Obligatory Duties and Discretionary functions of the Council

Duties and functions of the Council:

1) Except as otherwise provided in this Act, the Municipal Government of a Municipal areas shall vest in the Council.

2) In addition to the duties imposed upon it by or under this Act or any other law for the time being in force, it shall be the duty of every Council to undertake and to make reasonable provision for the following matters within the limits of the municipal area, and when effective measures cannot otherwise be made then even outside the said limits, namely:

   a) lighting public streets, places and buildings

   1(aa) planning for social and economic development.

   (ab) urban forestry, protection of the environment and promotion of ecological aspects;

   (b) watering public streets and places;

   (c) cleansing public streets, places and sewers and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Council or not; removing noxious vegetation and abating all public nuisances;
maintenance of a fire brigade equipped with suitable appliances for extinguishing fires, and protection of life and property when fire occurs

regulating or abating offensive or dangerous trades or practices;

removing obstructions and projections in public streets or places and in spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Council or in Government.

securing or removing dangerous buildings or places, and reclaiming unhealthy localities;

acquiring and maintaining, changing and regulating places for the disposal of the dead;

constructing, altering and maintaining public streets, culverts, municipal boundary marks, markets, slaughterhouses, latrines, privies, urinals, drains, sewers, drainage works, sewerage works, baths, washing places, drinking fountains, tanks, wells, dams and the like;

obtaining a supply or an additional supply of water, proper and sufficient for preventing danger to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, when such supply or additional supply can be obtained at reasonable cost;

naming street and numbering of premises;

registering births and deaths;
(m) public vaccination;

(n) suitable accommodation for any calves, cows, or buffaloes required within the municipal area for the supply of animal lymph;

(o) establishing and maintaining public dispensaries, and providing public medical relief and organising [Family Planning Centres and Promoting Population Control, family welfare and small family norms].

(p) establishing and maintaining primary schools;

(q) printing such annual reports on the municipal administration of the municipal area as the State Government by general or special orders requires the Council to submit;

(r) erecting substantial boundary marks of such description and in such position as shall be approved by the Collector, defining the limits or any alternation in the limits of the municipal area;

1(ra) converting dry latrines in the municipal area into wet latrines;

(s) disposing of night-soil and rubbish and if so required by the State Government preparation of compost manure from such night-soil and rubbish;

2[(s-la) ensuring that no person shall require or compel any other person to carry, and no person shall carry, night-soil as a head-load for removing it from one premises or place to any other premises or place, or for disposal, in any part of the municipal area;]
taking such measures as the State Government may, from time to time, direct for improvement of the living and working conditions of the sanitary staff of the Council;

welfare measures for the Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes, who are residing within the limits of the municipal area, and in particular taking such measures for the amelioration of the conditions of these classes as the State Government may, from time to time, direct;

(providing special medical aid and accommodation for the sick in time of dangerous or communicable disease and taking such measures as may be required to prevent the outbreak or to suppress and prevent the recurrence of such disease;

giving relief and establishing and maintaining relief works in time of scarcity or for destitute persons within the limits of the municipal area;

imposing compulsory taxes which are specified in Section 105.

A Council may, at its discretion, provide, either wholly or partly, out of the municipal property and funds for:

laying out, whether in areas, previously built upon or not, new public streets, and acquiring the land for
that purpose, and the land required for the construction of buildings or curtilages thereof to about on such streets;

1[(aa) slum improvement and upgradation;
(ab) urban poverty alleviation;
(ac) cattle pounds and prevention of cruelty to animals;
(ad) regulation of tanneries;]

(b) establishing or maintaining public hospitals, institutions for pre-primary and secondary education, libraries, museums, lunatic asylums, gymnasiums, akhadas, and homes for disabled and destitute persons, and constructing and maintaining buildings therefor, along with such other public buildings like town halls, municipal offices, shops, Dharmashalas, open-air theatres, stadia and rest-houses;

(c) laying out or maintaining public parks and gardens and also planting and maintaining, road-side and other trees;

(d) providing music for the people;

(e) taking a census, and granting rewards for information which may tend to secure the correct registration of vital statistics;

(f) making a survey;

(g) paying the salaries and allowances, rent other charges incidental to the maintenance of the Court of any stipendary or honorary Magistrate; or any portion of any such charges;
(h) arranging for the destruction or the detention and preservation of dogs which may be destroy or detained under Section 293 of this Act under Section 44 of the Bombay Police Act, 1951 (Bom. XXII of 1951);

(i) securing or assisting to secure suitable places the carrying on of the offensive trades specified in Section 280;

(j) supplying, constructing and maintaining, in accordance with a general system approved by Director of Public Health receptacles, fitting pipes and other appliances whatsoever, on or the use of private premises, for receiving, conducting the sewage thereof into sewers under the control of the Council;

(k) the acquisition and maintenance of grass grounds, and the establishment and maintenance of dairy farms and breeding stud;

(l) establishing and maintaining a farm or farm for the disposal of sewage;

(m) the construction, maintenance, management, organisation or purchase of telephone lines, or for guaranteeing the payment of interest on money expended for the construction of a telephone subject to the previous sanction of the Directs when the line extends beyond the limits of the municipal area;

