

(2011) 03 KAR CK 0202

In the Karnataka High Court

Case No : Writ Petition No. 35639 to 35641 of 2009

P.R. Ramesh, M. Ramachandrappa and T. Prabhakar

APPELLANT

Vs

The State of Karnataka and Bruhath Bangalore Mahanagara
Palike

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Constitution of India, 1950 — Article 243U, 243ZA
Karnataka Municipal Corporations Act, 1976 — Section 11 (1-A), 8

Citation : (2011) 2 KarLJ 529 : (2011) 3 KCCR 1945

Hon'ble Judges : J.S. Khehar, C.J;Manjula Chellur, J

Bench : Division Bench

Advocate : Madhusudhan R. Naik for L. Vijay Kumar, Petitioners 1 and 2 and V. Lakshminarayana, for Petitioner 3, for the Appellant; Ashok Harnahalli, General, B. Veerappa, AGA for R-1, D.N. Nanjunda Reddy and R. Subramanya, for R-2 to R-4, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—The instant writ petition has been preferred by three Petitioners, P.R. Ramesh, M. Ramachandrappa and T. Prabhakar. It is a petition filed in public interest. Petitioner Nos. 1 and 2 are former Mayors of the Bangalore Mahanagara Palike (hereinafter referred to as the BMP). The BMP has now been renamed as the Bruhat Bangalore Mahanagara Palike (hereinafter referred to as the BBMP). The erstwhile BMP had jurisdiction over an area of 227 sq.kms., whereas, the BBMP covers an area of about 800 sq.kms. The BBMP now includes 7 additional city Municipal Councils, 1 town Municipal Council, and 111 villages surrounding Bangalore city, which were not included in the BMP. The third Petitioner is a former Chairman of the Karnataka State Road Transport Corporation. All the three Petitioners are permanent residents of the city of Bangalore. All of them own immovable properties in the city, and are tax payers.

2. Through the instant writ petition, the Petitioners seek to highlight, that the BBMP is not carrying out its statutory obligations, as are ordained under the

provisions of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the Municipal Corporation Act). It is also the case of the Petitioners that the contractual obligations of the BBMP are being executed in utter defiance and in flagrant violation of the provisions of the Karnataka Transparency in Public Procurements Act, 1999 (hereinafter referred to as the Transparency Act) as also the rules framed there under.

3. The express case set up by the Petitioners is, that vested interests controlling the affairs of the BBMP are achieving their purpose by delaying the process of holding elections to the BBMP. It is sought to be pointed out, that on the expiry of the tenure of the councillors of the BBMP, the State government appointed an Administrator to carry on the functions and activities of the BBMP. The position projected is, that vested interests controlling the affairs of the BBMP, have been exploiting the situation through the Administrator, nominated by the State government.

4. On the issue of holding elections, it is submitted, that Petitioner No. 1 herein (P.R. Ramesh) under the apprehension, that the State government may not hold elections to the BBMP, approached this Court by filing W.P. No. 15482/2006, requiring this Court to direct the State government to hold elections, for the BBMP in terms of the mandate contained in the Constitution of India. In this behalf, it is pointed out, that under Article 243ZA of the Constitution of India, the superintendence, direction, control and conduct of elections to, Municipalities, including the preparation of electoral rolls, is vested in the State Election Commission. It is submitted, that for holding elections, wards have to be determined by the State government, wherein, the government has also to determine, the number of seats to be allocated to each ward. The State Election Commission has been vested with the responsibility to fix the date(s) for holding elections. According to learned Counsel, under Article 243U of the Constitution of India, the term of a Municipality has been fixed as five years (from the date of its first meeting), which cannot be extended beyond the said period of five years. The process of holding fresh elections to constitute a Municipality, therefore, necessarily has to be initiated, so as to be completed, before the expiry of the term of existing Municipality. In this behalf, our attention was invited to Article 243U of the Constitution of India.

5. It is pointed out, that even u/s 8 of the Municipal Corporations Act, it is provided, that the term of office of councillors of Municipalities in the State of Karnataka, has been laid down as five years. It is submitted, that holding of timely elections to Municipalities is imperative for their efficient and smooth functioning, in as much as, even Standing Committees to be constituted for carrying out different activities of Municipalities cannot be constituted in their absence. In so far as the BBMP is concerned, it is submitted, that there are to be eight specified Standing Committees. Section 11(1-A) of the Municipalities Act, which provides for Standing Committees for the BBMP, is being extracted hereunder:

- (a) the Standing Committee for taxation and finance;
- (b) the Standing Committee for public health;
- (c) the Standing Committee for town planning and improvement;
- (d) the Standing Committee for public works;
- (e) the Standing Committee for accounts;
- (f) the Standing Committee for education and social justice;
- (g) the Standing committee for appeals;
- (h) the Standing Committee for horticulture and marketing."

6. Appointment of Commissioners in Municipalities, according to learned Counsel, is regulated by Section 14 of the Municipal Corporation Act. A Commissioner is to be appointed by the Government, in consultation with the Mayor of the concerned Municipality. A Commissioner is to ordinarily hold office for tenure of two years. In the absence of the Commissioner, it is open to the Government to appoint an acting Commissioner u/s 16 of the Municipalities Act. The constitution of Municipalities (including the BBMP) has been laid down u/s 7 of the Municipal Corporation Act. As a matter of fact, it was pointed out, that the BMP had 100 councillors when the term of the existing members (including Petitioner Nos. 1 and 2) expired on 22.11.2006. The BBMP on its constitution comprises of 198 Council Ors.

7. It is submitted, that in W.P. No. 15482/2006 filed by P.R. Ramesh, (Petitioner No. 1 herein), he had placed reliance on the declared legal position enunciated by the Supreme Court in Kishan Singh Tomar v. Municipal Corporation of the City of Ahmedabad and Ors., AIR 2006 SCW 6044, wherein it was held, that it was incumbent upon the State Election Commission, to carry out the mandate of the Constitution of India, so as to ensure that a new Municipality is constituted within the time frame specified in Article 243U of the Constitution of India. It was sought to be emphasized, that the electoral process resulting in the constitution of a new Municipality, should be completed before the expiry of the tenure of five years, of the preceding Municipality. While disposing of the W.P. No. 15482/2006 (filed by Petitioner No. 1 herein), this Court interalia directed as under:

... ... The State government ought to have initiated steps to conduct the elections to the Bruhath Bangalore Mahanagara Palike in accordance with law. Without there being any justification, the process of elections is deferred and the administrator is continued. Such a situation cannot be permitted as it violate the provision contained under Article 243U. Therefore, in our view, it is just and necessary to direct the State government to conduct elections to the Bruhath Bangalore Mahanagara Palike initiating steps in this regard at the earliest.

Having made the aforesaid observations, this Court in its order dated 20.07.2008, while disposing of W.P. No. 15482/2006 also directed, that elections

to the BBMP should be conducted within three months (from 20.07.2008). Despite the aforesaid direction issued by this Court in W.P. No. 15482/2006, it is sought to be pointed out, at the behest of the Petitioners that the State government failed to conduct the elections within the time frame expressed by this Court. According to the Petitioners, on one pretext or another, on a number of occasions, extension of time was sought by the State government for conducting elections to the BBMP. According to the Petitioners, having seen the delaying tactics adopted by the Respondents, this Court passed another order dated 17.09.2009 (in W.P. No. 15482/2006) giving time bound directions to the State government, to hold elections to the BBMP. The operative part of the order dated 17.09.2009, to which our attention was drawn by the learned Counsel for the Petitioners, is being extracted hereunder:

2. Taking note of the long pendency in conducting the election to Bangalore Mahanagara Palike, we are of the considered opinion that suffice it to direct that:

(i) the State Government shall issue corrigendum notification as required in para - 3 of the affidavit dated 17.09.2009 filed by the Government, within seven days, ie., on or before 23rd September 2009 and thereafter, to publish the reservation notification within two weeks, ie., on or before 9th October, 2009.

(ii) the State Government shall release entire balance funds to the State Election Commission in two equal installments ie., the first installment shall be made on or before 7th October, 2009 and the second shall be made by the 15th October, 2009 for the conduct of BMP election;

(iii) the Election Commissioner is directed to announce the events of the election on or before 23rd October, 2009; and

(iv) the above directions shall be strictly adhered to by all the Respondents and no further extension of time shall be granted on any count.

8. At the point of time when the aforesaid order came to be passed by this Court, one P. Ramakrishna Pai approached this Court, by filing Writ petition No. 28719/2009. In the aforesaid writ petition, he assailed a notification dated 21.07.2009, whereupon, this Court vide its order dated 01.10.2009 stayed the operation of said notification (dated 21.07.2009). Consequent upon the interim order passed by this Court, the electoral process for holding elections to the BBMP could not proceed further, in as much as, the authorities were prevented from identifying wards for reservation. According to the averments made in the instant writ petition, the process of holding elections to the BBMP came to be stalled as a consequence to the aforesaid interim order (dated 01.10.2009). Accordingly, it is asserted, that P.R. Ramesh, (Petitioner No. 1 herein), moved an application to be impleaded as a party Respondent in W.P. No. 28719/2009 (filed by the aforesaid P. Ramakrishna Pai). When the aforesaid application came to be allowed, he sought vacation of the interim order dated 01.10.2009 (referred to above). It is pointed out, that on account of the efforts of Petitioner No. 1 herein, Writ petition No. 15482/2006 came to be dismissed on 28.10.2009. It is

submitted, that this Court having realized, that the process of holding elections to the BBMP was being delayed, pointedly directed the authorities to comply with the order dated 17.09.2009 (passed by this Court in W.P. No. 15482/2006), wherein this Court had given a time bound direction for holding Municipal elections. It is not a matter of dispute, that elections to the BBMP were eventually held on 28.03.2010. It necessarily follows, that the Administrator nominated by the State government has continued to function, after the expiry of the previous tenure of the BMC on 22.11.2006, till the newly elected councillors of the BBMP, held their first meeting on 28.03.2010.

9. Coupled with the delay in the electoral process, reference (whereof has been made herein above), it is the contention of the learned Counsel for the Petitioners, that the very appointment of an Administrator was statutorily unacceptable. In this behalf, it is pointed out, that the appointment of the Administrator, to look after the affairs of the BBMP, after the expiry of the term of the Municipality on 22.11.2006, was in clear violation of Section 100 of the Municipal Corporation Act. Section 100 of the Municipal Corporation Act is being extracted hereunder:

100. Power to appoint Administrator in certain cases:

(1) Whenever -

(a) the ordinary elections to the Corporation under this Act or any proceeding consequent thereon have been stayed by an order of a competent Court or authority;

(b) the election of all the councillors or more than two-third of the councillors has been declared by a competent Court or authority to be void;

(c) xxxxx

(d) all the councillors or more than two-third of the councillors have resigned, Government shall, by notification, appoint an Administrator, for such period as may be specified in the notification and may, by like notification, curtail (or extend, either prospectively or retrospectively) the period of such appointments (so however, the total period of such appointments shall not exceed six months).

(2) Notwithstanding anything contained in this Act, on the appointment of an Administrator under this Section, during the period of such appointment, the Corporation, the Standing Committees of the Corporation and the Mayor, the Deputy Mayor and other authorities other than the Commissioner, charged with carrying out the provisions of this Act or any other law, shall cease to exercise any powers and perform and discharge any duties or functions conferred or imposed on them by or under this Act or any other law, and all such powers shall be exercised and all such duties and functions shall be performed and discharged by the Administrator.

(3) The provisions of Sub-sections (3), (4) and (5) of Section 99 shall mutatis

mutandis be applicable in respect of the Administrator appointed under Sub-section (1)".

10. It is submitted, that none of the eventualities referred to in Section 100, were available (in the facts and circumstances of this case) to the State government to exercise the power vested in it u/s 100 of the Municipal Corporation Act (to appoint an Administrator). In this behalf, it is also the contention of the learned Counsel for the Petitioners, that in Writ Petition No. 15482/2006 (filed by the Petitioner No. 1), the Petitioner had also assailed the appointment of the Administrator. Reference was made to the order dated 02.07.2008 vide which W.P. No. 15482/2006 was disposed of. Our pointed attention was drawn to paragraph 15 of the aforesaid order, which is being reproduced herein.

