility of the Chief Minister to the Governor and accountability to the people, has implied power to call for the file relating to a decision taken by the Minister. The object of allotment of a subject to a Minister is for the convenient transaction of the business at various levels through designated officers. The ultimate object is to secure impartial, pure and efficient administration.

(c) Before an order of eviction can bind the Governor, it must be drawn in the name of the Governor as envisaged under Article 166(1) and (2) read with the Business Rules and must be communicated to the affected person. Until then, the action of the Government is not final.

23. The Government of Maharashtra has formulated the Business Rules under Article 166(3) and as per the Rule 16 thereunder, the business allocation has been set out. By an order dated 6th Dec., 1999 issued under the signature of the Principal Secretary in the Department of Urban Development, the business allocation between the Chief Minister and the Minister of State for the said department, has been laid down. Incidentally, the present Chief Minister is the Cabinet Minister for the Department of Urban Development and therefore, this allocation of business is between the two. The matters relating to Dhule Municipal Council are undoubtedly within the purview of the Minister of State for Urban Development and thus, he is the competent authority to exercise the powers u/s 313 of the Municipalities Act for the said Municipal Council, as per the Business Rules framed under Article 166(3) of the Constitution. The impugned order of dissolution dated 29th Nov., 2000 has been passed by the Minister of State for Urban Development and it has been communicated to the President of the Municipal Council by the Desk Officer from the Department of Urban Development on the same day. At the same time, the affidavit in reply filed by the Joint Secretary states that subsequent to the hearing held on 23rd Nov., 2000 before the Minister the final decision of dissolution of the Municipal Council was taken on 29th Nov., 2000 and the Minister announced the decision in the Legislative Assembly. The affidavit further states that the Notifications, as required to be published u/s 313 (1) of the Municipalities Act, has appeared in the extraordinary gazette published in the Nagpur Division on 29th Nov., 2000 itself at page Nos. 63-64. A copy of the said gazette has been brought on record

along with the affidavit in reply at Exhibit R-4. It is authenticated by Shri Ramanand Tiwari, Principal Secretary to the Government "by an order and in the name of the Governor of Maharashtra". It is clear that the order of dissolution passed u/s 313 of the Municipalities Act and impugned in these petitions and as authenticated, as per the Business Rules and in compliance with the requirements of Article 166 of the Constitution, was not served on the Municipal Council at any time and the order served on the Municipal Council or to the petitioner President has been signed by the Minister of State for Urban Development. The order served on the Municipal Council and which has been brought into force on 29th Nov., 2000 was not an order "by an order and in the name of the Governor of Maharashtra" and thus, violated the requirement of Article 154 read with Article 166 of the Constitution. The decision of the Madras High Court in the case of Pioneer Motors Ltd., Tirunelveli and Others Vs. O.M.A. Majeed, Mirania Motor Service, Tirunelveli and Others, and the decision of the Apex Court in the case of State of Madhya Pradesh and others Vs. Dr. Yashwant Trimbak, and Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others, are squarely applicable to this case and it has to be, in clear and unambiguous terms, stated that the order of dissolution communicated to the petitioner President or to the Municipal Council as passed u/s 313 of the Municipalities Act was not an order in the eyes of law and the said order was non est. On this ground alone, the impugned order deserves to be quashed and set aside,

24. The recorded ,as referred to in para Nos. 7 and 8 of this judgment, shows that no effective hearing had taken place before the Minister of State for Urban Development either on 23rd Nov. 2000 or on the earlier dates. In spite of a specific request having been made by the petitioner in Writ Petition No. 4901 of 2000 praying for an opportunity of hearing before any adverse order was passed against the Municipal Council, no such opportunity was proved or any notice of hearing was issued to the said petitioner who is also an elected Councillor. Section 313 (1) of the Municipalities Act very specifically lays down that the State Government may, after giving a council, a reasonable opportunity of being heard, by an order published in the official gazette stating the reasons therefore dissolve the council. This necessity of reasonable opportunity of being heard was incorporated by Maharashtra Act 41/1994 and after the Judgment of this Court in the case of The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another, . This requirement also meets the constitutional mandate as incorporated by the 74th Amendment in the Constitution. The record is so glaring to suggest that this mandatory requirement was not followed before the impugned order was passed dissolving the Municipal Council and on this ground also, the said order is required to be quashed. We may in this regard usefully refer to a Full Bench judgment of this Court in the case of Vidarbha Nagarpalika Parishad and Others etc. Vs. State of Maharashtra and Others etc., , wherein, this Court held that before an order of dissolution is passed against a Municipal Council, an opportunity of hearing is required to be given to the Council

and the Councillors against such proposal to supersede the elected body and the appointment of the Administrator. The said observations are applicable to the instant case as well.