(n) promoting the well-being of municipal employee or any class of municipal employees and the dependents;
(o) providing accommodation for servants employed by the Council
(p) the construction of sanitary dwellings for the poorer classes;
(q) the construction, purchase, organisation, maintenance, extension and management of light railways, tramways, and mechanically propelled transport facilities for the conveyance of the public;
(r) the construction, maintenance, repairs, purchase of any works for the supply of electrical energy or gas;
(s) making contributions to the funds of the Local Self Government Institute, Bombay, or any other organisation or Institution in the State which deals exclusively with Local Self Government matters in urban areas, and is recognised by the State Government.
(t) making contributions towards the construction, establishment or maintenance or educational institutions including libraries and museums, any hospital, dispensary or similar institution providing for public medical relief, or any other institution of a charitable nature;
(u) giving grants or donations to privately run primary or secondary schools or hostels for students;
(v) the setting up of diaries or farms for the supply, distribution and processing of milk or milk products for the benefit of the inhabitants of the municipal area;
any ceremony, fair, entertainment, exhibition or public reception including those to felicitate meritorious students within the municipal area, if the total expenditure during the year does not exceed Rs. 30,000, Rs. 20,000 and Rs. 10,000 in the case of A class, B class and C class Councils, respectively, provided, however, that, whenever expenses above the limits hereinbefore specified are to be incurred, the sanction of the Collector shall be necessary.

(i) in each case, where the expenses are above the permissible limits hereinbefore specified;

(ii) in each case, whatever the expense involved after the annual limits hereinbefore specified are reached;

(x) any other measure not specified in sub-section (2) likely to promote public safety, health and convenience.

(4) No suit for damages or for Specific performance shall be maintainable against any Council or any councillor or officer or servant thereof on the ground that any of the duties specified in sub-section (2) above have not been performed.

(5) Every Council shall also, out of the municipal property and fund, make payments at such rates as the State Government may from time to time by general or special
order specify for the maintenance and treatment either in the municipal area or at any asylum, hospital or house, whether within or without such municipal area, which the State Government declares by notification to be suitable for such purposes:—

(a) of lunatics, not being persons for whose confinement an order under Chapter XXXIV of the Code of Criminal Procedure, 1898 [Now see Code of Criminal Procedure, 1973, (II of 1974), is to force, and

(b) of leprosy patients,

resident within or under any enactment for the time being in force removed from the municipal area:

Provided that, the Council shall not be liable under this sub-section for the maintenance and treatment of any lunatic or leprosy patient in any such asylum, hospital or house as aforesaid, unless such lunatic or leprosy patient, immediately previous to his admission thereto, has been resident in the municipal area for at least one year:

Provided that, the Council shall not be liable under this sub-section for the maintenance and treatment of any lunatic or leprosy patient in any such asylum, hospital or house as aforesaid, unless such lunatic or leprosy patient immediately previous to his admission thereto, has been resident in the municipal area for at least one year:
Provided further that, where an application is made to the High Court or a District Court under the provisions of Section 88 of the Indian Lunacy Act, 1912, (IV of 1912), no order, for the payment of the cost of maintenance of the lunatic by a Council shall be made without any opportunity being given to such Council to show that the lunatic has an estate applicable to his maintenance or that there is a person legally bound, and having the means, to maintain him. The officer in-charge of any asylum to which lunatics for whose maintenance and treatment a Council is liable under this Section are admitted shall maintain a clear account of the cost of maintenance and treatment incurred on account of each lunatic detained in the asylum and shall furnish a copy thereof to the Council on application.

(6) If any Council supplies water through pipes, it shall take such steps, at such intervals, and on payment of such fees, as may be determined by a general or special order made by the State Government, to ascertain the condition of the water so supplied, by inspection and analysis at a laboratory approved by the State Government in that behalf:
Provided that, the State Government may, by notification in the official Gazette exempt any Council from this provision.
(7) Where a Council has entered into any arrangement or made any promise, purporting to bind it or its successors for a term of years or for an unlimited period to continue to any educational or charitable institution a yearly contribution from the municipal property or fund, it shall be lawful for the Council or its successor, with the sanction of the State Government to cancel such arrangement or promise, or to discontinue, or to diminish, such yearly contribution; provided that it shall have given at least twelve months notice, of its intention so to do to the manager, or managers of such institution.

Performance of functions by agencies

Where any duty has been imposed on, or any function has been assigned to a Council under this Act or any other law for the time being in force or the Council has been entrusted with the implementation of a Scheme:

(i) the Council may either discharge such duties or perform such functions or implement such schemes by itself; or

(ii) subject to such directions as may be issued and the terms and conditions as may be determined by the State Government, cause them to be discharged, performed, or implemented by any agency:
Provided that the Council may also specify terms and conditions, not in consistent with the terms and
conditions determined by the State Government for such agency arrangement.

Obligation to prepare Water Supply Scheme and to make sufficient drinking water available within certain period

(1) As soon as may be after the appointed day, but not later than one year from such day, every Council shall prepare a scheme for supply of protected drinking water to the inhabitants of its area, and shall, within five years from such day, execute the scheme and make protected drinking water available.

(2) The scheme shall be so prepared as to make available not less than seventy litres of water per day per head of the population within the municipal area.

(3) If a Council finds itself unable to investigate, to prepare plans and estimates and to execute the scheme, the Council may apply to the State Government for assistance within four months from the appointed day.

(4) The terms and conditions on which the State Government shall investigate, prepare plans and estimates and execute the scheme, shall be prescribed by rules made in this behalf.

(5) For the purpose of ensuring that adequate funds are available with the Council to investigate, prepare plans and estimates and to execute any schemes for protected drinking water supply, the Council shall deposit annually in a separate fund such percentage of
its general revenues of the last preceding year, for such number of years as the State Government may, at the time of sanctioning such scheme and before giving any guarantee to any loan required by the Council to finance the scheme, and after considering the views of the Council concerned, in each case determine. Such fund shall be known as "The Water Supply Reserve Fund" and the required deposit shall be made by Council to that fund before the first of June each year.

(6) This fund shall be regulated in the manner to be prescribed by rules.