15. In the light of the law declared by the Apex Court in the aforementioned judgment, the contentions urged by Respondents 1 and 2 stating that due to merger or amalgamation of different urban local bodies and panchayats into the Mahanagara Palike to establish what is known as Bruhat Bangalore Mahanagara Palike, it had become necessary to appoint an Administrator and defer the elections, cannot be accepted as a legal and justifiable ground to postpone the elections and continue the affairs of the local body by appointing an Administrator.

Having invited the Court's attention to the observations reproduced above, it is submitted, that the Administrator came to be appointed on 23.11.2006, to run the affairs of the BBMP, merely on account of the fact, that there was a merger/ amalgamation of the erstwhile BMP and some Urban Local Bodies and Panchayats, to form the BBMP. The explanation to the aforesaid factual position, tendered on behalf of the Respondents, however was, that the aforesaid merger had made it imperative for the authorities, to run the affairs of the BBMP through an Administrator. According to the Petitioners, the aforesaid explanation was obviously tendered by the Respondents, also to explain the delay in the electoral process and the continuation of the Administrator beyond the statutorily prescribed period of six months. The conclusions drawn by the Court emerging from paragraph 15 (extracted herein above) reveal, that the explanation tendered by the State government was found to be legally unreasonable by this Court, both for the purpose of postponement of elections, as also, for the continuation of the Administrator. It is also essential to extract herein, the ultimate conclusions drawn by this Court while disposing of W.P. No. 15482/2006, which were brought to our notice by the learned Counsel for the Petitioners, the same are accordingly being reproduced herein:

17. Having said so, the present realities and the developments that have taken place are also required to be looked into. Revision of electoral rolls has taken place as elections to the Legislative Assembly were conducted in the State during the month of May 2008. The State government ought to have initiated steps to conduct the elections to the Bruhat Bangalore Mahanagara Palike in accordance

with law. Without there being any justification, the process of elections is deferred and the Administrator is continued. Such a situation cannot be permitted as it violates the provision contained under Article 243U. Therefore in our view, it is just and necessary to direct the State government to conduct elections to the Bruhat Bangalore Mahanagara Palike initiating steps in this regard at the earliest.

18. Hence, the writ petitions are partly allowed. Respondents 1 and 2 are directed to conduct elections to the Bruhat Bangalore Mahanagara Palike within a period of three months from today. The writ petitions are accordingly disposed of.

11. It is sought to be suggested, that what ought to have been apparent to the authorities, when Petitioner No. 1 approached this Court by filing W.P. No. 15482/2006, was sought to be ignored only for the pointed purpose of violating the norms laid down for execution of contracts, as according to the Petitioners, this could have been the only way for vested interests controlling the affairs of the BBMP, to exploit the situation. It is submitted, that prior to the promulgation of the Transparency Act, the procedure for execution of contracts was contained in various provisions of the Municipalities Act. However, after the Transparency Act came into force with effect from 04.10.2000, on account of the mandate contained in Section 22 of the Transparency Act, the provisions of the Transparency Act, on the subject of execution of contracts, had an over-riding effect on the provisions of the Karnataka Municipal Corporation Act. Section 22 of the Transparency Act is being reproduced herein:

22. Act to override other laws: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage agreement, decree or order of a court or a Tribunal or other authority.

It is submitted, that on account of the impropriety of the Administrator in performing the functions of the BBMP from 23.11.2006 to 27.03.2010 (in the absence of elected Councilors), all acts performed by the Administrator must be treated as void. According to the Petitioners, the unauthorised appointment of the Administrator should be viewed as a covert process adopted by vested interest, expressly aimed at executing contractual obligations with an ulterior motive. This submission advanced on behalf of the Petitioners has been examined at a later state in this order, as the first contention advanced on behalf of the Petitioners.

12. It is submitted by learned Counsel for the Petitioners, that the controversy, in respect of irregularities committed by the BBMP, while inviting tenders, was pointedly focused even during the course of hearing of W.P. No. 30417/2009 (connected with W.P. Nos. 35639-41/2009), wherein the following order came to be passed on 10.02.2010:

Sri D.N. Nanjunda Reddy, learned Sr. Counsel for R2 to 4 in Writ Petition Nos. 35639-35641/2009 submits that Commissioner of BBMP is not available to give

further instructions in the matter till 23.2.2010. Further, with regard to interim prayer, he submits that he has got instructions to submit that till the interim prayer in these petitions is considered and an appropriate order is passed on the next date of hearing, the matter will not be precipitated. His submission is placed on record. He has to produce the resolution copy of the erstwhile Corporation authorizing its Commissioner to appoint tender inviting Authority and accepting authority under the provision of Section 9 of KTCP Act of 1999 as directed by this Court on 19.1.2010 in Writ Petition 30417/09.

2. Sri P.R. Ramesh, learned Counsel for the Petitioners in Writ Petition Nos. 35639-35641/09 submits that matter is before the State government, his submission is disputed by the learned Advocate General Mr. Ashok Haranahalli stating that no matter pertaining to the tenders in question in these cases is pending before the Government, his submission is placed on record.

(emphasis is ours)

Learned Counsel for the Petitioners, then drew our attention to the next motion bench order passed on 25.02.2010 (in the same writ petitions), wherein this Court observed as under:

Sri D.N. Nanjunda Reddy, learned Senior Counsel appearing for Respondents 3 and 4 submits that on instructions given by his instructing Counsel Mr. Subramanya, the directions given by this Court on 22.1.2010 in W.P. Nos. 35639-41/2009 to Respondent Nos. 3 and 4 directing the Commissioner of BBMP to produce the resolution copy of the erstwhile Bangalore Mahanagara Palike authorizing its Commissioner to appoint tender inviting authority and accepting authority under the provisions of Section 9 of KTCP Act of 1999 the said direction issued may not be applicable in the W.P. Nos. 35639-64/2009 though directions was issued in those petitions and it is in connection with W.P.N.30417/2009. He submits that the document of resolution purported to have passed by erstwhile BMP which is procurement of entity is at present not available, as an when it is traced, the same will be produced as directed by this Court in these writ petitions for perusal of this Court.

His submissions are placed on record.

Learned Senior counsel and learned Government Advocate Mr. Basavaraj Kareddy on behalf of learned Advocate General submits that the undertaking given by both of them on the previous date of hearing not to precipitate the matter in so far as awarding the contract in respect of the works challenged in these writ petitions may be continued till the next date of hearing and the matter may be heard on merits and disposed of on merits at the stage of hearing of Interlocutory applications.

Their submissions are placed on record and their undertaking that the matter will not be precipitated by them is accepted and recorded.

List these matters on 4.3.2010.

The last motion bench order, which deserves pointed attention, was passed on 19.03.2010, the same is also relevant to bring into focus the deliberations which were subject matter of consideration in W.P. No. 30417/2009, (as also, in the instant writ petitions). Though extensive, the said order dated 19.03.2010 is being extracted hereunder in its entirety:

1. The learned Advocate General Mr. Ashok Haranahalli, and learned senior counsel appearing on behalf of Respondents 3 and 4 Sri D.N. Nanjunda Reddy, both of them would submit that the Contract awarded in favour of the present contractors for clearing the Solid Material Waste come to an end on 31.3.2010. But, according to the learned Senior Counsel for the BBMP it has already expired on 15.03.2010. According to the learned Counsel Mr. V. Lakshminarayan for the Respondents 6 to 31, submits that contract awarded in favour of contractors would be expiring on 31.03.2010. Their submission is placed on record.

2. For the reasons stated supra they have requested this Court to permit the BBMP for removal of Solid Material Waste. In view of expiry of the term contract awarded as an alternative arrangements till the contract is awarded in favour of eligible persons, after following the procedure as contemplated in law. Sri Lakshmi Narayana, learned Counsel appearing on behalf of the Respondents 6 to 31, submits that there is a clause in the agreement between the contractors and BBMP that before expiry of the contract period, if the contract is not awarded in favour of eligible persons then through tender, the BBMP may extend the period of the contract in favour of the existing contractors for clearance of Solid Material Waste in BBMP area till the new tenders are invited and award the contract in favour of successful bidders.

3. Further, learned Advocate General Mr. Ashok Haranahalli and Sri D.N. Nanjunda Reddy, learned Counsel on behalf of Respondents 3 and 4 submits that the State government may be permitted to process the papers submitted by the Commissioner of BBMP to the State Government for further course of action and place the same before the elected body of the BBMP for which according to calendar of events, the election is scheduled to be held on 28.3.2010 and the results will be declared on 5.4.2010 and whatever the decision that would be taken by the elected body the decision of the State government will be subject to the same.

4. This legal contention is seriously contested by Sri Jayakumar S. Patil, learned Senior Counsel for the Petitioners and Sri V. Lakshminarayana, learned Counsel for Respondents 6 to 31 and also Sri Puttige R. Ramesh appearing on behalf of the Petitioners and present contractors contended that various legal contentions advanced in the writ petitions are in the Public Interest Litigation and therefore, the same are required to be heard by this Court with reference to Section 98(5) and Section 100 of KMC Act. The provision of the Constitution of India and provisions of KTCP Act, 1999 their contention is that administrator who was appointed u/s 100 by the State Government to the BBMP in the absence of the elected body. In terms of the office u/s 98(5) is only 6 months and in view of the

deletion of Section 101 of KMC Act, continuing the administrator to the BBMP and all his actions including the decision to invite tenders for various works of the BBMP in void abinitio in law. According to the learned Counsel for the Petitioners and contractors counsel, there is constitutional inhibition for the administrator and he had no competence to continue in the office of the dissolved elected body of BBMP. Therefore, they would submit that the legal questions raised in these petitions are required to be considered and answered by this Court. Unless the same is answered, no steps can be taken by the State Government for processing the papers and placing the same before the elected body of the BBMP as requested by the learned Advocate General for the State Government that would be a futile exercise. Therefore, they submit that further process can not be made in respect of the files which are already submitted by the Commissioner of BBMP to the State government and this Court such relief in favour of the State government at this stage.

5. With reference to the above the rival legal contentions we have carefully examined the same with regard to the two aspects of the matter at this stage in this writ petition, i.e., (i) The period of contract awarded in favour of the Respondents 6 to 31 in the Writ Petition 30417/2009 must have expired on 15.3.2010 according to the BBMP Counsel. In this regard, we leave it to the BBMP Commissioner to exercise his power keeping in view the Public Interest to extend the period in favour of the existing contractors till new tenders are invited and contracts are awarded for clearance of solid waste management in the BBMP area. Having regard to the legal contentions raised in these writ petitions with regard to the appointment of the Administrator his continuance in this office beyond 6 months. Prima-facie in view of Section 101 of the KMC Act is bad in law. It is an undisputed fact that election to the BBMP is not conducted and its term has come to an end four years back. It is an undisputed fact that present Administrator is appointed in the place of elected body for the purpose of administration and management of BBMP. He is in the office beyond six months is an undisputed fact. In view of the deletion of Section 101 and keeping in view of the Section 100 of KMC Act, the term of the office of administration shall not exceed more than 6 months. Prima facie, the contentions raised by the learned Counsel for the Petitioners and the above Respondents No. 6 to 31 are tenable in law. The said legal contentions are required to be examined and considered by this Court and answer the same such being the position further allowing the State Government to the tender process, during the pendency of this writ petition legal contentions raised in the public interest litigation may not be correct particularly having regard to the allegation that volume of work, which is proposed to be entrusted to the contractors of various works for a period of 30 years and according to BBMP 5+2 years. The submission is placed on record.

6. Since the public interest is involved in these matters, this Court is required to consider the legal contentions raised by the parties and answer the same. In this view of the matter, we will not permit the State Government to process the tender files and they must await the decision of this Court in these writ petitions.

7. Having regard to the facts and circumstances of this case, the Petitioners who are claiming to be the Public spirited persons invited our attention to the matters. Therefore, we are not allowing the State Government to proceed further in the matter to continue the tender process as prayed by the learned Advocate General.

8. It would be just and proper for this Court to give the earlier hearing. Therefore, list these matters next week for final disposal on top priority. The State Government are at liberty to move this Court in so far as extension of time in favour of the contractors in whose favour the contract of removal of Solid Material Waste is awarded and also with regard to the alternative arrangement to be made by the Commissioner for the above work, it is left open to the BBMP to take steps keeping in view the public interest.