25. In para No. 8 of this Judgment, we have noted down that the enquiry against the functioning of the Municipal Council had originated from the representations submitted by Shri Rajwardhan Kadambande on 26th June, 1997. The said representation was gone into by the Director, Municipal Administration, who had submitted a detailed report to the State Government. The noting in the file clearly stated that the fresh elections to the Municipal Council were held only on 1st Dec., 1996 and the new body which came in the office on 15th March, 1996 should not be dissolved. The report of the Director of Municipal Administrator has dealt with all the issues regarding financial conditions of the Municipal Council as well as alleged illegal appointment and stated that these appointments were made in the earlier period and therefore, it was not possible to identify persons responsible for the same. The note dated 24th Oct. 1997 concluded by recommending an action u/s 55A of the Municipalities Act against the President.

26. Shri Kadambande submitted a fresh representation for dissolution of the Municipal Council in August as well as Sept., 1999. A report from the Collector, Dhule, was called and suddenly on 3rd March, 2000, the Desk Officer in the Department of Urban Development put up a submission recommending the dissolution of the Municipal Council u/s 313 of the Municipalities Act. This submission indicated two reasons for the proposed action viz. (1) the financial condition of the Municipal Council, more particularly, the defaults in repayment of the Government Dues and (2) illegal appointments of 400 employees. The report, thus, shows that the action of dissolution of the Municipal Council was pre-decided and the show cause notices were based on this decision, thereby, implying that the decision was the foundation of the impugned action instead of the requirements of Section 313(1) of the Municipalities Act. This Court in *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, has specifically ruled that formation of an opinion by the State Government regarding any of the grounds under Clauses (a) to (e) of Section 313(1) of the Municipalities Act, could not exist unless there was material before it and reasons for making an order cannot be recorded in the order itself unless those reasons existed. This Court further observed that to justify action taken u/s 313 of the Municipalities Act, the incompetency of the Municipal Council has to be established and not the wrongful acts of the President. The record submitted by the Director of Municipal Administration or the Collector, Dhule, does not make out a case of persistent default or breach of statutory provisions in the administration of the Municipal Council, including management of its resources and more particularly, by the present body in office. The record submitted by the Chief Officer of the Municipal Council also does not, even prima facie, demonstrate that the present body which came in office in March, 1997 has either knowingly or unknowingly or in any irresponsible manner or in any illegal manner contributed to any of the charges levelled in the show cause notice

except the last charge regarding the regularisation of the plot of land in favour of Shri Bhairji Dhanaji Jagtap by its resolution dated 28th Dec., 1998. It is also evident from the record that the said resolution has been interfered with by the Collector, Dhule by exercising his powers u/s 308 of Municipalities Act and subsequently, the Municipalities Council has recalled the said resolution.

27. The President has filed an additional affidavit and brought on record the frequency with which the Chief Officer of the Municipal Council was replaced. The tenure of the Chief Officer at every time has been for few days or for few months, during the last four years or so. Section 77 of the Municipalities Act deals with the powers and duties of the Chief Officer and he has to perform these duties and functions subject to the control, directions and supervision of the President of the Municipal Council. If the incumbent in the office of Chief Officer who is responsible for the statutory duties is not allowed to have a reasonable tenure, obviously, the victim is the municipal administration and the welfare of the citizens. The elected representatives cannot be expected to devote their full time to perform the duties under the Municipalities Act as officers of the Council and it is the Chief Officer, who is the Administrative Head of the Municipal Council, working under the supervision, direction and control of the President of the Council. It is he who has to implement the decision of the Municipal Council in keeping with the statutory provisions as well as Government instructions as issued from time to time. The State Government, obviously failed to ensure that the Chief Officer is allowed to go through his normal tenure with the Municipal Council and discharge his duties. The President in his affidavit has specifically stated that during the period of 11 months, seven Chief Officers have been changed and the last incumbent was hardly available in the office. The affidavit also indicates that there has been lack of coordination between the present Chief Officer and the elected body. That apart, the fact remains that the Chief Officers have been shuffled and reshuffled with admirable frequency by the State Government and the State Government must share the responsibility for the financial mess the Municipal Council is thrown into as at present and for the last about a decade or so.

