

COMMENTARY ON
THE
ASSAM MUNICIPAL
ACT, 1956

[Assam Act No. XV of 1957]
(As Amended upto date)
with
RULES
Alongwith
Useful Appendices

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CHAPTER VIII

CONTROL

293. Control by Commissioner, etc.—The Commissioner of Division, the Deputy Commissioner, ¹[the Director of Municipality Administration] the Sub-Divisional Officer or any other officer specially appointed by the State Government by general or special order, may at all times,—

- (i) enter into and inspect, or cause any other person to enter not and inspect,—
 - (a) any municipal office and affairs of, or
 - (b) any immovable property in the occupation of, or
 - (c) any work in progress under, or
 - (d) any institution under the control and administration of the Board, and
- (ii) call for and inspect and book or document which may be, for the purpose of this Act, in the possession or under the control of the Board.

294. Inspection of works and registers by Commissioners.—With the previous sanction of the Chairman any Commissioner of a Board may inspect an work, or institution, constructed or maintained, in whole or in part at the expense of the Board any any register, books, accounts or other documents belonging to, or in the possession of the Board.

1. *Ins. vide* Act No. XIX of 1994.

295. Inspector of Municipal Works.—(1) The State Government, may appoint an officer of the Government to be Inspector of Municipal Works for one or more municipalities.

(2) The Inspector of Municipal Works shall perform such duties and exercise such powers as may be assigned to him by rule.

(3) In particular and without prejudice to the powers referred to in sub-section (2), the Inspector of Municipal Works may at all times enter upon or into and inspect, or cause any other person to enter upon or into and inspect, any immovable property in the occupation, or any work in progress, under the orders of the Board of any municipality within his charge, and the Board shall furnish such statements, estimates and reports as he may require.

(4) A report of every inspection made under this Section shall be forwarded, and a copy thereof shall be forwarded to the Board.

(5) The Board within the charge of an Inspector of Municipal Works shall, in all matters of professional detail, be guided by his report.

296. Power to suspend action under Act.—The State Government, the Commissioner of Division, the Deputy Commissioner, ¹[the Director of Municipal Administration,] the Additional Deputy Commissioner or the Sub-Divisional Officer-in-charge of a Sub-Divisional may, by order in writing, suspend the execution of any resolution or order of the Board or prohibit the doing of any act which is about to be done or is being done, in pursuance of, or under cover of, this Act, or in pursuance of any sanction or permission granted by the Board in the exercise of their powers under this Act, if in its or his opinion, the resolution, order or act militates against the fundamental rights conferred by Part III of the Constitution of India and the State Policy on the Directive Principles laid down in Part IV of the Constitution of India, is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body or persons.

When the Commissioner of Division or the Deputy Commissioner ²[the Director of Municipal Administration] the Additional Deputy Commissioner or the Sub-Divisional Officer-in-charge of a Sub-Division, makes any order under this Section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the State Government, which may thereupon rescind the order or direct that it continues in force with or without modification. Permanently or for such period as it thinks fit.

1. *Ins. vide* Act No. XIX of 1994.

2. *Ins. vide* Act No. XIX of 1994.

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1. Action of the Municipal Board—Power to suspend.—Since respondent had settled with parking zone but on his failure to deposit kist money and to execute the deed lease despite reminders, the Municipal Board issued the final show cause notice threatening cancellation of settlement and quashing of such show cause by Additional Deputy Commissioner under Section 296 illegal, because condition precedent for exercise of power under Section 296 not present. [*Sibsagar Municipal Board v. State of Assam*, 2003 (3) GLT 174 (Gau)].

2. Nature and scope of.—Before exercising of power under Section 296 of the Act, competent must be of opinion that the action of the Municipal Board violated the fundamental rights or the directive principles of state policy or was in excess of the power or same was likely to result in breach of peace or injury to public. [*Sibsagar Municipal Board v. State of Assam*, 2003 (3) GLT 174 (Gau)]

3. Holding of vacant land is a part of house.—Vacant land by side of house shall form part of the house and if a decree for ejection is passed, the tenant must vacate not only the house occupied, but also vacant land, annexed to it. [*Brij Rajat Kothari v. Akhlesh Sahu*, 2003 (1) GLT 598 (Gau)].