13. The factual position recorded herein above, lays down the foundation to the first submission advanced by the learned Counsel for the Petitioners. In noticing the details of the deliberations conducted by the Administrator in respect of entering into contractual obligations, it is necessary to keep in mind two dates, firstly, 22.11.2006 ie., the date when the tenure of the then BMP expired, and secondly, 28.03.2010, ie., the date when the newly elected councillors held their first meeting. During the periods intervening the two dates referred to above, according to the Petitioners, there was a whole hog violation of the provisions of the Transparency Act (and the rules framed there under). For establishing the aforesaid procedural irregularities, according to the Petitioners, it is necessary to refer to the admitted transactions (extracted from the statement of objections, jointly filed on behalf of Respondent Nos. 2 to 4). The same are accordingly reproduced hereunder:

Sl. No. Date Event

1. 23.09.2009 The BBMP issued invitation for prequalification in respect of 1 & 2 ie., pertaining to construction of road, widening , asphaltting and signal free corridors.

2. 01.10.2009 Addendum notification was issued including Section 3 in addition to the works specified in the notification dated 23.09.2009 ie., in respect of construction of dedicated transportation corridor, widening, strengthening of arterial roads in old BMP area, improvements to junctions, construction of flyover and remodeling of valleys (Storm Water Drains)

3. 01.10.2009 Invitation for prequalification was issued for 12 packages in respect of multi-level car parking and markets. The prequalification notification has been published in leading papers ie., Prajavani, Times of India, The Hindu, and also the State Tender Bulletin on 20.10.2009.

4. 21.10.2009 The State Government approved the various projects regarding infrastructural facilities submitted by the BBMP to the tune of Rs. 22,000 crores.

5. 07.12.2009 The State Government issued Government Order approving 12

road infrastructural work notified under the prequalification under 1 and 2.

6. 07.12.2009 Prequalification has been finalized and the list of qualified persons/agencies was published.

7. 07.12.2009 The tender was floated in respect of 1 and 2 (19 packages) through e-procurement.

8. 15.12.2009 The tender notification was published in Stat Tender Bulletin.

9. 08.01.2010 Last date for receipt of bids through e-procurement by the pre-qualified tenderers.

10. 12.01.2010 Opening of tenders of technical bid at 11 am.

11. 12.01.2010 The financial bid of the persons/agencies qualified under technical bid were opened. The comparative statements of the financial bid submitted by the persons/agencies are being prepared. Work order not issued in view of Code of Conduct.

The case set up by the Petitioners is, that all the aforesaid transactions were aimed at obliging contractors for executing works which were to cost the BBMP approximately Rs. 22,000 crores. Having narrated the factual background of the deliberations transacted by the Administrator of the BBMP, we shall herein after dwell on the pointed factual position brought to our notice on behalf of the Petitioners for projecting the various legal submissions advanced by them.

14. In the instant writ petition, the Petitioners have impugned the action of the BBMP in having issued an advertisement dated 23.09.2009 ("Annexure-A") inviting applications for pre-qualification of contractors, through e-procurement. The aforesaid advertisement limited the invitation to contracting firms in India. It was clarified in the advertisement, that only such of the firms which were pre-qualified (under the procedure initiated through the advertisement dated 23.09.2009) would be invited to bid for contracts for the execution of works, and for supply of goods, for the BBMP. Those interested were required to submit their applications enclosing necessary documents on or before 22.10.2009. A perusal of the aforesaid advertisement reveals that the process of pre-qualification was being undertaken in respect of works specified as "1 and 2". As a matter of explanation, the works comprised in "1" included widening, strengthening, asphaltting of selected arterial/sub-arterial roads, and providing electrification utility lines, including maintenance of roads for a period of 10 years (comprising of 12 packages) involving an estimated value of between Rs. 152 crores to Rs. 230 crores. "Section 2" comprised of converting 9 high density corridors into signal free corridors for un-interrupted flow of traffic. "Section 2" comprised of 9 packages involving an expenditure ranging between Rs. 32 crores to Rs. 300 crores. A copy of the advertisement dated 23.09.2009 was annexed to the writ petition as "Annexure-A".

15. Another advertisement dated 01.10.2009 ("Annexure-B") was issued by the

BBMP, the instant advertisement was in the nature of an addendum, to the preceding advertisement dated 23.09.2009. Through the instant advertisement dated 01.10.2009, the BBMP specified, that works which were specified in "Section 3", would also be considered along with the works advertised on 23.09.2009. The works incorporated by the addendum, were of a similar nature as the works specified in the original notification dated 23.09.2009. Through the instant advertisement (as in the earlier advertisement) the object sought to be achieved was to shortlist contractors by way of pre-qualification. "Section 3" was sub-divided into 5 parts ie., (a) to (e). Part (a) of "Section 3" provided for construction of a dedicated transportation corridor for vehicular and non-motorised transportation including the provision for design, built, maintain and transfer arrangement. Part (a) was comprised of two packages, the expected expenditure whereof was in the range of Rs. 300 crores to Rs. 600 crores. Part (b) of Section 3 related to widening and strengthening of arterial roads in the old BMP area. The instant part included one package with an estimated cost of Rs. 255 crores. Part (c) of "Section 3" involved improvements to urban road junctions in the White-field area in the Mahadevapura zone. The instant part comprised of one package with an estimated cost of Rs. 125 crores. Part (d) of "Section 3" related to construction of a flyover from Hebbal junction to High Grounds Police Station. Part (d) comprised of one package only, with an estimated cost of Rs. 550 crores. The last part ie., part (e) of "Section 3" pertained to remodeling of valleys (Storm water drains) in the new zones of the BBMP, including construction of other appurtenances for hydro-power generation of suitable capacity, and maintenance, including defect liability for a period of 10 years. Part (e) comprised of 12 packages, wherein the estimated cost ranged from Rs. 390 crores to Rs. 600 crores. The instant notification/advertisement dated 01.10.2009 which was appended to the writ petition as "Annexure-B", has also been impugned by the Petitioners.

16. The BBMP issued a third notification/advertisement, also dated 01.10.2009 ("Annexure-C"). This was also (just like in the preceding two notifications (dated 23.09.2009 and 01.10.2009) an invitation for pre-qualification of contractors, through e-procurement. The instant notification/advertisement dated 01.10.2009 comprised of two different kinds of works. The first of the aforesaid works related to construction of small, medium and large scale markets, numbering 200 at different locations in the city of Bangalore, including maintenance of market buildings for a period of 10 years. The first set of the works comprised of 10 packages with a total estimated cost of Rs. 1,300 crores. The second set of the works comprised of construction of multi level car parking structures, numbering 40, within the limits of the BBMP, including maintenance thereof for a period of 10 years. The instant work was divided into two packages with a total estimated cost of Rs. 500 crores. The last date of receipt of responses for pre-qualification of contractors was 31.10.2009. The instant advertisement/notification dated 01.10.2009 which was appended to the writ petition as "Annexure-C", has also been assailed by the Petitioners.

17. A writ in the nature of certiorari was sought by the Petitioners, to quash "Annexures-A to C" referred to in the preceding three paragraphs. As a matter of interim relief, the Petitioners prayed for restraint on further proceedings based on the notifications dated 23.09.2009, 01.10.2009 and 01.10.2009 ("Annexures-A to C", with the writ petition).

18. Learned Counsel for the Respondents also brought certain factual details to our notice, the facts which have been brought to our notice at the hands of learned Counsel representing Respondent Nos. 2 to 4 are now being formally recorded. It is sought to be asserted at the hands of learned Counsel representing Respondent Nos. 2 to 4, that the BBMP had prepared a detailed project, for taking up infrastructural development works involving an approximate expenditure of Rs. 22,000 crores in July 2009. The aforesaid proposed capital investment plan, was to deal with expenditure towards infrastructure to be created within the limits of BBMP, within a period of three years ie., between 2009-2012. The aforesaid proposal prepared by the Commissioner of the BBMP placed before the Administrator of BBMP, who accorded his approval to the proposed capital investment plan on 16.07.2009. The proposal having been approved by the Administrator BBMP, according to learned Counsel representing Respondent Nos. 2 to 4, was deemed to have been approved by the concerned Standing Committee (nominated for the particular subject involved), as also, the Corporation (whenever required). The matter was then forwarded for the consideration of the State government. The proposal came to be submitted to the State government by the Commissioner of the BBMP on 18.07.1982 (Annexure R-2). The State government in principle approved the proposal on 21.10.2009 (Annexure-R-7). The approval of the State government, it is pointed was required, as the proposed expenditure was in excess of Rs. 5 crores.

19. Having complied with the aforesaid procedural requirements, the first of the impugned notifications dated 23.09.2009 (Annexure-A) was issued inviting applications for pre-qualification, in terms of works covered under "Sections 1 and 2" referred to herein above. The aforesaid notification inviting applications for pre-qualifications was published through the e-procurement platform, at the very first instance. Thereafter on 26.09.2009, an advertisement was published in a national English daily ie., the Times of India, as also, in a Kannada daily newspaper ie., Prajavani (which has the largest circulation amongst Kannada newspapers published in the State of Karnataka) inviting desirous parties for pre-qualification. On 01.10.2009 the impugned addendum notification "Annexure-B" and the third impugned notification dated 01.10.2009 "Annexure-C" were issued, including works comprised in "Section 3" referred to above. On 20.10.2010, an invitation for pre-qualification was published in the tender bulletin, wherein the last date for receipt of pre-qualification applications was depicted as 22.10.2009.

20. It is a matter of record that in all, 27 firms submitted applications seeking consideration for pre-qualification. Out of the aforesaid 27 applicants, 21

applicants/firms had submitted their applications within the time stipulated in the advertisements/notifications. Out of the aforesaid 21 applications, 20 of the applicants were eligible. All those found eligible had submitted their applications on time, were approved and short listed, during the process of pre-qualification. These 20 pre-qualified firms were notified on e-portal, on 07.12.2009. The BBMP requested the Director General of Commercial Intelligence and Statistics to publish a tender notification (for the execution of works) in the Indian Trades Journal, Calcutta. All the events narrated in the foregoing paragraph and hereinabove, occurred prior to the receipt, by the BBMP, of the Court notice of the instant writ petition (by the BBMP). The BBMP received summons for appearing in the instant writ petition on 11.12.2009. None of those, whose applications were not considered, be it for reasons of having been received beyond the last date, or on account of ineligibility, assailed the action of the BBMP, in not having included them in the approved pre-qualification list. The fact that there is no aggrieved party, as against the decision of the BBMP approving 20 applicants for pre-qualification, to our mind is a matter of great significance. Accordingly, we confronted the learned Counsel for the Petitioners with the aforesaid factual position. Suffice it to notice, that the learned Counsel for the Petitioners, could not dispute the aforesaid factual position.

21. On 03.12.2009, the Cabinet accorded its approval for individual works estimated to cost Rs. 3,248 crores in respect of 19 packages under "Sections 1 and 2". On 07.12.2009 (Annexure R-7), the State government expressly conveyed the approval of the Cabinet to the BBMP. Thereafter, bids were invited by the BBMP, from the 20 pre-qualified firms. In the said invitation, the last date of receipt of tenders was depicted as 18.12.2009. The last date for receipt of tenders was, however, extended in the first instance to 24.12.2009, and thereafter to 08.01.2010. The main tender was again published in the Karnataka State Tender bulletin on 15.12.2009. All tenders received before the last date (08.01.2010) of submission of tenders, were opened for the evaluation of technical and financial bids on 12.01.2010. A comparative statement of the aforesaid technical and financial bids came to be prepared on 13.01.2010. On 13.01.2010 itself negotiations were held with the tenderers. On 15.01.2010, the "model code of conduct" came into operation, on account of the BBMP elections. On 21.01.2010 an assurance was given to this Court on behalf of the BBMP, that the matter would not be precipitated. On 10.02.2010, the aforesaid assurance was recorded by this Court in a motion bench order, whereupon, the matter has not proceeded any further.

22. We shall now endeavour to delineate the primary statutory provisions which were brought to our notice during the course of hearing. In so far as the present controversy is concerned, it is necessary to highlight the various statutory provisions, with reference to dates of their incorporation. Accordingly, even though it may seem to be repetitive in nature, the amendment of the relevant statutory provisions, with reference to the date of amendments is being highlighted herein sequentially, thereto (when relevant to the present

controversy) so as to avoid any confusion in the matter. All the pleas raised by the Petitioners, in so far as the procedure contemplated under the provisions of Municipal Corporations Act, as also, the Transparency Act, have to be evaluated within the parameters of the factual matrix prevailing at the relevant juncture.