(7) If a Council does not apply to the State Government for assistance under sub-section (3), it shall be presumed that the Council does not want such assistance and will prepare and execute the scheme on its own.

(8) On an application by a Council, and on sufficient and satisfactory reasons being shown, the State Government may extend the time limits prescribed in sub-sections (1) and (3). If within the period prescribed in sub-section (1) or (3) or within the extended period (if any), a Council fails to prepare or execute the scheme it shall be presumed that the Council has committed default in performance of its duty under this Act.

(9) If the State Government at any time notices that a Council has failed to deposit the sum specified in subsection (5) to its Water Supply Reserve Fund, the State
Government may take over the fund by an order in writing and also direct the bank in which the moneys of the Council are deposited to pay from the amount to the credit of such Council such sums as may be due to the said fund at such intervals and in such installments as the State Government may direct. Such bank shall be bound to obey such order. Every payment made pursuant to such order shall be a sufficient discharge to such bank from all liability to the Council in respect of any amount so paid by it out of the moneys of the Council deposited with such bank.

(10) The provisions of sub-sections (1), (2), (3) and (4) shall not apply to any Council which on the appointed day if executing a scheme for supply of protected drinking water as required by sub-section (2).

(11) Nothing in this section shall apply to any Council which on the appointed day has in operation a scheme as required by sub-section (2).

(12) The provisions of this section shall apply also to every Council constituted after the appointed day, subject to the modification that any reference to the appointed day therein shall be construed as a reference to the date on which such Council is first constituted.
ANNEXURE B

INTERNAL AUDIT

Interval of audit - The Municipal Auditor shall complete the audit of each month's account within the first fortnight of the next following month and shall give the Municipal Accountant the following certificate:-

"Certified that the accounts from ......................to ......................have been audited by me and found correct with the exception of the following items ".

The Municipal Auditor shall also give a similar certificate the end of each quarter after the accounts of the quarter are checked by him.

Duties - The Municipal Auditor shall -

1) maintain supervision over Municipal income and expenditure;

2) satisfy himself -

a) that all expenditure incurred is covered by a provision in the Budget sanctioned by the Council;

b) that no expenditure has been incurred except with proper sanction and in accordance with such sanction;

c) that all sums due to and received by the Council have been brought to account without delay; and,

d) that the receipts and payments are correctly classified;
3) examine all pay bills for establishments and for fixed grants-in-aid and see that none for the sanctioned charges have been disbursed;

4) audit the accounts of debt, deposit, sinking funds, advance, suspense and remittance transactions of the Council and report upon these accounts to the Council through the Chief Officer and the standing Committee;

5) examine all bills for articles purchased and see that they are supported by suitable acknowledgments, that the articles have been received and brought on the stock accounts where necessary;

6) examine all bills for charges on account of all works and other expenditure and see that proper certificates are furnished in support of them and that no deviation has been made from the sanctioned plans and the estimates without the sanction of the competent authority;

7) examine all receipts for disbursements made, and see that each payment is sufficiently vouchered for;

8) examine at the end of every month the General Cash Book, check with the entries in the Classified Register and the other registers of income and expenditure check the balance recorded in the General Cash Book, with the balance in the Bank or Treasury
and check all periodical abstracts of income and expenditure prepared by the Accountant;

9) examine at least twice a year all the accounts and registers required to be maintained under these rules or any other rules made in this behalf and to check the balance in the bank and the treasury;

10) examine in particular at least twice a year the Materials Account and the Register of Tools and Plant and to check them with the actual stock of materials, tools and plant;

11) tally at least twice a year all the receipt books and chalans with the actual collections;

12) examine and certify all such returns statements and accounts as may be referred to him by the President, the Chief Officer the subject committee, the Standing Committee or the Council;

13) sign abstracts, bill and accounts that have been examined by him and sign all subsidiary documents connected with them that have undergone examination in the course of his audit;

14) examine whether all the grants payable to the Council have been received in the financial year in which they were due;
15) examine whether the demand registers contain all entries of assessment including those relating to properties etc., included for the first time in assessment list during the current year;

16) verify during the year or at the time of inspection that the securities have been obtained, are duly verified and are commensurate with the cash and valuables handled and the life and solvency certificates of sureties are obtained;

17) advise on all question of leave or service in accordance with the rules and check all claims to gratuity or provident fund, or compensation;

18) pre-audit all claims for remissions, refunds reduction or write-off of taxes;

19) prepare replies to the Government audit objections and the audit note;

20) generally adopt and recommend all such measures and precautions to secure the Council against loss or damage arising from dishonesty, error, irregularity or illegality.

Powers of the Auditors

1) Municipal Auditor may report direct to the President or the Standing Committee, at any time any material
impropriety, irregularity or illegality in the expenditure or in the recovery of money due to the Council or in the council accounts and on matters relating to the accounts and financial matters of the Council or to the audit of the said account; Provided that, a copy of such report shall always be sent to the Chief Officer.

2) If the Municipal Auditor considers it desirable that whole or any part of the audit of any accounts which he is required to audit should be conducted in the Offices in which these accounts originate, he may require that these accounts together with all books and documents having relation thereto, shall at all convenient times be made available in the said Office for inspection.

3) The Municipal Auditor shall have power to require that any books or other documents relating to the accounts he is required to audit, be sent for inspection to him;

Provided that, if the documents are confidential he shall first obtain the permission of the President and shall be responsible for preventing the disclosure of their contents.
ANNEXURE C

SUMMARY OF RECOMMENDATIONS OF THE MUNICIPAL
FINANCE COMMISSION, MAHARASHTRA STATE

The Gap between the needs and resources and the Commission's approach for bridging the same

1. A drainage scheme should be prepared simultaneously with the water supply scheme in respect of every municipal area. It should not be postponed until supply of 30 gallons per head per day is reached. Drainage schemes should be initiated in as many municipalities as may be feasible for compact developed portion of the town and extended as phased programme so as to cover a larger area from year to year.