28. Coming to the merits of the charges regarding financial conditions and illegal appointments, it requires to be observed that the financial condition of the Municipal Council cannot be, by any stretch of imagination, attributed to the present body in office and the statement of appointment of daily rated employees as is available in the file maintained by the Chief Officer indicates that all these appointments have been made by the earlier body or bodies. In the matters of making the repayment of State's dues, a specific statement under the signature of the engineer of the Municipal Council has been brought on record and the same has not been disputed. The said statement shows that for the first time in the year 1996-97 the Municipal Council repaid an amount of Rs. 12,15,000/-. In the next year, it repaid Rs. 12,85,000/- followed by another installment of Rs. 59,80,000/- in the year 1998-99 towards the electricity bill of the Municipal Water Supply Scheme and in the financial year 1999-2000 the

Municipal Council has made payment of Rs. 1,25,00,000/- on that count. Similarly a statement regarding the payment of salaries to the employees as also on record and the same is verified from the file maintained by the Chief Officer of the Municipal Council. For the month of April, 1999 onwards, the Municipal Council went on to pay the salaries from January, 1999 onwards as well as salaries of earlier period. In addition to the regular monthly salaries, the Municipal Council has paid part of the amount of arrears, thus, clearing the arrears of earlier monthly salaries of the employees. The statement shows that the regular monthly salaries during March, 2000 were paid by the Municipal Council. The major reason for the present financial condition of the Municipal Council is on account of installation of water Supply Scheme by the State Government. The investment made on this scheme is so huge that the Municipal Council cannot have the capacity to meet the monthly obligations to repay the Government dues and this scheme was handed over to the Municipal Council sometimes in the year 1993-94. By a specific resolution, the Municipal Council opposed the proposal to take over the Water Supply Scheme solely for the reasons that it was not viable financially. The Municipal Council was earning an amount of Rs. 12.25 Crores per year by way of Octroi collection. As against the said amount, the Government is giving meagre amount of Rs. 97.12 lakhs to the Municipal Council and out of that amount, about Rs. 80,00,000/- go towards salaries and pensionary benefits of the employees. From the balance of Rs. 18,00,000/-, the Municipal Council is expected to pay electricity bills, water charges as well as the civic amenities including the maintenance charges of the water purification plant. The electricity dues as shown in the show cause notice pertain to the period from 1980 onwards and as stated the present body has taken effective steps for payment of these dues within permissible limits. The present body has also taken steps to remove the surplus temporary employees and has not filled in any vacancy caused on account of retirement, etc. The Court cases filed against the Municipal Council in the Labour, Industrial Court by such temporary employees, even if have resulted into the order against the Municipal Council, the elected body presently in the Office, cannot be blamed on this count. The appointment orders even for such temporary employees on daily wages are required to be issued by the Chief Officer and there are no such appointments on record issued during the tenure of the present body. The Court orders, so passed against the Municipal Council unless it is demonstrated that in spite of such orders the Municipal Council failed to take appropriate legal steps or failed to correct the irregularities, if any, committed in such appointments or in respect of such employees. The Court orders were solely based on the presumptions that the employees concerned had worked for a continuous period of more than one year and they could not be removed unless the legal procedure was followed or in some cases, the employees had sought the benefits of salaries, etc. as are available to the permanent employees on the basis of the principles of equal pay of equal work."

29. If the State Government decides to dissolve the Municipal Council for such

reasons and an amount of precarious financial conditions as well as illegal appointments of staff, etc. as has been alleged in the case at hand, we are afraid majority of the Municipal Councils in the State of Maharashtra would be required to be dissolved. The State Government has enough powers and sufficient measures built in the Municipalities Act to take corrective steps so as to ensure that the elected bodies of the Municipal Councils function within the four corners of law and discharge their public functions for the welfare of citizens. The State Government is under obligation to have a close supervision and watch over the affairs of the Municipal Council through the Chief Officer, the Collector as well as the Director of Municipal Administration, as is contemplated under Chapter XXIII of the Municipalities Act. The action of dissolution is the last measure adopted only when it is opined by the State Government that the Municipal Council has persistently defaulted and acted illegally in performance of its duties under the Municipalities Act. The power of dissolution cannot be invoked just for the asking and such a decision must be based on proper findings regarding the omissions and commissions of the Municipal Council and an effective opportunity of hearing is a pre condition for such orders. In the case, the record that has been submitted before us does not make out any case for dissolution of the Municipal Council and when we say so, we refer to the Municipal Council as a collective body and not the President. We are informed that an action against the President u/s 55A of the Municipalities Act is pending and we say nothing in respect of that enquiry or action.