23. As has been noticed herein above, the controversy raised by the Petitioners pertains to three advertisements/notifications. The same have been assailed primarily on the ground that they are violative of the provisions of the Karnataka Municipal Corporations Act, 1976, as also, the Karnataka Transparency in Public Procurements Act, 1999. Reference has been made to Sections 180 - 183 of the Municipal Corporation Act by pointing out that the aforesaid provisions prescribe the procedure for execution of works by way of contracts including the sanction of estimates and works, which were violated by the Respondents. The aforesaid provisions are being extracts hereunder:

"180. Power of Corporation to determine whether works shall be executed by contract:

The Corporation may determine either generally for any class of cases or specially for any particular case whether the Commissioner shall execute works by contract or otherwise.

181. Powers of several authorities to sanction estimates: The powers of the several authorities to sanction estimates shall be as prescribed.

182. General provisions relating to contracts:

(1) The Corporation may enter into any contract and perform such contracts as it may consider necessary or expedient for carrying into effect the provisions of this Act.

(2) Subject to the rules made in this behalf, the following provisions shall apply with respect to the making of contract for any of the purposes of the Act, namely -

(a) every contract shall be made by or on behalf of the Corporation by the Commissioner;

(b) no contract for any performance which, in accordance with the provisions of this Act, the commissioner may not carry out without the sanction of one or other Municipal Authorities or of the Government shall be made by him unless such sanction has been given;

(c) any contract involving any expenditure exceeding such limits as may be specified in the rules shall be made by the Commissioner unless the requirement regarding the procedure to be followed has been followed, and unless the authority which is competent to accord sanction has accorded such sanction and where the sanction to be accorded is by the Government unless such sanction has been accorded by the Government.

(3) These provisions shall apply to any variation of the contract involving an increase of such percentage over the expenditure involved in the original contract as may be prescribed.

(4) Subject to such rules as may be made in this behalf every contract to be entered into by the Commissioner on behalf of the Corporation shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged:

Provided that.-

(a) the common seal of the Corporation shall be affixed to every contract, which, if made between private persons, would require to be under seal; and (b) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing and shall be sealed with the common seal of the Corporation and shall specify.- (i) the work to be done or the materials or goods to be supplied, as the case may be;

(ii) the price to be paid for such work, materials or goods, and (iii) in case of a contract for work, the time within which the work or specified portions thereof shall be completed.

(5) The common seal of the Corporation shall remain in the custody of the commissioner and shall not be affixed to any contract or other instrument except in the presence of the Commissioner and the Commissioner shall sign the contract or instrument in token that the same was sealed in his presence.

(6) No contract executed otherwise than as provided in this section shall be binding on the Corporation.

183. Invitation of tenders.-

(1) At least seven days before entering into any contract or the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding five thousand rupees, the Commissioner shall give notice by advertisement inviting tenders for such contract:

Provided that such advertisement shall be published only in such newspapers having such circulation as may be prescribed;

Provided further that the standing committee may, at the instance of the Commissioner and for reasons which shall be recorded in its proceedings, authorize the commissioner to enter into a contract without inviting tenders.

(2) On receipt of the tenders made in pursuance of the notice given under Sub-section (1), the Commissioner may, subject to the provisions of Section 182, accept any tender which appears to him, upon a view of all the circumstances, to be the most advantageous, but he shall not reject all the tenders without the sanction of the standing committee.

The provisions extracted hereinabove are in the format of their incorporation at the time of notification of the Municipal Corporation Act (notified on 01.06.1977, and having received the assent of the President on 31.05.1977). On the issue of grant of contracts (including sanction of estimates and contracts) Section 183 of the Municipal Corporation Act was amended with effect from 16.06.2003. The amended provision is being reproduced hereunder:

183. Invitation of tenders.- (1) At least seven days before entering into any contract or the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding such amount as may be notified by the Government from time to time, the Commissioner shall give notice by advertisement inviting tenders for such contract:

Provided that such advertisement shall be published only in such newspapers having such circulation as may be prescribed.

Provided further that the Standing Committee may, at the instance of the Commissioner and for reasons which shall be recorded in its proceedings, authorize the Commissioner to enter into a contract without inviting tenders.

(2) In respect of the tenders made in pursuance of the notice given under Sub-section (1), the Commissioner may accept or reject any tender in accordance with the provisions of the Karnataka Transparency in Public Procurements act, 199 (Karnataka Act 29 of 2000)."

24. It would be relevant to mention that under the mandate of Section 421 of the Municipal Corporation Act, power is vested with the State government to make rules for carrying out the purpose of the provisions of the Municipal Corporation Act. In exercise of the power vested in the State government, to frame rules, the Karnataka Municipal Corporations Rules, 1977 (hereinafter referred to as the Municipal Corporation Rules) were notified on 03.11.1977. Rule 6(1) and Rule 7 were repeatedly referred to during the course of hearing. The aforesaid rules as they were originally framed (at the time of their notification on 03.11.1977) are being extracted hereunder:

6. Powers of the several authorities of the Corporation to [accord Administrative Approval]-

(1) The powers of the several authorities of the Corporation of the City of Bangalore to sanction estimates shall be as follows namely -

(i) The Commissioner may sanction any estimates the amount of which does not exceed Rupees 30 lakhs;

(ii) When the amount of an estimate exceeds Rupees 30 lakhs but does not exceed Rupees 50 lakhs, sanction of the Standing Committee shall be required;

(iii) Any estimate the amount of which exceeds Rupees 50 lakhs but does not exceed Rupees 100 lakhs, shall require sanction of Corporation;

(iv) Any estimate the amount of which exceeds Rupees 100 lakhs shall require sanction of the Government.

7. Applicability of certain rules for the process of tender-

[(1)] The Karnataka Transparency in Public Procurements Rules, 2000 made under the provisions of Karnataka Transparency in Public Procurements Act, 1999 as amended from time to time and notifications made thereon shall apply for the process of tenders]

[(2) In respect of Bruhath Bangalore Mahanagara Palike the tenders in respect of estimates exceeding Rupees Ten Lakhs and above, shall be as per the E-Procurement system as provided in the Karnataka Transparency in Public Procurements Act, 1999 (Karnataka Act 29 of 2000) and the rules made there under.]

In conjunction with the amendment to the provisions of the Municipal Corporation Act, the State government amended the provisions of the Municipal Corporation Rules. The amended Rule 6 was notified on 30.05.2009. The aforesaid amendment was enforced with effect from 02.06.2009. Amended Rule 6 is being reproduced hereunder:

6. Powers of the several authorities of the Corporations to accord Administrative Approval.-

(1) The powers of the several authorities of the Corporation of City of Bangalore to sanction estimates shall be as follows, namely.-

(i) The Commissioner may approval any estimates the amount of which does not exceed Rupees 300 lakhs;

(ii) When the amount of an estimate exceeds Rupees 300 lakhs but does not exceed Rupees 400 lakhs approval of the Standing Committee shall be required;

(iii) Any estimate the amount of which exceeds Rupees 400 lakhs but does not exceed Rupees 500 lakhs, shall require approval of Corporation;

(iv) Any estimate the amount of which exceeds Rupees 500 lakhs shall require approval of the Government;

(2) The powers of the several authorities of the Corporations of cities other than Bangalore to accord Administrative Approval shall be as follows, namely.-

(i) The Commissioner may approve any estimate the amount of which does not exceed Rupees 30 lakhs.

(ii) When the amount of an estimate exceeds Rupees 30 lakhs but does not exceed Rupees 50 lakhs, approve of the Standing Committee shall be required;

(iii) Any estimate the amount of which exceeds Rupees 50 lakhs but does not exceed Rupees 100 lakhs, shall require approval of the Corporation.

(v) Any estimate the amount of which exceeds Rupees 100 lakhs but does not exceed Rupees 200 lakhs shall require approval of the Director of Municipal Administration.

(v) any estimate the amount of which exceeds Rupees 200 lakhs, shall require the approval of the Government.

3. x x x x x.

Vide the same amendment which as carried out for Rule 6, the Government also added Rule 6(A) to the Municipal Corporation Rules. Rule 6(A) added with effect from 02.06.2009 is being extracted hereunder:

6-A. Previous approval when necessary.-

(1) No contract for the procurement of services, supply of materials or goods or for the execution of any works shall be entered into by the Commissioner, Corporation of the City of Bangalore except with the previous approval of -

(i) the Government in all cases where the estimated value of the contract in each case exceeds Rs. 500 lakhs;

(ii) the Corporation in all cases where the estimated value of the contract in each case does not exceed Rupees 500 lakhs and the rates of the acceptable tender is not more than fifteen per cent of the CSR;

(iv) the Standing Committee in all cases where the estimated value of contract in each case does not exceed Rupees 400 lakhs and the rates of the acceptable tender is not more than twelve per cent of the CSR:

Provided the Commissioner may make a contract only in case where the estimated value of contract in each case does not exceed Rupees 300 lakhs and the rates of the acceptable tender is not more than eight per cent of the CSR.

(2) No contract for the procurement of services, supply of materials or goods or for the execution of any works shall be entered into by the Commissioner, City Corporation of cities other than Bangalore except with the previous approval of -

(i) the Government in all cases where the estimated value of the contract in each case does not exceed Rupees 200 lakhs;

(ii) the Director of Municipal Administration in all cases where the estimated value of contract in each case does not exceed Rupees 200 lakhs and the rates of the acceptable tender is not more than fifteen per cent of the CSR;

(iii) the Corporation in all cases where the estimated value of contract in each case does not exceed Rupees 100 lakhs and the rates of the applicable tender is not more than twelve per cent of the CSR;

(iv) the Standing Committee in all cases where the estimated value of contract in each case does not exceed Rupees 50 lakhs and the rates of the acceptable

tender is not more than eight per cent of the CSR:

Provided Commissioner may make a contract only in case where the estimated value of contract in each case does not exceed Rupees 30 lakhs and the rates of the acceptable tender is not more than eight per cent of the CSR].

25. The Transparency Act was notified on 13.12.2000 (after having received the assent of the Governor on 10.12.2000). In the narration recorded hereinbefore, reference has already been made to Section 22 of the Transparency Act. So far as the controversy in hand is concerned, the other relevant provisions of the Transparency Act are Section 2(h) (i) & (l) as also Sections 5, 6 and 8. The aforesaid provisions are being reproduced herein:

"2(h) "Tender" means the formal offer made for supply of goods or services in response to an invitation for tender published in a Tender Bulletin;

(i) "Tender Accepting Authority" means an officer or a Committee appointed to accept tenders and a "Tender Inviting Authority" means an officer or a Committee appointed to invite tenders, u/s 9:

(l) "Tender Document" means the set of papers detailing the schedule of works, calendar of events, requirement of goods and services, technical specifications, procurement criteria and such other particulars, as may be prescribed for evaluation and comparison of tenders:

Provided that for the purpose of e-procurement, the "tender papers" means set of documents in electronic form."

5. Procurement other than by tender prohibited.- On and from the date of commencement of this Act no Procurement Entity shall procure goods or services except by inviting tenders for supply.

6. Procurement Entities to follow procedure.- No tender shall be invited, processed or accepted by a Procurement Entity after the commencement of this Ordinance except in accordance with the procedure laid down in this Act or the rules made there under.

8. Publication of Tender Bulletin.- (1) The State Tender Bulletin Officer, or as the case may be, the District Tender Bulletin Officer shall on receipt of intimation relating to notice of invitation of tender from tender inviting authority or information relating to details of acceptance of tender u/s 13 or rejection of tender u/s 14 from the tender Accepting Authority, publish within the prescribed time, the State Tender Bulletin or as the case may be District Tender Bulletin.

(2) The Tender Bulletin shall be made available for sale in the office of the Tender Bulletin Officer and in such other places as the Tender Bulletin Officer deems fit to make available.

26. In addition to the aforesaid, it would be relevant to mention, that the State government has been empowered to make rules necessary for carrying out the

purpose envisaged under Transparency Act (under Section 25 of the Transparency Act). The State government in exercise of powers vested in it, framed the Karnataka Transparency in Public Procurements Rules, 2000 (hereinafter referred to as the Transparency Rules). Rules 2(b) and 27 of the Transparency Rules were brought to our notice during the course of hearing. The aforesaid Rules are accordingly being extracted hereunder:

"2(b) "Pre-qualification" means the process by which the tenderers are first screened for their capability and resources to implement the contract before they are permitted to offer their tenders;

27. Pre-qualification Procedure.-

(1) The tender inviting authority shall for reasons to be recorded in writing provide for pre-qualification of tenderers on the basis of:-

- (a) experience and past performance in execution of similar contracts;
- (b) capabilities of the tenderer with respect to personnel, equipment and construction or manufacturing facilities;
- (c) financial status and capacity.