2. It is essential to take radical measures to place the property tax back in its position as the central point in the scheme of Local Finance.

3. To bridge the gap between the needs and resources, the Commission recommends the following:
   i) The more effective utilisation of the existing sources of revenue and appropriate administrative measures therefor.
   ii) Freeing the property tax from the restrictive influence of the Rent Control Act.
   iii) Payment of local taxes by the Government properties comparable to those payable by similar private properties.
iv) Sharing of certain revenues exploited by the State Government with the urban local bodies.

v) Abolition of octroi taxes and its substitution by a multipoint turnover tax.

vi) Rationalisation with suitable improvement of the grant-in-aid system of the State Government, and finally,

vii) To make adequate provision both in the five year plans and annual plans to meet the needs of capital works and expenditure on water supply and drainage on an enhanced scale.

Exploiting the existing sources of taxation and requisite administrative measures

4. The Commission is of the view that the question of augmenting the funds of the municipal councils does not depend so much now onwards on the increase in rate of property tax or other taxes but on proper assessment of the properties and the periodical revision of the said assessment.

5. The Commission is not in favour of setting up a State Level Valuation Department for assessing the rateable values of properties since the scheme will not be workable in practice. Instead, requisite municipal staff should be suitably trained or qualified staff should be made available to the municipal councils.
6. Government should exercise the powers vesting in it under Section 168(2) of the Maharashtra Municipalities Act regarding the requisition to be made to the Collector for appointing a Recovery Officer if the arrears exceed 50 per cent of the taxes recoverable.

7. The State or Regional level cadre of Chief Officers should be constituted early.

8. "C" Class and Hill Station Municipal Councils are not in a position to maintain separately by themselves costly equipment. Government should keep the required equipment at the District Head Quarters and allow its use, on the prescribed payment, by the Councils.

9. A Co-ordination Committee consisting of the representative of the Collector, Medical, Public Health Department, Town Planning Department, Public Health Engineering Department, Education Department and the Chief Officers of the Municipal Councils should be set up in each district and it should meet atleast once in a quarter.

10. Every tenement should contribute a minimum monthly charge for water and conservancy. However, there should be provision in the Municipal Acts empowering the Municipal Commissioner or the Chief Officer to waive, on due representation, this minimum monthly charge in the case of a tenement if the income of the entire family occupying it is less than
Rs. 150 per month in the case of Bombay, less than Rs. 125 p.m. in the case of other corporations and less than Rs. 100 in the case of a municipal council.

11. The Commission recommends - (i) that the urban local bodies which are not levying profession tax should be urged to do so, and (ii) the Government of India may be requested to revise the existing ceiling of profession tax from Rs. 250 to Rs. 1000.

Adverse effects of the Rent Control Act

12. It is necessary to establish, beyond doubt, that the powers vesting in the urban local bodies to revise periodically the assessment of properties should not be fettered by the provisions of the Rent Control Act. Likewise it should be clear in law that the increase in the amount of municipal tax or cess whether by way of upward revision beyond the controlled rent or by way of revision of rateable value or imposition of new tax or cess should be payable by the actual beneficiary, namely, the tenant occupier.

13. For this purpose Section 114(1) of the Maharashtra Municipalities Act and Section 10 of the Bombay Rent Control Act, 1947 should be amended as indicated. Similar amendments should be incorporated in other municipal acts also.

14. There should be incorporated a provision in all the Municipal acts to empower the Municipal Commissioner or Chief
Officer to waive, on due representation, the increase in taxes, as a result of the periodic revision of the assessment or enhancement of rates in the case of a tenement of the income of the entire family occupying it is less than Rs. 150 per month in case of Bombay and less than Rs. 125 in the case of other corporations and Rs. 100 in the case of municipal councils.

Levy of municipal taxes on Central Government properties, railway properties and State Government properties

15. a) The Bill for permitting the levy of local taxes on Central Government properties, has it understood been prepared and is awaiting introduction in the Parliament. It should be circulated to the State Government for eliciting their views or for discussion at a forum where representatives of State Governments and Local Self Government participate.

b) Central Government should give up the idea of prescribing exemption in favour of what are termed non-commercial Departments. If so required in public interest only certain specific sections of the Home and Defence Departments may qualify for exemption. In the case of properties exempted from the payment of local taxes, Government should lay down norms for payment of an amount in lieu of taxes by way of compensation or contribution.

16. Central Government properties should pay local taxes, including octroi on goods as provided in sections 105 and 106
of the Maharashtra Municipalities Act, 1965 on State goods exception perhaps being made in respect of certain categories of vacant lands only.

17. In respect of service charges or taxes, exclusion of certain services like Education, Medical and Public Health is not justified. If at all, only a 10 percent could be allowed on the main ground of provision of medical facility by the Central Government at its own expenses.

18. The book value should not form the basis of assessing the residential properties of the Central Government. The Valuation Agency should be allowed to assess on the basis of reasonable current capital value having regard to the age and condition of the building.

19. The Central Government properties should be assessed by the same machinery which undertakes the assessment of State properties and there should be a periodical revision every four or five years as in the case of other properties.

20. In respect of Port Trust properties, the Madras model of the tax being prescribed as a percentage of gross revenue is commended.

21. The Acts governing the municipal corporations should be amended to bring them on line with the provisions of the Maharashtra Municipalities Act in respect of payment of
property taxes. The special concession of twenty per cent presented in respect of properties within the limits of corporation should be done away with. For fixing the rateable value of State Government properties, the Government has prescribed that a rate of four percent on cost of land and six percent on cost of construction should be taken. The rate should be revised upwards to nine per cent with a differential, if necessary, of two percent in respect of the cost of land only.