30. The action of dissolution of the Municipal Council must be founded on the judicial appraisal of the facts and circumstances on the basis of which the Government comes to the conclusion that the said council is incompetent to perform or has persistently made defaults in performance of its duties imposed on it by law. Section 313 of the Municipalities Act casts duty on the State Government to act in accordance with the principles of natural justice while coming to a objective finding on the basis of the relevant material placed before it. In the instant case, except the complaint of Shri Kadambande as well as representations of Shri Anil Gote, the sitting MLA from Dhule, (dated 15th Nov., 1999 and 29th March, 2000) and the representation from Prof. Sham Patil (Dated 4th April, 2000), there is nothing on record, by way of finding recorded by the competent officer against the Municipal Council in support of such dissolution. Even in the reasoning given by the Minister ,of State, there is nothing attributable to the present body warranting the axe of dissolution u/s 313 of the Municipalities Act. The supplementary show cause notice dated 10th Nov., 2000 has been issued on account of a specific Resolution dated 27th Dec., 1998 in respect of the plot of land in Survey No. 122 and this charge has been levelled against the Municipal Council notwithstanding the fact that the said resolution was not confirmed in the next meeting and it was recalled in the Annual General Body meeting held on 15th July, 2000. So also, the Collector at Dhule, had exercised his powers u/s 308 of the Municipalities Act and interfered with it and the subject matter is sub-judice in a pending petition before this Court.

31. The requirement of publication of the order in the official gazette stating the reasons for the dissolution of the Council is mandatory u/s 313 (1) of the Municipalities Act. Though the State Government claims that the said requirement was fully met, the extraordinary gazette published on 29th Nov., 2000 does not set out all the reasons as are embodied in the order impugned and passed by the Minister of State. The impugned order records findings in para Nos. 6.1, 6.2 and 6.3 and states that the Municipal Council had defaulted in discharging its obligations for making payment of dues to the MSEB, Maharashtra Jivan Pradhikaran Mandal and the State Government as well as the payment of salaries to its employees. In addition, the Municipal Council has neglected to pay attention to the developmental and essential services of the town on account of which citizens have taken out processions and resorted to strike, etc. thereby, creating a law and order situation and further the Municipal Council also failed to take steps to increase its revenue collection. None of these reasons are supported by any report as submitted by the Director of Municipal Administrator or by any other competent officer prior to the date of show cause notice and the record, as referred to hereinabove, does not support these findings. The findings recorded in the impugned order are without any basis and the reasoning given in support of these findings is nonexistent. This Court in *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, observed that in a democratic society it is of the essence that democratic institutions which are part and parcel of the scheme of decentralization of powers are allowed to function and not superseded on charges inadequately brought home or unreasonably accepted. This view is reinforced by the 74th Amendment to the Constitution which assures a tenure of five years to an elected body of the Municipal Council and stipulates that the Municipal Council cannot be dissolved unless the statutory provisions under the Municipalities Act are violated before the expiry of the fixed tenure of five years. The State Government has proceeded against the Municipal Council in a casual manner and failed to apply its mind to the complaints/representations qua the actual conditions prevailing in the municipal administration, especially, after the present body took over the reins of the Municipal Council in March, 1997. In the case of *Surinder Prakash Goel Vs. The State of U.P. and others*, , a Division Bench of Allahabad High Court held that any provision for removing an elected functionary should be strictly construed and an elected person in a democracy should not be easily removed by an order of the executive authority and such a removal ought to be only in clear cases of flagrant and gross misconduct.

32. The impugned order passed by the Minister of State, thus, fails on all counts and the petitions, therefore, succeed. However, before we part with these petitions, we must record our dismay towards the State Government in acting contrary to the provisions of Articles 154 and 166 of the Constitution in the matters of deciding appeals, revisions, and other quasi judicial proceedings under different statutes. Invariably, these orders are communicated under the signatures of the Minister concerned and they are not communicated as "By

order and in the name of the Governor of Maharashtra". Business Rules framed by the Governor under Article 166(3) of the Constitution do not recognize any such orders passed by the Minister and communicated to the respective parties without being authenticated by the concerned Secretary of the Department. We come across such orders frequently and they are glaringly in disregard to the constitutional mandate. Indeed such orders do not exist in the eyes of law. It is a sine qua non that once the Minister concerned decides any proceedings under a statutory provision and records his findings, the subsequent procedure for authentication of the order is followed so as to make it a decision of the State Government by an order and in the name of the Governor". The State Government appears to have given a go-bye to these constitutional requirements during the last few years, for the reasons best known to the executive. We therefore, direct that a copy of this order be placed before the Chief Secretary for the State of Maharashtra so that the Constitutional requirements read with Business Rules are complied with strictly henceforth by the concerned Ministers or the competent authorities, as the case may be.

33. In the result, the petitions are allowed and the the impugned order dated 29th Nov., 2000 passed by the Minister of State for Urban Development is hereby quashed and set aside. Rule made absolute accordingly with no order as to costs.