4. Constitution of *ad hoc* Bongaigaon Municipal Board.—Proviso to Section 299(b) would show that an *ad hoc* body appointed under Section 299(b) is only required to obtain prior approval of the Director of Municipal Administration on the matter on which decision of the Board is necessary had there been no dissolution. He further stated and filed copies of documents to show that the budget for the Bongaigaon Municipal Board for the year 1996-97 has in fact been approved by the Director of Municipal Administration by his order dated 3.3.1997 and hence the petitioner has obtained the necessary prior approval for incurring expenditure on different items out of the Board's Fund as required under the said proviso to Section 299(b) of the Act, as amended. But in my considered opinion, even where approval is given by the Director of Municipal Administration for some expenditure out of the Municipal funds, it may so happen that the Municipal fund may not be spent in accordance with the budget approved and there may be misappropriation, mis-utilization, diversion, wastage,

etc. In such case, if the State Government as the owner and custodian of the properties vested in the Municipal Boards as per the provisions of Section 299(c) issues directives for enquiry and for stoppage of expenditure of the Municipal funds, the same cannot be held to be outside the jurisdiction of the State Government. If such power of the State Government to issue directives necessary for the purpose of protecting the properties of the Board is not impliedly read into Section 299(c) of the Act, the very object of the said statutory provision would be defeated. Section 299(b) read with Section 299(c) of the Act would, therefore, make it clear that the State Government has the power to issue the impugned order dated 22.1.1997 for the purpose of protecting the properties of the Bonagaigoan Municipal Board. The State Government has the jurisdiction to issue the directions as the custodian of the properties of the Municipal Board under Section 299(c) of the Act, where the elected Municipal Board has been dissolved and the State government has appointed an ad hoc Municipal Board under Section 299(b) of the Act. The decisions of this Court cited were not rendered in cases where the elected Municipal board had been dissolved and the State Government had appointed an ad hoc Municipal Boards under Section 299(b) of Act and are not applicable to the facts of the present case. [*Bonagaigoan Municipal Board v. State of Assam and another*, 1998 (1) GLR 438].

5. Cancellation of allotment order of shops.—Since the authority of respondents was restrained and or prohibited from execution of the allotment order with a direction to return the security premium to those allottees and authorities were directed to call for fresh tenders and conditions were imposed, hence considering the fact, impugned order cannot stand and it must be set aside because it was not passed on proper application of provisions of Section 296 of the Act. [*Ratan Dutta v. State of Assam*, 1988 (1) GLJ (NOC) 27: 1988 (2) GLR 168].

6. Duty of Deputy Commissioner.—It has been held that the Deputy Commissioner performs a public duty exercising power under Section 296 of the Act, and no order or action of the Board should be kept under suspension *sine die*. [*Lohit Chand Saikia v. North Lakhimpur Municipal Board*, 1984 (2)GLR 412].

7. Granting of licence—Power of Additional District Magistrate.—Additional District Magistrate, whether can direct town committee to grant licence, the case has been remanded to High Court for consideration. [*Doom Dooma Town Committee v. The State of Assam*, 1990 GHC 78].

8. Issuance of show cause notice—Quashing of.—Since the private respondent in whose favor parking zone was settled by Municipality was in default of payment of kist money as well as he was not executing lease deed, hence show cause notice issued directing him to pay kist money and execute lease deed or else settlement in his favour to be cancelled. Such notice was neither volatile of fundamental rights and directive principles of state policy nor was likely to lead to serious of peace or annoyance to public. Therefore, quashing of show cause notice in the absence of ingredients essential for exercising said power under Section

296, were absent not proper. [*Sibasagar Municipal Board v. State of Assam and others*, AIR 2003 Gauhati 149].

9. Proceedings of Municipal Boards—Suspension of.—While entertaining the application under Section 296 of the it is necessary for the authorities to purpose the order or the resolution of Board having in mind a Board is an elected body and having statutory power to perform public duties by the Legislature. If an order or resolution has been passed by Board, which militates against the fundamental right conferred by state policy or it is in excess of power conferred law on the Board. If execution of the resolution or order passed by Board is likely to lead to a serious breach of peace, same may be interfered under Section 296 of the Act. [*Municipal Board Sibsagar v. The Secretary to the Government of Assam*, 1983 (2) GLR 63].

10. Proceedings and resolution of Municipal Board—Power of State Government—Approval of State Government.—It has been held that power of settlement and confirmation of settlement is vested in the Municipal Board and settlement does not require any further approval from State Government. [*Navajyoti Dutta v. State of Assam and others*, 1997 (1) GLT 189].

11. Stopping of construction of building.—When order was passed to stop construction of the building, which obstructed the enjoyment of property, hence such orders prejudice to the interest of the petitioner can be passed by a statutory body giving him reasonable opportunity. [*Parma Singh v. Deputy Commissioner K. J. Hills and others*, AIR 1971 A & N 192].