Sharing the proceeds of some existing State taxes (entertainment tax and motor vehicle tax) with the urban local bodies

22. Entertainment Tax - Entertainment tax is a local tax in character and the local bodies should be given a share of entertainment tax. It should vary from 10 to 40 percent in inverse proportion to the population of the municipal area. In effect it should be 40 percent in respect of 'C' class municipalities and 35 and 30 in respect of 'B' and 'A' class municipalities respectively. In respect of Municipal Corporation it should be 10 percent.

Within the limits of 10 percent and 40 percent there should be a review of allocation by the Government in the light of the actual receipts and the needs of the local bodies. Government may consider the feasibility of pooling the distributable receipts of each of the four categories separately and disbursing them on the basis of population.
23. Motor Vehicle Tax –

(i) The Municipal Corporation of Bombay, Poona and Sholapur which are levying wheel tax on motor vehicles should be allowed to continue levying the tax. Suitable increase in the ceiling rates of the tax needs to be considered by the State Government.

(ii) Rest of the Corporations viz., Nagpur and Kolhapur which do not levy the tax on motor vehicles along with all other municipal councils should get road grant from the Pool of the Road Fund as indicated below:

(iii) Twenty-five percent of the net collection in the State from the motor vehicle tax should be earmarked for being distributed to municipal councils. Out of this 60 percent should be distributed as "normal road grants" to the municipal bodies specified in (ii) above at a flat rate of Rs. 2.5 per person of their population according to 1971 census.

(iv) The remaining 40 percent should be distributed annually as special road grants to municipal councils and all the corporations including Sholapur, Poona and Bombay Municipal Corporations which need to be accorded a favourable treatment in regard to special grants for construction of fly-over bridges subways, bridges, etc., to enable them to undertake special road works including bridges.
(v) The amount if any, remaining undistributed should be shown to the credit of the fund and carried forward for the next financial year.

Octroi

24. The Commission endorse the recommendation of the Study Group that octroi should be abolished and the loss of revenue should be made good by the levy of a multi-point turnover tax.

25. The compensation may be paid quarterly in advance, adjusting the excess or short-fall in the last quarter of the financial year, to mitigate the difficult ways and means position of urban local bodies resulting from the loss of day-to-day receipts from octroi.

26. The compensation in lieu of octroi to be paid to each local body in the first year after octroi is abolished should be equal to its gross octroi receipts in the preceding year. In subsequent years the net proceeds from the multi-point turn-over (i.e. after deducting 1.5 percent being the collection charges and 6.52 percent for disbursement to Village Panchayats) should be distributed to each urban local body in proportion to its gross octroi receipts in the year preceding the abolition of octroi.

27. The two new Municipal Councils of Chikhalda and Panhala which are not levying octroi at present and any new Municipal
Councils that may hereafter be set up may be given a share in proportion to their population from the divisible pool of 6.52 percent for distribution to village panchayats.

28. Foodgrains and milk should be exempted from the levy of multi-point turnover tax. Except for this, there should be no special exemption in favour of Central or State Government goods from the payment of octroi or its substitute multipoint turnover tax.

Grants to Local Bodies

29. The Commission is not in favour of recommending to municipal councils any basic per capita general purpose grant which is based on the sole criterion of population irrespective of their performance, purpose or source of revenue as the approach for recommending such a grant has in it hidden germs of eroding the self-reliance and independence of local bodies as self-governing institutions.

30. The municipal councils should be given a grant equal to 75 percent of both the ordinary land revenue as well as the non-agricultural assessment realised during the previous revenue year.

31. It is necessary that adequate and timely financial help is made available on an assured basis of Government to the local authorities in respect of schemes implemented under the Development Plans of the Councils which are approved by the State Government.
32. In respect of grant-in-aid for conversion of dry latrines into flush type latrines, the ceiling should be raised to Rs. 2000. Half of the assistance should be by way of loan, and one-fourth by way of outright grant to the house-holder through the municipal council. The State Government must use its weight of authority and levers of financial assistance to ensure that each municipal council chalks out a programme to eliminate the scourge of manual handling of night soil within a time bound programme and implements it in practice.

33. Provision of adequate and protected drinking water supply and maintenance of drainage systems which are functions of prime importance involve heavy capital outlays and to avoid heavy losses to the Councils due to delay in allocation of funds or execution of schemes which result in higher cost consequent on rising prices, it is essential to fix target dates for completion of schemes and to adhere to them strictly.

34. Water rates and other charges should generally be fixed at such level that it covers not merely the maintenance charges but provides for the servicing of the loans also.

35. Municipal Councils situate in drought-prone areas, or saline tracts; hill stations and pilgrim centres or fair may be given additional grant-in-aid in lieu of loans varying between 10 and 20 percent on an ad hoc basis.
36. Mahabaleshwar hill station should be given assistance for water supply in the form of charging for water at a concessional rate of Rs.3/- per 1000 gallons instead of Rs. 4/- per 1000 gallons.

37. As recommended in another chapter, 25 per cent of the net proceeds of the motor vehicle tax should be earmarked for distribution to the municipal councils and corporations, 60 percent being so distributed as normal grants to the municipal councils and the municipal corporations of Nagpur and Kolhapur at a rate of Rs. 2.5 per capita according to the census population of 1971 and the remaining 40 percent as special grants to the municipal councils and all the corporations including those that levy the wheel tax on motor vehicles. The three Corporations, viz., Bombay, Poona and Sholapur which are not eligible for normal road grants should be assisted more favourably from the special road grant to meet their specific needs such as fly-overs, sub-ways, parking places, etc.