(2) Only the tenders of pre-qualified tenderers shall be considered for evaluation.

Provided that notwithstanding anything contrary contained in these rules the tender inviting authority may adopt list of pre-qualified tenders empanelled by the Direction of Information Technology, Government of Karnataka in respect of computer peripherals and related services and call for price bids from all such pre-qualified tenderers and the price bids received from the pre-qualified tenderers shall be considered for evaluation by the tender accepting authority, so far as may be in accordance with these rules.

28. The first contention advanced at the hands of the learned Counsel for the Petitioners in their endeavour to assail "Annexures-A to C" was, that the functioning of the Administrator beyond the period contemplated u/s 100 of the Municipal Corporations Act, must be deemed to be without the authority of law. It is accordingly submitted, that the approval of estimates/contracts for execution of works and/or supply of materials or goods (extracted in paragraph 9 above) leaves no room for any doubt, that the same was neither legal nor legitimate. In this behalf, according to the Petitioners, the functioning of the Administrator must be deemed to have come to an end, at the most, after the expiry of six months, from the date of appointment of the Administrator. Details in this behalf were pointedly brought to our notice by the learned Counsel for the Petitioners. These details have been recorded in paragraphs 3 to 10 hereinabove. The same are not being repeated again for reasons of brevity. According to the Petitioners, the continuation of the Administrator in excess of 6 months was neither legal nor legitimate. As such, it is asserted, that all actions taken by the Administrator are liable to be declared as null and void. The impugned

advertisements "Annexures A to C", having been issued well beyond the date of expiry of the valid/legal tenure of the Administrator, according to the Petitioners must be set aside, as the same were issued when the Administrator, had ceased to have any legal authority to run the affairs of the BBMP.

29. In response to the first submission advanced on behalf of the learned Counsel for the Petitioners, it was asserted on behalf of the Respondents, that neither Article 243U nor Article 243ZF of the Constitution of India is relevant to determine the tenure of the Administrator, since neither of the aforesaid provisions relate to the subject of appointment of an Administrator or the duration of tenure of such appointment. Therefore, according to the learned Counsel for the Respondents, the determination of the first submission advanced by the learned Counsel for the Petitioners cannot emerge from the provisions of the Constitution of India even though reliance was placed thereon, by the learned Counsel for the Petitioners, during the course of hearing. It is further sought to be ascertained, that the duration of the tenure of the Administrator, was originally provided for in Section 101 of the Municipal Corporation Act. Section 101 of the Municipal Corporation Act is being extracted hereunder:

101. Maximum period of supersession etc.- No order of supersession or appointment of Administrator u/s 99 or Section 100 shall remain in force for a period exceeding one year:

Provided that for reasons to be recorded in writing Government may continue such order for a further period not exceeding six months:

Provided further that such order shall continue for a period beyond one year and six months if for reasons beyond the control of Government, which shall be recorded in writing, it is necessary to do so.

It is also pointed out that Section 101 came to be omitted with effect from 01.06.1994. The implication of the omission of Section 101 of the Municipal Corporation Act, according to the learned Counsel for the Respondents, clearly depicts the intention of the legislature. Simultaneously, with the omission of Section 101 of the Municipal Corporation Act, the words, "... so however the total period of such appointments shall not exceed six months ..." came to be incorporated in Section 100 of the Municipal Corporation Act. The amended Section 100 of the Municipal Corporation Act, has been extracted in paragraph 9, herein above. It is further the submission of the learned Counsel for the Respondents, that the appointment of the Administrator, in the facts and circumstances of the present case, was made in exercise of power vested with the State government u/s 509 of the Municipal Corporation Act. Section 509 of the Municipal Corporation Act, is being reproduced hereunder:

509. Removal of difficulties: If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette as the occasion may require do anything which appears to it to be necessary to remove the difficulty.

It is submitted by the learned Counsel for the Respondents that Section 509 of the Municipal Corporation Act, had to be invoked on account of absence of any specific provision, dealing with the situation which had emerged on the reconstitution of the BMP, and the consequential creation of the BBMP. Since there was no specific provision catering to the circumstances which had to be dealt with, according to the learned Counsel for the Respondents, the State government took recourse to Section 509 of the Municipal Corporation Act, to appoint the Administrator on the expiry of the tenure by the BMP (on 22.11.2006). To further supplement the instant contention, it is asserted, that Section 100 aforementioned caters to an exigency separate and distinct from the one in hand, and therefore, would not have been the source of power, invoked by the State government for the appointment of the Administrator on 23.11.2006. . For exactly the same reasons as have been recorded in respect of Section 100, it is asserted, that Section 99 of the Municipal Corporation Act can also not be considered to be applicable, to the controversy in hand.

30. In addition to the aforestated legal contentions, it is also sought to be asserted at the hands of the Respondents, that the validity of the order of appointment of the Administrator beyond the term of six months, was assailed before this Court in P.R. Ramesh v. State of Karnataka and Ors. (W.P. No. 15482/2006) and in M. Nagaraj v. State of Karnataka and Ors. (W.P. No. 16836/2006). It is also sought to be pointed out, that Petitioner No. 1 Sri P.R. Ramesh was also one of the Petitioners in W.P. No. 15482/2006. It is however pointed out, that after both the aforesaid writ petitions were dismissed, it is not open to the Petitioners herein, to assail the appointment of the Administrator, merely on the ground, that the Administrator had continued to function for a period of more than six months.

31. We have given our thoughtful consideration to the first contention advanced at the hands of the learned Counsel for the Petitioners. It is necessary to notice that the appointment of an Administrator is contemplated, not only u/s 99 of the Municipal Corporations Act, but also u/s 100 thereof. Section 99 aforementioned is being extracted hereunder:

"99. Power of Government to (dissolve) Corporation-

(1) If in the opinion of the Government the Corporation is not competent to perform or make default in the performance of any of the duties imposed on it or undertaken by it, by or under this Act or any other law for the time being in force or exceeds or abuses its powers or fails to carry out the directions or orders given by Government to it under this Act or any other law or is acting in a manner prejudicial to the interest of the Corporation, the Government may, by an order published, together with a statement of the reasons therefore, in the Official Gazette declare the Corporation to be incompetent or in default or to have exceeded or abused its powers, or to have failed to carry out the directions given to it, or to have acted in a manner prejudicial to the interests of the Corporation, as the case may be, and may (dissolve it):

Provided that before making an order of (dissolution) as aforesaid reasonable opportunity shall be given to the Corporation to show cause why such order should not be made.

(2) When the Corporation is (dissolved) by an order under Sub-section (1), the following consequences shall ensue-

(a) all the councillors of the Corporation shall, on such date as may be specified in the order, cease to hold office as such councillors without prejudice to their eligibility for election under Sub-section (8);

(b) during the period of (dissolution) of the Corporation, all powers and duties conferred and imposed upon the Corporation and the Standing Committees of the Corporation by or under this Act or any other law shall be exercised and performed by an Administrator appointed by Government in that behalf;

(c) all property vested in the Corporation shall, until it is reconstituted, vest in Government.

(3) Government may direct that the Administrator shall be a whole-time officer and when such a direction is issued, he shall be paid out of the Corporation funds such monthly salary and allowances as Government may from time to time, by order, determine and the Corporation shall make such contribution towards the leave allowances, pension and provident fund of the officer as may be required by the conditions of service under the Government, to be paid by him or for him, as the case may be.

(4) During the period of (dissolution) of the Corporation, references in any enactment or law for the time being, in force to the Mayor of the Corporation shall be construed as references to the Administrator appointed under Clause (b) of Sub-section (2).

(5) During the period of (dissolution) of the Corporation, the Administrator shall in the discharge of his functions be guided by such directions in matter of policy involving public interest as the Government may by order specify; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Government shall be final.

(6) Government may, by notification, appoint an advisory committee consisting of not less than fifteen and not more than twenty-five persons who shall be qualified to become councillors under this Act to assist the Administrator.

(7) xxxxx

(8) When a Corporation is dissolved it shall be reconstituted in the manner provided under this Act before the end of six months from the date of such dissolution:

Provided that where the remainder of the period for which the dissolved Corporation would have continued is less than six months it shall not be

necessary to hold an election under this section for constituting a Corporation for such period.

(9) A Corporation constituted upon the dissolution before the expiration of its duration shall continue only for the remained of the period for which the dissolved Corporation would have continued had it not been so dissolved).

(10) An order of (dissolution) of the Corporation under Sub-section (1) [xxxxxxx] together with a statement of the reasons therefore shall be laid before both Houses of the State Legislature as soon as may be after it is made.

A perusal of Section 99 of the Municipal Corporation Act leaves no room for any doubt in our mind that it caters to three specified exigencies. Firstly, when the elected councillors cannot effectively and efficiently carry out the functions of the Municipal Corporation in question. Secondly, when the elected councillors have exceeded and abused the power vested in them. Stated differently, the second exigency would arise when the councillors act in a manner prejudicial to the interest of the Corporation. And thirdly, when the Municipal Corporation in question, fails to carry out directions issued to it, by the State government. In any one (ore more) of the three exigencies referred to above, it is open to the State government to dissolve the Municipal Corporation. On such dissolution, the councillors cease to hold office, and therefore, the Standing Committees of the Municipal Corporation are automatically dissolved. Section 99 of the Municipal Corporation Act, in the circumstances referred to above, vests in the State government, the authority to appoint an Administrator, to run the affairs of the Municipal Corporation during the aforesaid period of dissolution of the Municipal Corporation. When a Corporation is dissolved for the reasons indicated above, it has to be reconstituted (under Section 99(8) of the Municipal Corporation Act) within an outer limit of six months. Based on the aforesaid, it is natural to infer that the tenure of an Administrator appointed u/s 99 of the Municipal Corporation Act, would not exceed six months. This period specified in Section 99(8) of the Municipal Corporation Act is the basis of the first contention advanced on behalf of the Petitioners.

32. Likewise, a perusal of Section 100 of the Municipal Corporation Act leaves no room for any doubt, that it caters to three specific exigencies. Firstly, when the tenure of the existing Municipal Corporation having come to an end, a new Municipal Corporation cannot be constituted, because elections of councillors has been stayed by a Court (or by a competent authority). Secondly, when the elections of at least two-third of the councillors of the Municipal Corporation in question, have been set aside by a Court of competent jurisdiction (or by a competent authority). And thirdly, when at least two-third of the councillors have resigned. During any of the three exigencies referred to above, the Standing Committees of the Corporation stand automatically dissolved, and as such, are prevented from carrying out the duties and responsibilities vested in them. Likewise, all other authorities except the Commissioner of the Corporation, are also precluded from performing their functions. Section 100 of the Municipal

Corporation Act in the circumstances referred to above, vests in the State government, the authority to appoint an Administrator, to run the affairs of the Municipal Corporation, for a period not exceeding six months. The aforesaid out limit prescribed in Section 100 is also the basis of the first contention advanced on behalf of the Petitioners.

33. It is apparent, that the exigencies in which Sections 99 and 100 of the Municipal Corporation Act can be invoked for the appointment of an Administrator, are specific and predetermined, by the said provisions themselves. It is only when the appointment of an Administrator has been made in exercise of the power vested in the State government u/s 99 of the Municipal Corporation Act that the duration of such appointment cannot transgress beyond the period during which the Municipal Corporation remains dissolved. And in case the Administrator has been appointed u/s 100 of the Municipal Corporation Act, the period of such appointment cannot however exceed six months if the appointment of the Administrator has been made by the State government in exercise of power flowing out of Section 100 aforementioned. It is apparent, from our analysis of Section 99 (in paragraph 31) and of Section 100 (in paragraph 32), that specific exigencies lead to the invitation of action at the hands of the State government under the aforesaid provision. In our considered view, therefore, the tenure of a maximum of six months suggested in the contention advanced by the learned Counsel for the Petitioners will only be applicable if the Administrator can be shown to have been appointed, in the present case, in the exigencies postulated under Sections 99 or 100 of the Municipal Corporation Act, and not otherwise.