12. Suspension of order of Board.—It has been held that power of suspension to be exercised by the Deputy Commissioner only when he forms the opinion that the resolution or order, firstly, it militates against the fundamental right conferred under the constitution or secondly, it is in excess of power conferred by law or thirdly, execution of the resolution order or act would lead to a serious breach out the peace; fourthly in would cause serious injury or annoyance to the public or any class or body of person. But no order or action of the Board should be kept under suspension *sine die*. [*Lohit Chandra Saikia v. North Lakhimpur Muninipal Board*, 1984 (2) GLR 412].

296-A. Control over proceedings of Municipal Boards.—(1) The State Government the Commissioner of Division, the Deputy Commissioner ¹[the Director of Municipal Administration] shall see that the proceedings of the Municipal Boards are in conformity with law.

(2) The State Government may, by order in writing, annual any proceedings which it considers not to be in conformity with the law do all things necessary to secure such conformity :

Provided that not such order shall be made without giving the Board and opportunity of expressing its view on the matter.

1. Ins. *vide* Act No. XIX of 1994.

COMMENT

Proceedings of Municipal Board—Power of Deputy Commissioner.—

The Deputy Commissioner can decide whether the proceedings of the Municipal Board are in conformity with the provisions of law, hence annulling a proceeding he must hear the Board give opportunity to it to express its view, and justify the validity of the proceedings. Under Section 296-A a quasi-judicial power or adjudicator power has been conferred on the Deputy Commissioner. However under Section 296 of the Act, the only power which has been conferred on the Deputy Commissioner is to suspend the operation of a resolution, order or and act of the Municipal Municipality under certain contingencies. Therefore, in present case the Deputy Commissioner cannot determine the validity of the order and/or exercise any adjudicator power, which has been done in the instant case. The impugned order re-fixing the rate of rent, toll and fees as determined by the Deputy Commissioner is without jurisdiction and the same is liable to be quashed. [*Lohit Chandra Saikia v. North Lakhimpur Municipal Board*, 1984 (2) GLR 412].

297. Power of State Government in case of default and of Deputy Commissioner in case of emergency etc.—

(1) If at any time, on receipt of a complaint or information, it appears to the State Government that the Board have made default in performing any duty imposed on them by or under this or any other Act, the State Government by an order in writing, call upon the Board to perform the duty within such time may be appointed by such order.

(2) If such duty is not performed within such period, the State Government may, after considering any presentation which the Board may submit, either revoke or modify the order or appoint some fit proper person to perform the duty.

(3) If, in any case of emergency, the Deputy Commissioner, upon the recommendation of the concerning Technical adviser immediately available in the district within which the municipality is situated, is of opinion that the immediate execution of any work or the immediate doing of any act which the Board, whether at a meeting or other doing of any which the Board, whether at a meeting or otherwise, are empowered to execute or do is necessary for the health or safety of the public, he may call upon the Board to execute the work within such time as he may appoint. If such work is not executed within such period he may appoint some fit and proper person to execute the work or do the act immediately.

The Deputy Commissioner shall forthwith report to the Commissioner of Division every case in which he use the powers conferred on him by this sub-section whereupon the Commissioner of Division may pass such order as he thinks fit.

(4) Where any person is appointed under sub-section (2), or sub-section (3), the State Government or, subject to any order which may be passed by the Commissioner with the prior approval of the Commissioner of Division may direct that the expense of performing the duty, executing the work or doing the Act, together with reasonable remuneration, if any, to the person so appointed, shall forthwith be paid by the Board.

(5) Where such expense and remuneration are not so paid the Deputy Commissioner may make an order directing the person having the custody of the balance of the municipal fund to pay the expense and remuneration or so much thereof as is possible from the balance in priority to any or all other charges, and such person shall make payment accordingly :

Provided that the Board may prefer an appeal to the State Government against the decision of the Commissioner of Division as regards assessment of expenses and remunerations as made under sub-section (4).

§298. Power to dissolve the Board in case of incompetence default or abuse of power.—If, in the opinion of the State Government, any is not competent to perform or persistently makes default in the performance of the duties imposed on the Board by a under this Act otherwise by law or exceeds or abuses it's power or in the event of failure on the part of the Board to provided such services as the State Government may, by notification in the Official Gazette, declare to be the essential services the State Government after giving the Municipal Board a reasonable opportunity of being heard, may by notification, stating the reasons for so doing declare such Board to be incompetent or in default or to have the Board or abused its power as the case may be, and dissolve the Board and hold election within a period of six months from the date of dissolution.