38. Grants-in-aid under the Bombay Shops and Establishment Act, 1948, grant-in-aid for expenditure towards traffic amenities and grants-in-aid from fines realised and credited to Government under municipal and other Acts, should be maintained at the existing levels.
39. The Commission recommends that the State Governments should make a statutory provision to give its present system of grant-in-aid and the status of a grant-in-aid code and should also make a statutory provision for the periodical appointment of a Committee for the revision of the Code.

Financial Assistance for Capital Works

40. The State Government will have to examine in depth the question as to the need for a special development authority in addition to or in the place of CIDCO. There is, however, no case in Maharashtra for setting-up an Urban Development Finance Corporation of the type that has been set up in Kerala.

The Bombay and Poona Municipal Corporation

41. There is no other city in the world where the cumulative imposts related to rateable value is as high as in Bombay and the Commission sees no scope for enhancing the revenues of the Municipal Corporation or of the State by enhancing the rates of taxation.

42. It is matter of great urgency to relieve the Corporation from the restrictive influence of Rent Control Act and to restore its authority to assess the properties reasonably in line with the realities of rental value in the city.
43. Half of the deficit that the Bombay Municipal Corporation has to face on primary education after contributing to it the proceeds of its education cess and statutory share should be met by way of grant from the State Government. This objective would be achieved by raising the percentage of grant from its present level of 7.5 per cent to 25 percent of expenditure on primary education.

44. The Corporation needs to be accorded more favourable treatment in regard to special grants for construction of fly-over bridges, subways and similar other road works out of special road fund.

45. The Corporation would get a share of 10 percent of the Entertainment tax proceeds in the city.

46. Provision should be made in the Bombay Municipal Corporation Act to permit the Corporation to levy the profession tax.

47. In respect of assessment of Port Trust properties, the system followed in Madras, viz., levy the tax as a percentage of gross receipts should be adopted.

48. The Commission is of the opinion that there is no case for subsidising a Commercial undertaking of the type and size of the B.E.S.T.
49. In respect of the motor vehicle tax levied on the buses of the BEST on the basis of the carrying capacity of the buses is distinctly on the high side and Government should revise the rate to reduce the incidence.

50. The Councillors and informed citizens of Poona will have to build up public opinion for relieving the Corporation from the strangle hold of Rent Control Act and progressively enhancing its revenue through both upward revision of the rateable value and the raising of the minimum rate of General tax to the level of 20 percent.

51. The Commission would commend to the Poona Municipal Corporation to levy appropriate taxes on Zopada patties both in the interest of municipal revenues as also to bring them under the over all discipline of city development.

52. The borrowing capacity of the Corporation has been adversely affected by the inclusion of the cost of a large number of capital works in revenue account. The Commission would urge that the corporation should take immediate measures to rebuild its borrowing capacity to at least Rs. 5 crores within the next three years.
G.B. Mahajan and others, Appellants V. The Jalgaon Municipal Council and others, Respondents.

(A) Maharashtra Municipalities Act (1965), Ss. 272(1) - Powers of Municipality - Project of construction of commercial complex - Agreement with developer for its financing and execution - Not illegal.

Municipalities - Construction of commercial complex - Agreement with developer for financing and execution of project - Not illegal.

The Municipal Council had sponsored a project for development of real estate. The Municipal Council invited competitive proposals to as to ways in which the potential of the land could be commercially exploited and invited competitive plans and designs on the basis of which the Architects could be selected from the architects all over the country. The project envisaged a central Administrative Building with ground plus 17 floors intended to be utilised by the Municipal Council for locating its own officers and an adjacent structure with a basement plus five upper floors to
be used as a vegetable-market and a commercial complex. The board aspects as to the funding of the project were that the project was to be executed by a "Developer" who would be required to take-up and execute the project at his own cost; that the developer would be obliged to rehabilitate 486 small time vegetable vendors who were in occupation of the land in various units by providing them small stalls at, what was described as, a concessional premium of Rs.3,000/- per stall, that 83 more shops, at fixed premia of Rs. 40,000/- each, be given to Adatias who were carrying on their business on the property and that, further, another 60 shops, at the same rate, be allotted to some traders who are stated to have encroached upon the land. This was in addition to the five shops, which had to be made available to the heirs of the original donor of the land free of cost. The nature of the rights conferred on to these beneficiaries is stated to be "Occupancy rights" for a period of 50 years. The municipality would get rents from those occupants at rates stipulated. The administrative block comprising of ground plus 17 floors was, however, intended to be handed over to the Municipal Council free of cost for its own use and of its tenants. The developer would be entitled and at liberty to depose of the occupancy rights in respect of the rest of the accommodation in "Commercial-Complex" and retain the premia paid by the disponees so to reimburse itself the financial outlays on the projects plus its profit. The occupiers,
including those who would have the benefit of the allotments at such fixed rates as well as those to be inducted by the developer, were expected to pay rents to the Municipal Council for the period of 50 years at rates envisaged in the scheme, through, however, certain incentives and concessions were afforded for the first two periods of 3 years each. After enunciating these criteria the project was put to tender. Advertisements were taken out in the newspapers and five Developers responded and submitted their tenders. After a process of scrutiny of the tenders and elimination of ineligible and non-competitive ones, the tender of one of the developers was accepted by the Municipal council by its unanimous Resolution. (Paras 4, 5, 6)

Held, the plea that a project envisaging a self-financing scheme, by reason alone of the particular policy behind it was beyond the powers of the local authority would not be tenable. A project, otherwise would not be tenable. A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in
the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprise of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost over runs in projects, balancing of costs against time-scales, quality control, cost benefit ratio etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right or trial and error, as long as both trial and error are bona fide and within the limits of authority. (Para 14)

In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. In the context of expanding exigencies of urban planning it would be difficult
for the court to say that a particular policy option was better than another. Thus the project cannot be said to be ultra vires of the powers of the Municipal Council.