34. From the admitted sequence of facts narrated herein above, it is apparent, that the tenure of the existing councillors of the BMP (including Petitioner Nos. 1 and 2 hereinabove) naturally expired on the completion of the term of the said Corporation on 22.11.2006. In compliance of the directions issued by this Court, the process of elections to the BBMP was conducted during 2009/2010. On the completion of the aforesaid election process, 198 councillors came to constitute the new BBMP. In our considered view, neither Section 99 nor Section 100 of the Municipal Corporation Act had been invoked for the dissolution of the earlier BMP on 22.11.2006. In this behalf, reference may be made to the three contingencies recorded by us in paragraph 32, wherein Section 99 of the Municipal Corporation Act can be invoked for the dissolution of the existing Corporation, paving the way for the appointment of the Administrator. We have also recorded in paragraph 32 above, the three specific circumstances wherein an existing Corporation can be dissolved u/s 100 of the Municipal Corporation Act, which would also require an Administrator to run the affairs of the Corporation. Neither the exigencies laid down in Section 99 nor the contingencies contemplated u/s 100 of the Municipal Corporation Act, were the basis for the conclusion of the term of office of the councillors of the BMP on 22.11.2006. In fact, the tenure of the elected councillors of the BMP naturally expired on 22.11.2006. In the aforesaid view of the matter, it is not possible for us to conclude, that the appointment of the

Administrator in the present case can be stated to have emerged from the authority exercisable by the State government either under Sections 99 or u/s 100 of the Municipal Corporation Act. The contingency in which the Administrator was appointed after the expiry of the tenure of the existing councillors of the BMP on 22.11.2006 has not been expressly provided for under any express provision of the Municipal Corporation Act. The period, during which elected councillors were not functioning, to run the affairs of the BBMP, an Administrator had necessarily to be appointed. For the situation in hand since recourse could not be made to Sections 99 and 100 of the Municipal Corporation Act (for the appointment of an Administrator) the State government, had necessarily to take recourse to Section 509 of the Municipal Corporation Act, as has been suggested by the learned Counsel for the Respondents. If the submission advanced at the hands of the learned Counsel for the Petitioners is to be accepted by literally applying the provision(s) relied upon by the Petitioners, the functioning of the Corporation would stop after the Administrator had been in office for a period of six months. It is difficult to countenance to this. A valid interpretation of a legal provision, can never lead to an unacceptable or impracticable conclusion. We are satisfied, that in the absence of duly elected Councilors, the only manner in which the affairs of the BBMP could be administered, was by the appointment of an Administrator. That having been done during the course of the period during which circumstances were beyond anybody's control, the same should flow from a statutory provision. Since we have already concluded, that Sections 99 and 100 of the Municipal Corporations Act are inapplicable to the facts and circumstances of this case, and since, no other provision, which can be stated to be applicable has been brought to our notice, we are satisfied, that reference made to Section 509 of the Municipal Corporations Act, has to be accepted as the only source of refuge in the facts of the present case. We therefore, hereby, accept the contention advanced at the hands of the learned Counsel representing Respondent Nos. 2 to 4. In the aforesaid view of the matter it is not necessary to examine the remaining contentions advanced on behalf of the learned Counsel for the rival parties (in so far as the first contention is concerned). For the reasons recorded herein above, we find no merit in the first contention submitted at the hands of the learned Counsel for the Petitioners.

35. The second contention advanced at the hands of the learned Counsel for the Petitioners also emerges from the provisions of the Municipal Corporations Act. For the present contention, learned Counsel for the Petitioners placed reliance on Sections 166 - 168 of the Municipal Corporations Act. The aforesaid Sections 166 - 168 are being extracted herein after:

166. Estimates of expenditure and income to be prepared annually by the Commissioner:

The Commissioner shall, on or before the fifteenth day of January each year prepare and submit to the Standing Committee a budget containing a detailed estimate of income and expenditure for the ensuing year, and, if it is in his

opinion necessary or expedient to vary taxation or to raise loans shall submit his proposals in regard thereto.

167. Budget estimates to be prepared by the Standing Committee for (taxation, finance and appeals [or as the case may be, standing committee for taxation and finance]) -

(1) The Standing Committee for (taxation, finance and appeals [in the case of Corporations other than the [Bruhat Bangalore Mahangara Palike] and the Standing Committee for taxation and finance in the case of [Bruhat Bangalore Mahangara Palike]]) shall, on or as soon as may be, after the fifteenth day of January consider the estimates and proposals of the Commissioner and after having obtained proposals, if any, of other Standing Committees and such further detailed information, if any, as it shall think fit to require from the Commissioner and having regard to all the requirements of this Act, shall prepare therefrom subject to such modifications and additions therein or thereto as it shall think fit, a budget estimate of the income and expenditure of the Corporation for the next year.

(2) in such budget estimate, the Standing Committee shall -

(a) provide for the payment, as they fall due of all instalments of principal and interest for which the Corporation may be liable, on account of loans;

(b) provide for the payment as it falls due, of any amount towards contributions, fees or such other amounts as may be payable by the Corporation to the Government;

(c) allow for a cash balance at the end of the year of not less than one lakh of rupees under General Account - Revenue.

(3) The Commissioner shall cause the budget estimate as finally approved by Standing Committee, to be printed and shall, not later than the first day of February, forward a printed copy thereof to each Councilor.

168. Consideration of budget estimate by the Corporation- At a meeting of the Corporation which shall be called for some day in the first week of February the budget estimate prepared by the Standing Committee shall be laid before the Corporation.

Based on the provisions extracted herein above, it is asserted at the hands of the learned Counsel for the Petitioners, that the procedure for preparing estimates of expenditure of income at the hands of the different Standing Committees (contemplated under Sections 166 - 168) having not been followed, the impugned advertisements appended to the writ petition as "Annexures A to C" are liable to be set aside. It is the contention of the learned Counsel for the Petitioners, that the Respondents have failed to place any material on the record of this case to demonstrate, that the Commissioner of the BBMP had prepared the annual budget of income and expenditure and/or material to demonstrate,

that the impugned advertisements "Annexures-A to C" had been issued within the parameters of the budget estimates prepared by the Commissioner of the BBMP. It is also asserted, that the Respondents have failed to place any material on the record of the case to demonstrate, that the Standing Committee for "Taxation and Finance" of the BBMP had prepared the annual budget of the Corporation. Accordingly it is contended, that it is difficult to understand how the Administrator of the BBMP initiated the process of execution of works to the tune of Rs. 22,000/- crores on its own. It is the assertion of the learned Counsel for the Petitioners, that the provisions referred to hereinabove, are not merely in the nature of decisions of the BBMP or communications issued by the State government. It is stated that they are part and parcel of the statutory provisions of the Municipal Corporations Act, and as such, the same cannot be over-looked under any circumstances.

36. For just the same reasons as have been noticed while dealing with the first contention advanced at the hands of the learned Counsel for the Petitioners, we are satisfied that there is hardly any merit in the instant contention as well. As already noticed hereinabove, the tenure of the councillors of the Bangalore Mahanagar Palike ie., BMP expired on 26.11.2006, the question of constitution of Standing Committees thereafter, would arise only after fresh elections of councillors to the re-constituted Bruhat Bangalore Mahanagar Palike ie., the BBMP were held. At the cost of repetition, it may be stated, that after the expiry of the tenure of the elected councillors in November, 2006 the newly elected councillors held their first meeting on 28.02.2010. It is only thereafter, that Standing Committees would come into existence. During the absence of duly elected Councilors, all the Standing Committees are automatically dissolved, and an Administrator is vested with the responsibility of discharging the duties of the Standing Committees, as also, of the Corporation. Reference in this behalf may be made to Section 99(2)(b) of the Municipal Corporation Act, which reveals, that during the period a Corporation remains dissolved all powers and duties conferred on the Standing Committees, as also, on the Corporation would be performed by the Administrator. A similar mandate is contained in Section 100(2) of the Municipal Corporation Act, which also provides, that after the appointment of the Administrator the entire responsibility vested in the Standing Committees, as also, with the Corporation, would be discharged by the Administrator. In the aforesaid view of the matter, based on the analogy emerging out of Sections 99 and 100 of the Municipal Corporation Act, we are of the view, that herein also, during the period when the BBMP was not functioning through elected Councilors, ie., when no Standing Committees were in existence, all functions ordinarily required to be discharged by the Standing Committees and/or by the Corporation could legitimately be discharged only and solely by the Administrator. The factual narration of facts recorded in this order based on the submissions advanced on behalf of Respondent Nos. 2 to 4 clearly demonstrate, that the procedure contemplated under different statutory provisions were duly followed. That being so, in the absence of elected Councilors, we are of the view

that the Administrator had validly discharged the duties and responsibilities, of not only the Standing Committees of the BBMP, but also of the Corporation itself. Therefore, sanction and approval granted by the Administrator can validly be treated as sanction and approval of the Standing Committees and/or the Corporation itself. For the reasons recorded herein above, we are satisfied that the contention advanced at the hands of the learned Counsel for the Petitioners, based on Sections 166 - 168 of the Municipal Corporations Act, is wholly misconceived and is liable to be rejected.

37. The third contention advanced at the hands of the learned Counsel for the Petitioners was, that the authorities were liable to follow the prescribed procedure, not only with reference to sanction of estimates relating to execution of works to be undertaken by the BBMP, but also in respect of approval of contracts to be entered into by the BBMP for the execution of contracts. Referring to Section 182 of the Municipal Corporations Act, it is the submission of the learned Counsel for the Petitioners, that in matters pertaining to approval of contracts (to be entered into by the BBMP), different parameters have been laid down, for prior approval. It is submitted that when Section 182 of the Municipal Corporation Act is read in conjunction with Rules 6 and 6A of the Municipal Corporation Rules, it emerges that the prior approval for execution of contracts, have been staggered for approval between the Commissioner, the Standing Committees, the Corporation and the Government, based on the expenditure estimated to be incurred. The three impugned notifications were issued on 23.09.2009 (Annexure-A), 01.10.2009 (Annexure-B) and 01.10.2009 (Annexure-C), as such, the amended provisions of Rules 6 and 6A of the Municipal Corporation Rules, which were enforced with effect from 02.06.2009, would be applicable to the facts and circumstances of this case. Rule 6 aforementioned, relates to approval of estimates, for procurement of services, supply of materials/goods, or for execution of works. Where the estimate is in respect of the contemplated consideration is less than Rs. 3 crores, the Commissioner of the BBMP is the competent authority; where the consideration is less than Rs. 4 crores, the concerned Standing Committee is the competent authority; where the consideration is less than Rs. 5 crores, the Corporation is the competent authority; and where the consideration is more than Rs. 5 crores, the State government is the competent authority. For previous approval of contracts, for procurement of services, supply of materials/goods, or for execution of works, Rule 6A postulates the parameters. Where the contract is in respect of consideration less than Rs. 3 crores, the Commissioner of the BBMP is the competent authority; where the consideration is less than Rs. 4 crores, the concerned Standing Committee is the competent authority; where the consideration is less than Rs. 5 crores, the Corporation itself is the competent authority; and where the consideration is in excess of Rs. 5 crores, the State government is the competent authority.

38. It is the vehement contention of the learned Counsel for the Petitioners, that the afore-stated procedure was not followed when the tenders for execution of

contracts contemplated by the impugned advertisements at "Annexures A to C" came to be issued. It is submitted, that at the relevant juncture, the reins of authority in the BBMP were held by the Administrator, and that, the estimates/contracts emerging out of "Annexures A to C" were sought to be sanctioned/approved at the hands of the Administrator unilaterally, without following the mandate of the provisions of law referred to hereinabove.

39. In so far as the instant aspect of the controversy is concerned, learned Counsel representing the BBMP invited this Court's attention to the averments made in paragraph 10 of the statement of objections jointly filed on behalf of Respondents 1 to 4, so as to contend that, the State government had accorded its approval to the proposed capital investment plan, and only thereupon, applications for pre-qualification were invited. It is submitted, that the proposal in this respect was made by the Commissioner of the BBMP on 18.07.2009 (Annexure R-2). The aforesaid proposal after being approved by the Administrator of the BBMP was sent to the State government for its consideration. It is sought to be asserted, that the State government, through the Cabinet of Ministers, first approved the execution of the construction work, and only thereafter, the Commissioner of the BBMP took the decision to invite applications for pre-qualification. It is therefore sought to be asserted, that the third contention raised by the learned Counsel for the Petitioners, does not find support from the ground realities.