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1. Opportunity to explain the allegations—Mandatory before dissolution of Board.—Section 298 impose restriction on the Government regarding the dissolution of these Town Committee/Municipal Boards. The Government has power to dissolve the Town Committee /Municipal Boards Constituted under Section 298 in case of incompetency, default or abuse of powers and if in the opinion of the State Government any Board/

1. Subs. *vide* Act No. XIX 1994.

(4) Where any person is appointed under sub-section (2), or sub-section (3), the State Government or, subject to any order which may be passed by the Commissioner with the prior approval of the Commissioner of Division may direct that the expense of performing the duty, executing the work or doing the Act, together with reasonable remuneration, if any, to the person so appointed, shall forthwith be paid by the Board.

(5) Where such expense and remuneration are not so paid the Deputy Commissioner may make an order directing the person having the custody of the balance of the municipal fund to pay the expense and remuneration or so much thereof as is possible from the balance in priority to any or all other charges, and such person shall make payment accordingly :

Provided that the Board may prefer an appeal to the State Government against the decision of the Commissioner of Division as regards assessment of expenses and remunerations as made under sub-section (4).

§298. Power to dissolve the Board in case of incompetence default or abuse of power.—If, in the opinion of the State Government, any is not competent to perform or persistently makes default in the performance of the duties imposed on the Board by a under this Act otherwise by law or exceeds or abuses it's power or in the event of failure on the part of the Board to provided such services as the State Government may, by notification in the Official Gazette, declare to be the essential services the State Government after giving the Municipal Board a reasonable opportunity of being heard, may by notification, stating the reasons for so doing declare such Board to be incompetent or in default or to have the Board or abused its power as the case may be, and dissolve the Board and hold election within a period of six months from the date of dissolution.

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1. Opportunity to explain the allegations—Mandatory before dissolution of Board.—Section 298 impose restriction on the Government regarding the dissolution of these Town Committee/Municipal Boards. The Government has power to dissolve the Town Committee /Municipal Boards Constituted under Section 298 in case of incompetency, default or abuse of powers and if in the opinion of the State Government any Board/

1. Subs. *vide* Act No. XIX 1994.

Committee is not competent to perform or make default in performing of the duties imposed on the Board by or under this Act or otherwise by law, or exceeds or abuses its, or in the event of failure on the part of the Board to provide such services the State Government by notification in the Official Gazette declare to be essential services, the State Government after giving a reasonable opportunity of being heard may by notification stating the reasons, can dissolve such Board/Committee. Section 298 speaks of opportunity to explain its allegation which is mandatory in nature. Section 299 (b) of the Act, 1956 (as amended in 1994) is quoted below :

"299(b). All powers and duties which under this Act may be exercised and performed by the Board whether at a meeting or otherwise shall, during the period of dissolution be exercised and performed by such person as the State Government may direct till commissioner and Chairman are elected." [*Monoranjan Deka and six others v. State of Assam and others*, 1996 (3) GLR 414].

2. Dissolution of Municipal board.—It has been held that Government is empowered to supersede or dissolve a Municipal Board on condition enumerated in Section and provisions are extraordinary and could be invoked only in an appropriate case. Issue of notification to replace the Executive Officer by an *ad hoc* committee without any reason, illegal State Government directed to held elections. [*Manik Sarkar v. State of Assam*, 1994 (2) GLR 431].

3. Dissolution or supersession of municipality—Powers of.—The power of dissolution of municipality is being often misused by the State Government which has come under sharp attack by the conscious public and sure to this Municipal Board remained unrepresentative for years together 298 was substituted by which 1985 to 1996 all over the State of Assam. In 1992 Section months in the event of dissolution fresh election was to be held within six months in the event of dissolution of the Board. In connection with such measure the step to dissolve the Town Committee have not envisaged a permanent remedy. General Election of Municipal Board has to be held as early as possible. [*Shri Naresh Chandra Joarder v. Sapatgram Town Commuttee, Sapatgran and other*, (1988) 1 GLR (NOC) 7].

4. Permissibility of *ad hoc* committee.—Since instead of holding election the State Government sought to replace the Executive Officer by and *ad hoc* committee without any reason whatever and on challenging notification for constitution of *ad hoc* committee, the High Court held that such constitution was without considering the aspiration of the people to fulfill their democratic right. [*Manik Sarkar v. The State of Assam*, 1992 (2) GLR 180].