(Paras 14, 15, 16)

(B) Maharashtra Municipalities Act (1965), Ss. 272(1), 92 - Construction of commercial complex - Agreement with developer for financing and execution by Municipality - Induction of occupiers by developer with consent of Municipal Council in area earmarked for him - Not impermissible.

Municipalities - Construction of commercial complex - Agreement with developer - Induction occupiers by him in area for him - Not impermissible. (Paras 16, 17)

(C) Constitution of India, Art. 14 - Construction of commercial complex by Municipality - Agreement with developer for financing and execution - Tender prepared by reputed architects - Tenders can identify terms which form the basis of comparative evaluation - Tender of one developer accepted unanimously by Municipal Council - No other tenderer expressing grievance - Charge of arbitrariness would not be tenable.

Maharashtra Municipalities Act (1965), S.272(1) (Paras 20, 21)

(D) Maharashtra Municipalities Act (1965), S.272(1) - Construction of commercial complex - Agreement with developer
for financing and execution - Induction of occupiers by developer in area earm. ed for him - Mere allegations that developer would indulge in malpractices in disposal of occupancy rights for unjust gains - Would not invalidate the otherwise valid project.

Contract Act (1872), S.70

Municipalities - Construction of commercial complex - Agreement with developer - Induction of occupiers by developer - Mere allegation of unjust enrichment against developer - Would not invalidate the project. (Para 22)

Cases Referred: Chronological Paras

W.P. No. 2404 of 1989 1
W.P. No. 2404 of 1989 9
W.P. No. 1765 of 1988 7
AIR 1986 SC 391 : 1986 (1) SCC 100 15
1986 AC 240 19
1982 (3) All ER 141 19
AIR 1979 SC 1628 : 1979 (3) SCR 1014 12
285 US 310 : 143 ALR 967 : 318 US 54 20
(1948) 1 KB 223 19

VENKATACHALIAH, J.: Petitioners seek special leave to appeal to this Court from the order dated 18.9.1989 made by the Bombay High Court, Aurangabad Bench, dismissing appellants' Writ Petition No. 2404 of 1989 in which they assailed certain contracts of the Municipal Council of Jalgaon with a Developer of real estate for the execution of
a project for 'Administrative Building' and a 'Commercial Complex' on a plot of land belonging to the Municipality.

2. We have heard Sr. R.K. Jain learned Senior Advocate for the Petitioners, Sri. K.K. Singhvi, Sri. A.S. Bhasme and Dr. Y.S. Chitale, leaned Senior Advocates for Respondents, 1, 4, 5 and 6 respectively.

Special leave granted. The main appeal is taken up for final hearing, heard and disposed of by this judgment.

3. The controversy related to a project for the development of real estate sponsored by the Town Municipal Council, Jalgaon, in the State of Maharashtra. In the year 1913 the Municipal Council, it would appear, received by way of gift of a piece of land of an extent of 5 acres and 32 guntas from a certain Lila Dhar Bhatia. The land had been in the use of the Agricultural Produce Market Committee, Jalgaon, as a cotton market and wholesale fruit and vegetable market. The Municipal Council having entertained the idea of putting the land to a better and more profitable use persuaded the Market Committee to yeild-up possession. The terms of the original gift, it would appear, stipulated conditions that the land be put to use for only as a cotton and vegetable market. In order to enable itself to put the land to uses other and more beneficial uses and to exploit the commercial potential which the property had with the passage of time acquired, the Municipal Council appears to
have approached the heirs of the original donor who appear to have agreed to amend the terms of the gift accordingly. But the permission was not without strings attached. The project as envisaged by the Municipal Council, contemplated, amongst other things, the erection of a commercial complex. The heirs appear to have bargained for and secured a benefit that they should be given five-shops free of cost in the commercial complex.

4. The Municipal Council invited competitive proposals as to the ways in which the potential of the land could be commercially exploited and invited competitive plans and designs of the basis of which the Architects could be selected from architects all over the country. By its Resolution dated 17.3.1988 the Municipal Council selected M/s. Kabra Chaudhary Associates as Architects for the project.

The Project envisaged a Central Administrative Building with ground plus 17 floors intended to be utilised by the Municipal Council for locating its own offices and an adjacent structure with a basement plus five upper floors to be used as a vegetable-market and a commercial complex. The board aspects as to the funding of the project were that the project was to be executed by a "Developer" who would be required to take up and execute the project at his own cost; that the developer would be obliged to rehabilitate 486 small
- time vegetable vendors who were in occupation of the land in various units by providing them small stalls at, what was described as, a concessional premium of Rs.3,000/- per stall; that 83 more shops, at fixed premia of Rs. 40,000/- each, be given to Adatias who were carrying on their business on the property and that, further, another 60 shops, at the same rate, be allotted to some traders who are stated to have encroached upon the land. This was in addition to the five shops, which had to be made available to the heirs of the original donor free of cost. The nature of the rights conferred on to these beneficiaries is stated to be "occupancy rights" for a period of 50 years u/s 272(1) of the Maharashtra Municipalities Act, 1965 (Act for short) which regulated the matter. The municipality would get rents from those occupants at rates stipulated. The administrative block comprising of ground plus 17 floors was, however, intended to be handed over to the Municipal Council free of cost for its own use and of its tenants.