40. We have considered the third contention advanced at the hands of the learned Counsel for the Petitioners. At this juncture, it is relevant to notice, that after the expiry of the tenure of the elected councillors of the BBMP, an Administrator had been appointed by the State government to handle the affairs of the BBMP. We have, while considering the first contention advanced on behalf of the Petitioners, affirmed the validity of the appointment of the Administrator, and also, his continuation till the newly elected councillors held their first meeting on 28.03.2010. In the absence of councillors of the BBMP as also the Standing Committees of the BBMP, the responsibility of the Councilors, as also, the Standing Committees has to be shouldered by the Administrator. The instant conclusion has been drawn by us while examining the second contention advanced on behalf of the Petitioners. On account of the approval at the hands of the Administrator, it is natural to infer, that the concerned Standing Committee, and/or the Corporation whenever required, had actually granted the sanction/approval for the contemplated estimate/contract. Accord of approval at the hands of the Cabinet of Ministers, in our view satisfies the requirement of approval at the hands of the State government, irrespective of the nature of estimates/contracts which are subject matter of consideration. The highest sanctioning authority stipulated under the provisions relied upon by the learned Counsel for the Petitioners, is the State government. It is apparent that the approval at the hands of the Cabinet of Ministers, constituted sanction at the hands of the highest prescribed authority. Thus viewed, in the facts and circumstances of this case, it is not possible for us to hold that the sanction/approval of the concerned

authorities in term of the mandate of the provisions of the Municipal Corporations Act and/or the Municipal Corporation Rules had not been obtained, prior to the issuance of the impugned advertisements, "Annexures A to C". In view of the above, we find no merit even in the Petitioners third contention.

41. The fourth contention advanced at the hands of the learned Counsel for the Petitioners was to the effect, that the Transparency Act being a special provision had an over-riding effect on other general legislations, including the Municipal Corporation Act. Additionally, in view of the non-obstante clause contained in Section 22 of the Transparency Act, it is sought to be reiterated, that the provisions of the Transparency Act would have an over-riding effect over the provisions of the Municipal Corporation Act. Therefore, it is sought to be asserted, that to the extent the provisions of Municipal Corporations Act are not in conformity with the provisions of the Transparency Act, the provisions of the Transparency Act, will have an over-riding effect. Likewise, it is asserted, that the provisions of the Municipal Corporation Rules, which are at variance with the Transparency Rules, the provisions of the Transparency Rules will have an overriding effect. Under the mandate of Section 22 of the Transparency Act, it seems that the provision of the Transparency Act would have an over-riding effect on the provisions of the Municipal Corporation Act with effect from 04.10.2000. u/s 1(2) of the Transparency Act, the Transparency Act was made operational with effect from 04.10.2000 (even though it received the assent of the Governor on 10.12.2000 and was notified on 13.12.2000). In so far as the instant aspect of the matter is concerned, the submissions advanced on behalf of the learned Counsel for Respondent Nos. 2 to 4 were divided into two parts. Firstly, it was sought to be asserted, that none of the provisions of the Transparency Act (or the rules framed there under) have been contravened, and as such, the submissions based thereon were untenable. The second submission was, that all the provisions of the Transparency Act (and the rules framed there under) did not have an over-riding effect over the provisions of the Municipal Corporation Act (and the rules framed there under). And further, that none of the provisions (of the Transparency Act) applicable to Municipal activities had been violated. In the aforesaid view of the matter our endeavour would be to consider the first of the two submissions noticed hereinabove, to test the contentions advanced on behalf of the Petitioners on the basis of the provisions of the Transparency Act (and the rules framed there under). Only if the conclusions which emerge, are in favour of the Petitioners, the necessity to consider the second submission advanced on behalf of Respondent Nos. 2 to 4 would arise. For the tenor of the second contention advanced on behalf of Respondent Nos. 2 to 4, reference may be made to paragraph 47.

42. Since it is the case of the Respondents, that the provisions of the Transparency Act have not been violated. In any manner whatsoever, we consider it just and appropriate to first deal with the different issues alleging violation of the provisions of the Transparency Act, (and the rules framed there under) which have been agitated before us, and to determine the veracity

thereof. We shall therefore, in the first instance assume (for the arguments sake) that the fourth contention advanced on behalf of the Petitioners, as concluded in favour of the Petitioners. The necessity to record a finding thereon will arise only if Respondent Nos. 2 to 4, fail to substantiate their first contention (noticed in the foregoing paragraph) that none of the provisions of the Transparency Act (or the rules framed there under) have been violated. All the submissions examined hereafter, are based on the alleged violation of the provisions of the Transparency Act.

43. The fifth contention of the learned Counsel for the Petitioners was, that tender notification(s) had to be published in the Indian Trade Journal, in terms of Rule 10 of the Transparency Rules. This requirement is mandatory, in all cases where the value exceeds Rs. 10 crores. In addition to the publication in the Indian Trade Journal, notices inviting tenders, according to the learned Counsel for the Petitioners, have also to be published in different newspapers in different languages based on the total consideration involved, and the government orders on the subject. Besides the aforesaid it is contended, that it is also necessary for the Director of Information to publish notices inviting tenders as per the instructions of the tendering department. It is submitted, that the aforesaid publications though mandatory, have not been shown as having been made in this case. The entire process of inviting tenders, according to learned Counsel, therefore, deserves to be set aside. The sixth contention of the learned Counsel for the Petitioners was that the appointment of the Tender Inviting and Accepting Authority by the procuring entity in terms of Section 9 of the Transparency Act, though mandatory, had also not been complied with. Besides the aforesaid, it is submitted, that Section 10 of the Transparency Act requires the appointment of a Tender Scrutiny Committee for scrutiny of tenders above Rs. 5 crores, in case of certain departments (Public Works, Irrigation and Minor Irrigation Departments,) and above Rs. 1 crore, generally. It is submitted, that even though the works contemplated through the impugned "Annexures-A to C", were to the tune of Rs. 22,000 crores, the Respondents did not choose to nominate either the Tender Inviting Authority or the Tender Accepting Authority. It is submitted that the entire action was processed in extreme haste, in as much as, even the Tender Scrutiny Committee was not constituted. In this behalf, it is asserted that the Commissioner/Administrator having not been appointed as the Tender Inviting/Accepting Authority u/s 9 of the Transparency Act; and the Tender Scrutiny Committee, having not been nominated u/s 10 of the Transparency Act, the action of the Respondents in issuing the impugned advertisements/notifications "Annexures- A to C" unilaterally, are clearly unsustainable, and are liable to be set aside. By way of the Petitioners seventh contention, it was sought to be asserted, that the notification by the Tender Inviting Committee ought to have necessarily been in consonance with the provisions of Rule 17 of the Transparency Rules, which contemplates, that where the estimate of works is in excess of Rs. 2 crores, the minimum notice period should be 60 days (unless the aforesaid has been exempted under Rule 27 of the Transparency Rules). Rule 17

of the Transparency Rules is being extracted hereunder:

"17. Minimum time for submission of tenders:

(1) The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin the last date for submission of tenders. This minimum period shall be as follows:

(a) for tenders upto rupees two crores in value, thirty days; and

(b) for tenders in excess of rupees two crores in value, (sixty days)

(2) Any reduction in the time stipulated under Sub-rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing.

It is sought to be asserted in this behalf, that for any of the projects of the magnitude contemplated under "Annexures A to C", the minimum period prescribed for the receipt of tenders should not be reduced, as the same would not be in public interest. Referring to Rule 17 extracted above, it is submitted that adequate time has to be afforded to allow tenderers to make up their mind before they respond to the notice inviting tenders, failing which, it is natural to infer that the process adopted was a total farce. In the instant case inviting the Court's attention to the impugned notifications "Annexures-A to C", it is submitted, that wholly inadequate time was afforded to interested parties to submit their tenders. Details of the time schedule adopted in the present case, having been fully expressed in paragraphs 13 to 16 hereinabove, is not being detailed once again for reasons of brevity. We shall now record the eighth contention advanced on behalf of the Petitioners. The most forceful contention based on the provisions of the Transparency Act projected at the hands of the learned Counsel for the Petitioners, was based on a collective reading of Section 2(h)(i) & (l) of the Transparency Act, along with, Sections 5, 6 & 7 thereof, so as to contend, that a complete go-by was given to the mandatory procedural requirements in the case of grant of contracts, by adopting a process, which suited the whims and fancies of the Administrator. It is therefore contended, that the Respondents have given a complete go by to the provisions of the Transparency Act (and the rules framed there under).

44. Each one of the submissions collectively noticed in the foregoing paragraph (as the fifth, sixth, seventh and eighth contentions) have been clubbed together for reasons which will follow hereafter. For each one of the aforesaid submissions, learned Counsel for the Petitioners, had adverted to one or the other statutory provision under the Transparency Act (or the Rules framed there under). Reference was made to some government orders also, while advocating the aforesaid contentions. Reference was also made to forms KW4 and KW6 for advancing one of the submissions noticed above. Details of the submissions advanced on the basis of government order(s) and the forms referred to above

have deliberately not been recorded. We are noticing all this, so that learned Counsel for the Petitioners do not feel led down, that their contentions have not been taken into consideration, despite having been advanced. The reason for all this will emerge from the conclusion(s) which we have drawn, to all the aforesaid four contentions.

45. According to learned Counsel for the Respondents, the action of the Respondents, sought to be assailed by the Petitioners through the instant writ petition, being merely an invitation to pre-qualification, none of the provisions relied upon by the learned Counsel for the Petitioners in propounding the fifth, sixth, seventh and eighth contentions were required to be complied with. The distinction sought to be pointed out is, that the provisions referred to by the learned Counsel for the Petitioners relate to the "tender stage", which had not yet arisen. According to learned Counsel for the Respondents, the impugned advertisements "Annexures-A to C" merely solicited applications from interested parties for pre-qualification. Those short listed in the process of pre-qualification will be invited to submit tenders for specified works. It is, therefore, asserted that the process of "pre-qualification" and the process of "tenders" being separate and distinct, their respective procedures have been separately provided for, and as such, the procedure stipulated for one cannot be ipso facto made applicable to the other.

46. We are of the view, that it is not necessary for us to extract all the provisions relied upon by the learned Counsel for the Petitioners, while dealing with any of the contentions noticed hereinabove as the fifth, sixth, seventh and eighth contentions advanced on behalf of the Petitioners, if we have to accept the contention advanced on behalf of the Respondents. The provisions relied upon by the Petitioners would be relevant, according to the Respondents, only if they were applicable to the stage for which the impugned advertisements "Annexures-A to C" came to be issued. All the provisions relied upon, by the learned Counsel for the Petitioners, pertain to the "tender process", whereas, the impugned orders clearly pertaining to the "pre-qualification process". None of the provisions relied upon by the Petitioners, according to the learned Counsel for the Respondents, is relevant to test the validity of the impugned orders. According to the Respondents separate provisions are provided under the Transparency Act (and the Transparency Rules), to regulate the aforesaid two processes (the "pre-qualification process, and the "tender process"). This is sought to be clarified by asserting that only when the process of "pre-qualification" comes to an end, the "tender process" commences. In other words, it is submitted, the latter process is not a part of the former process, but the latter follows the former. The provisions relied upon by the learned Counsel for the Petitioners, according to the learned Counsel for Respondent Nos. 2 to 4, are applicable only at the stage when tenders are invited, and not at the stage of invitation of applications for "pre-qualification". As against the assertion of the Respondents, it is the contention of the learned Counsel for the Petitioners, that the "pre-qualification process" is also a part and parcel of the "tender process", and as such, the

procedural requirements for one would also apply to the other. The aforesaid submissions (the fifth, sixth, seventh and eighth contentions) canvassed at the hands of the learned Counsel for the Petitioners, would require adjudication only if, we concur with the contention of the Petitioners counsel, that the "pre-qualification" process is a part of the "tender process".