5. Petition by a person having interest in the affairs of municipalities.—Through the petitioner was not having a right to vote but a resident of Jorhat having interest in the affairs of municipalities, has petition cannot be thrown out merely on the ground of *locus standi* if it is seen that the action of Government is unjustified and illegal. [*Manik Sarkar v. The State of Assam*, 1992 (2) GLR 180].

299. Consequence of dissolution.—When an order of dissolution has been passed under Section 298, the following consequences shall ensue :—

- (a) all Commissioners of the Board shall, as from the date of order of dissolution, vacate their offices as such Commissioners;
- (b) all powers and duties which under this Act may be exercised and performed by the Board whether at a meeting or otherwise shall, during the period of dissolution be exercised and performed by such person as the State Government may direct till Commissioner and Chairman are elected :

Provided that the officer so appointed after dissolution of the Board shall obtain prior approval of the Director or Municipal Administration on the matter on which but for the dissolution, the decision of the Board is necessary.

- (c) all properties vested in such Board shall during the period of dissolution vest in the State Government.

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1. Dissolution of town committee.—From reading of this Section it transpires that on receipt of the explanation against the allegation from the concerned Town Committee/Municipal Board the State Government is required to consider the same and hereunder by notification stating the reasons for so doing it may declare that the Town Committee is incompetent to perform, or persistently makes in performance default in performance of its duties or has exceeded or abuses its power and the State Government by such notification dissolve the Board/ Committee or supersede such bodies. [*Monoranjan Deka and six others v. State of Assam and others*, 1996 (3) GLR 413].

2. Misappropriation of properties of Board—Powers of State Government.—The petitioner is only a nominee of the State Government under Section 299(b) of the Act and exercise the powers and performs the duties of the Board under the Act as nominee of the State Government. Section 299(c) of the Act further makes it clear that all properties vested in the Municipal Board vest during the period of dissolution in the State Government. Accordingly, during the period a Board is in dissolution properties vested in such Board vest in the State Government by virtue of Section 299(c) of the Act. The Statement will have all consequential and

incidental powers necessary to properties vested in the Board and vested in the Government by virtue of Section 299(c) of Act are being misappropriated, mis-utilized or diverted for wrong purpose, the State Government would have the power to issue direction under Section 299 of the Act carting out necessary enquiry into the compliant and taking preventive steps against the loss or damage being done to the properties vested in the Board and the State Government. [*Bongaigaon Municipal Board v. State of Assam*, 1997 (2) G.L.T. 529 : 1997 (2) GLJ 91].

3. Dissolution of Town Committee—Powers of.—It has been held that steps for super session or dissolution of the town committee has not been enumerated as a permanent measure and there is clear mandate to hold general election as early as possible measure and there is clear mandate to hold general election as early as possible. [*Nares Chandra Joardar v. Satpatgram Town Committee*, 1988 (1) GLR (NOC) 7].

4. Power of Executive Officer to promulgate bye-laws.—It has been held that the Chief Executive Officer was competent to promulgate the bye-laws. [*Meghalaya Truck Owner's Assasciation v. State of Meghalaya*, 1989 GHC 273; 1989 (2) GLR 1 : 1989 (1) GLJ 388].

5. Nominee of State Government.—Since petitioner was an appointee in terms of Section 299(b) of the Assam Municipal Act, 1956 and is only a nominee, exercising the power and performs the duties of the Board under the Act as a nominee of the State Government. [*Bangaigaon Municipal Board v. State of Assam and another*, 1997 (2) GLT 529].

6. Protection of properties of Board.—It has been held that the State Government empowered to issued necessary directions to protect the properties of the Board, where the elected Municipal Board had been dissolved. [*Bongaigaon Municipal Board v. State of Assam and another*, 1997 (2) GLT 529].

300. Disputes.—(1) If any dispute, for the decision of which this Act does not otherwise provide, arise between the Boards of two more municipalities constituted under this Act, or between the Board of any such municipality and a cantonment authority of any other local authority, the matter shall be referred,—

- (a) to the Deputy Commissioner, if the local authorised concerned are in the same district; or
- (b) to the Commissioner of Division concerned if the local authorities are in different districts;

(2) Save as provided in sub-section (4) the decision of the authority to which any dispute is referred under this Section shall be final.

(3) If, in the case mentioned in clause (a), the Deputy Commissioner is a member of one of the local authorities concerned, his functions under this Section shall be discharged by the Commissioner of Division concerned.