47. We have given our thoughtful consideration to the rival submissions advanced as the fifth, sixth, seventh and eighth contentions on behalf of the Petitioners. The term "pre-qualification" has been defined in Section 2(b) of the Transparency Rules (extracted above). In our considered view, it is imperative to collectively read Rule 2(b) along with Rule 27 of the Transparency Rules (which has also already been extracted above). On a collective perusal of the aforesaid provisions, there is no room for any doubt in our mind, that the process of "pre-qualification" is a matter separate and distinct from the process of invitation of "tenders". Pre-qualification in our considered view is a process whereby prior to invitation of tenders, parties desirous of executing contracts are invited, and are screened. Parties are short listed on the basis of their experience and past performance, and also, on the basis of their capabilities and financial status and capacity. Thus viewed, the process of "pre-qualification" contemplates short listing of entities, from out of which alone, tenders are to be solicited, for the execution of any work or for the supply of any material or goods, based on requirements which emerge from time to time. The object of "pre-qualification" is to short list persons/entities with acceptable credentials. So that, when "tenders" are to be invited for execution of specific works/goods, only those possessing acceptable credentials are invited to submit their "tenders". Tender bids are evaluated on the basis of offers of those who compete for the same, whereas, in the pre-qualification process, none of the competing parties/entities have had an occasion to submit a tender bid. The "pre-qualification process" and the "tender process" in our view do not overlap one another. Only when the former concludes, the latter begins. In our considered view therefore, the two processes viz., the "pre-qualification process", as also, the "tender process", being separate and distinct from one another, the conditions stipulated for compliance under the provisions of the Transparency Act (and of Transparency Rules) for the "tender process", cannot be ipso facto applicable to the "pre-qualification" process. The impugned advertisements having been issued for the purpose of short listing, as a part of the process of prequalification, (contemplated under the provisions of the Transparency Act, as also, the Rules made there under) only the conditions stipulated for compliance at the stage of prequalification will be applicable. We are of the view that if the legislature, as also, the rule making authority, had so desired, they would have provided the same terms and conditions for the pre-qualification process, as have been provided for the tender process as well. It needs to be emphasized that Rule 2(b) of the Transparency Rules defines the term pre-qualification as the process by which tenderers are screened, before the interested parties "... are permitted to offer their tenders", whereas, Section 2(h) of the Transparency Act distinctly defined the term "tender", as the formal

offer made in response to an invitation for a tender. The statutory definition of the two terms affirm the inferences drawn hereinabove. Therefore, it would not be incorrect to conclude that the statutory provisions of the enactments relied upon, also affirm the submissions advanced on behalf of Respondent Nos. 2 to 4. Likewise, Rule 27 of the Transparency Rules delineates the "pre-qualification procedure", whereas, the "tender procedure" is separately provided for (in extensive detail) under the Transparency Act and the Transparency Rules. This also, would lead to the same conclusion, namely, that the "pre-qualification procedure" and the "tender procedure" are separate and distinct from one another. We are therefore inclined to accept the contention advanced by the learned Counsel for the Respondents, that the pre-qualification process and the tender process, have been separately provided for under the provisions of the Transparency Act (and the rules framed there under) and that, they are governed only by such of the provisions as have been individually provided for them. In other words the provisions applicable to the "tender process" cannot per-se be deemed to be applicable to the "pre-qualification process". What the Petitioners contend would lead to the enforcement of terms and conditions which are sought to be made applicable only to the "tender process" even to the "pre-qualification process", inspite of the fact that, neither the provisions of the Act nor the provisions of the Rules framed there under, so envisage. It is therefore not possible for us, to accept the bundle of contentions advanced at the hands of the learned Counsel for the Petitioners as their fifth, sixth, seventh and eighth contentions, simply for the reason, that the provision relied upon by the learned Counsel for the Petitioners, relate to the "tender process", whereas the challenge raised in the instant writ petition relates to the "pre-qualification stage".

48. In paragraph 41 of the instant order, two alternative submissions advanced at the hands of the learned Counsel representing Respondent Nos. 2 to 4 have been noticed. The necessity of examining the latter of the aforesaid two submissions, would have arisen if we were to accept the submissions advanced at the hands of the Petitioners, and had arrived at the conclusion, that the Respondents were guilty of breach of the provisions of the Transparency Act (and the Rules framed there under). Since while examining all the contentions advanced at the hands of the learned Counsel for the Petitioners based on the provisions of the Transparency Act, (as also, the rules framed there under) we have not accepted any of the contentions advanced at the hands of the learned Counsel for the Petitioners, it is not necessary for us to record a finding on the latter contention advanced at the hands of learned Counsel representing Respondent Nos. 2 to 4. All the same, we consider it just and appropriate to outline briefly the basis of the latter contention advanced by the learned Counsel representing Respondent Nos. 2 to 4. While advancing the latter submission in para 41, learned Counsel for Respondent Nos. 2 to 4 had in the first instance placed reliance on the amended Section 183 of the Municipal Corporation Act, and had invited our attention, to Sub-section (2) thereof. The amended, as also, the unamended Section 183 of the Municipal Corporation Act have been

extracted in para 23 above. Based on Sub-section (2) of Section 183 of the Municipal Corporation Act, it was the contention of the learned Counsel for the Respondents, that the aforesaid amendment having been made with effect from 16.06.2003, ie., well after the Transparency Act was made operational (with effect from 04.10.2000) leads to the inference that only such of the provisions of the Transparency Act as were expressly referred to as in Section 183(2) of the of the Municipal Corporation Act (or in any other provision thereof) would be applicable, and would have an overriding effect, over the provisions of the Municipal Corporation Act. All other provisions of the Transparency Act must be deemed to have been exempted from such application, for the simple reason, that the legislature had indicated its intention only to make specified provisions applicable. According to learned Counsel, the legislature had thereby diluted the general effect of Section 22 of the Transparency Act, from an overall overriding effect on the provisions of the Municipal Corporation Act, to the specified limited extent. Likewise reference was made to Rule 7 of the Municipal Corporation Rules (extracted in para 20 hereinabove) so as to contend, that only certain provisions of the Transparency Rules were made applicable to the contingencies contemplated under the Municipal Corporation Rules. For the instant submission, both sub rules (1) and (2) of Rule 7 of the Municipal Corporation Rules were sought to be invoked by the learned Counsel representing Respondent Nos. 2 to 4. For the provisions of the Transparency Rules also, learned Counsel for the Respondents canvassed the same logic as was advanced by him while advancing his plea in respect of the Transparency Act. The instant contention advanced at the hands of the learned Counsel for Respondent Nos. 2 to 4, is left open to be decided as and when an appropriate occasion arises.

49. The last submission (the ninth in the series of contentions) advanced at the hands of the learned Counsel for the Petitioners, was based on a bundle of facts. The said facts commenced with the order dated 17.09.2009, whereby, this Court had directed the concerned authorities to conclude the election process of the BBMP by October, 2009. Despite the aforesaid, the pre-qualification notification was issued on 23.09.2009. On 16.11.2009 a statement was made, that a notification fixing the calendar of events would be made available on 07.12.2009. Accordingly the calendar of events was issued on 07.12.2009, stipulating the manner in which the elections to the BBMP were to be held. On the same date, on which the calendar of events was issued, a notification (dated 07.12.2009) was issued on e-portal identifying 20 firms short listed for award of works, during the process of prequalification. On 08.12.2009, a Division Bench of this Court directed that elections to the BBMP should be held within two weeks (from 07.12.2009). Despite the same, the State government did not co-operate with the State Election Commission, to hold the elections in terms of the directions issued by this Court. The narration of the aforesaid facts, according to the learned Counsel for the Petitioners, is sufficient to conclude, that extraneous considerations were the basis of inviting tenders and issuing orders for awarding contracts. It is submitted, that the whole process stands vitiated on account of

legal mala fides apparent on the face of record. It is the case of the learned Counsel for the Petitioners, that in execution of contracts where the magnitude of consideration was to be, to the tune of Rs. 22,000 crores, the elected representatives of the BBMP should have been allowed to take a final decision in the matter. The deviation from the aforesaid procedure, according to the learned Counsel for the Petitioners, is liable to be struck down as being vitiated, on account of legal mala fides, and being arbitrariness, and as such, for being violative of the provisions of Article 14 of the Constitution of India.

50. During the course of hearing, learned Counsel for Respondents 2 to 4 informed us, that each and every applicant, who had responded to the pre-qualification advertisements, within the time prescribed, was approved in the process of pre-qualification, except for one of the applicants who was ineligible. It is the submission of the learned Counsel for the Respondents, that the said ineligible firm had not assailed the action of the BBMP, in not accepting its pre-qualification offer. It is also the categoric assertion of learned Counsel for Respondents 2 to 4, that the BBMP is not in receipt of even a single representation, at the hands of any other individual/entity/firm/body/agency, besides the 20 pre-qualified applicants, expressing the desire to execute the contracts contemplated under the impugned advertisements "Annexures A to C". Not a single concern, according to learned Counsel, has expressed its dissatisfaction of the procedure adopted by the BBMP for the prequalification process, or has raised a challenge thereto. It is submitted, that no party whatsoever, had approach the BBMP alleging denial of consideration. It is therefore the contention of the learned Counsel for the Respondents, that there is not a single dissatisfied individual, in the procedure followed by the BBMP, to short list contractors for execution of works in terms of the advertisements at "Annexures A to C", for the prequalification stage. Thus viewed, it is the assertion of the learned Counsel for the Respondents, that all those who were/are desirous of executing works for the BBMP, in terms of advertisements referred to herein above, would have an opportunity to do so, when tenders are invited by the BBMP.

51. It is also the contention of the learned Counsel for Respondents 2 to 4, that an offer was made during the course of hearing of the instant case, that the procedure already undertaken by the BBMP for the execution of contracts under reference, can be placed before the newly elected 198 councillors (of the BBMP) for the satisfaction of the Petitioners, and that, the Corporation would proceed further, in awarding contracts for execution of works or for supply of goods, only if the procedure undertaken by Respondents 2 to 4 hitherto before came to be approved by the newly elected Councilors. It is further submitted, that the aforesaid offer made to the Petitioners was not accepted by the Petitioners, merely on account of the fact, that they desired to press their claims on the basis of technicalities of law, rather than, legitimacy and good conscious. Even though according to the learned Counsel for Respondents, there was no violation of any statutory provisions, the aforesaid offer had been made, to obviate allegations of

kind which have now been levelled by the Petitioners.

52. We have given our thoughtful consideration to the last/ninth contention advanced on behalf of the Petitioners. The factual position depicted at the hands of the learned Counsel representing Respondent Nos. 2 to 4 emerges partly from the pleadings on the record of this case, and partly from the deliberations which transpired during the course of hearing. First and foremost, it is clear from the factual position, that not a single individual/entity who had applied (being desirous of executing the works contemplated under "Annexures A to C"), and was eligible for the same, has been deprived of consideration. All the applicants who responded within the stipulated time, and were eligible, have succeeded at the pre-qualification stage, and have been duly short listed for participation in all the works expressed in "Annexures A to C". Merely because certain orders came to be passed by this Court, finding fault with the State Election Commission and/or the State government, in not holding elections to the BBMP, cannot be the basis of inferences in the nature of extraneous consideration, mala fides or arbitrariness, suggested by the learned Counsel for the Petitioners. The erstwhile BMC had 100 Councilors, the present BBMP has 198 Councilors. During the course of hearing, so as to avoid allegations of the kind leveled by the Petitioners, an offer was made at the hands of Respondent Nos. 2 to 4, to place the entire matter for re-consideration before the newly elected 198 Councilors, so as to seek their approval, and ratification. The proposal was summarily spurned by the Petitioners. Learned Counsel for the Petitioners, having conveyed the instructions obtained by them, by requested this Court to adjudicate the matters on the merits, based on the issues canvassed. There is certainly nothing unfair in the stance adopted on behalf of the Petitioners. But then, having declined the offer, it no longer lies in the mouth of the Petitioners to level allegations of extraneous consideration, oblique motive, mala fides or arbitrariness. The process which is subject matter of challenge at the hands of the Petitioners is the "first stage". There is no dissatisfied individual, with the first stage. The important of the stages would be that, when tenders for specified works are invited, whereupon contracts would be awarded. That stage is still to commence. The competing tenderers would stand to gain or lose, when tenderers are screened, and one of them is chosen to execute the work(s) for which tenders are invited. We find no infirmity in the deliberations carried out by Respondents 2 to 4 upto the stage of pre-qualification. The Respondents themselves agreed that they would not precipitate the matter further. This statement was made to this Court on 21.01.2010. On 10.02.2010 the aforesaid assurance was recorded by this Court in a motion bench order, whereupon, the matter has not proceeded further. Thus viewed, it would not be incorrect to conclude, that the Respondents themselves, of their free will did not allow the matter to proceed into the important stage, wherein contracts for execution of works would be awarded, and actual financial implications would emerge. It is therefore not possible for us to hold, that a valid challenge can be raised on behalf of the Petitioners, on pleas of the nature of extraneous consideration,

oblique motive, mala fides or arbitrariness. For the reasons recorded hereinafter, we find no merit in any of the aforesaid allegations leveled on behalf of the Petitioners.

For the reasons recorded, on the different pleas raised on behalf of the Petitioners, we find no merit in their challenge to "Annexures A to C". The instant writ petitions being devoid of merit, are accordingly hereby dismissed.