5. The Project-scheme contemplated a mode of financing which contemplated that in consideration of the "Developer" putting-up the entire construction at its own cost and making various allotments to the shop keepers to whom the Municipal Council had given assurances of alternative accommodation at fixed rates of premia and providing Ground plus 17 floors of the Administrative building free of cost of the Municipality,
the developer would be entitled at liberty of dispose of the occupancy rights in respect of the rest of the accommodation in "Commercial - Complex" and retain the premia paid by the disponees so to reimburse itself the financial outlays on the project plus its profit. The occupiers, including those who would have the benefit of the allotments at such fixed rates as well as those to be inducted by the developer, were expected to pay rents to the Municipal Council for the period of 50 years at rates envisaged in the scheme, though, however, certain incentives and concessions were afforded for the first two periods of 3 years each. According to the financial estimates prepared by the Municipal Council with the assistance of its architects as to the economics of the scheme the project was to involve a financial outlay of about Rs. 11 crores. On certain estimates prepared by it the Municipal Council was of the view that the project would benefit the local community both from the immediate was well as long-term advantages if this mode of financing and execution of the project was adopted. It was the Council's view that while the project would help to rehabilitate all those businessmen and traders who were carrying on business on the land and obviate protracted litigation for their eviction, the Municipal Council would in addition, get a building consisting of a Ground plus 17 floors in the Central Administrative Block which would be an impressive structure 70 meters in height adding greatly to the value of the
municipal estate. It was also said that the rents from those occupants in the commercial complex would considerably augment the municipal revenues.

6. After enunciating these criteria the project was put to tender. Advertisements were taken out in the Newspapers and it is stated that five Developers responded and submitted their tenders. After a process of scrutiny of the tenders and elimination of ineligible and non-competitive ones, the tender of respondent No.6 was accepted by the Municipal Council by its unanimous resolution dated 8.10.1988. On 9.10.1988, a "Letter of Intent" was issued to the respondent No.6, which, in turn, on 15.10.1988 issued its own advertisement of the project. On 18.10.1988, a formal agreement was entered into between the Municipal Council and the respondent No.6 in this behalf.

7. Appellants who are residents of Jalgaon and who entertained serious misgiving as to the legal permissibility, the economic soundness and propriety of the policy of this venture petitioned to the Collector of the District under the provisions of the 'Act' to suspend the resolutions of the Municipal Council undertaking the project and the agreement with respondent 6 for its execution. They urged that the transaction was really amounted to grant of a lease for 50 years prohibited u/s 92 of the 'Act'; that under the Act a scheme of this kind could not be embarked upon without the
sanction of the Development Department of the Government of the State of Maharashtra; that the transaction resulted in the creation of the impermissible encumbrance on the property of the Municipal Council in favour of the developer and lastly that the intended user violated the original terms of the gift. The Collector suspended the impugned resolutions. But the Minister, in a revision - petition preferred against the Collector's order, stayed the operation of that order. Simultaneously, some persons, including some of those who had moved the Collector, field Writ Petition No. 1765/1988, in which the resolutions touching the clearance of the project and the agreement with respondent No.6 had been assailed and the writ-petition 1825/1988 in which the Minister's order staying the Collector's order was challenged came up together before a Division Bench of the High Court on 20.12.1988. The contention that was pressed appears to be that in the calculations forming the basis of the financial estimates of the project were made crossly under-estimating the probable receipts by way of premia for the grant of occupancy - rights with the intention of giving an opportunity for unjust enrichment to respondent 6 as, according to the appellants, the occupancy-rights for the shops were capable of fetching far higher premia than those estimates made by the Municipality. Learned Judges of the Division Bench who dealt with the writ - petitions were of the opinion that any apprehension in that behalf would be allayed if it was
ensured that any such excess should go to the benefit of the Municipality. Accordingly, the Division Bench directed that in the matter of disposal of the occupancy - rights in regard to the shops other than those earmarked for the preferential category of existing businessmen and traders - tenders should be called from the public so that the difference between what was taken into account in the estimates of the project and what was actually secured in the response to the advertisement might go to the benefit of the Municipality.

The order said:

"Shri Singhvi, appearing for the Jalgaon Municipal Council, states that the Council will invite tenders for sale of 68 shops on the ground floor with basement on the western side facing Sane Guruji Road, stipulating Rs.3,50,000/- per shop as the floor price, and of 32 shops on the ground floor without basement, on the rear of the above 68 shops, i.e. on the western side and facing Jaikisanwadi, stipulating Rs.2,50,000/- per shop as the floor price. The advertisement will be given within a week from today and it will be repeated within a space of two days in between. The advertisement will mention that Rs.25,000/- have to be paid at the time of submitting the tender for the shop.

If the applications are received tendering more amount than is stipulated in the notice, then the surplus amount
will be credited to the Municipal Council and only the floor price shall be paid to the contractor.

If applications for all the shops are not received, or, if the application received tender less amount than the floor-price, then the Council is at liberty to go ahead with their present scheme .... "

It would appear that the advertisement issued in that behalf did not elicit any favourable response from the public. The matter was listed again before the High Court on 21.1.1989. the Division Bench held that its earlier order dated 20.12.1988 was self executory and had put an end to the writ petition finally and nothing really survived in the writ-petition. That was how WP No. 1765/1988 came to an end. Writ-petition 1825/1988. In review -petition 223 of 1989 appellants had sought a review of the order dated 20.12.1988 which was also dismissed on 7.2.1989. The advertisement issued pursuant to the order dated 20.12.1988, was itself challenged in a separate writ-petition and that writ-petition was also dismissed on 8.2.1989.

8. All these orders were assailed before this Court in Special Leave Petition No. 3293/1989, SLP NO. 3222/1989, SLP No. 3289/1989 respectively. The SLP 3293/1989 which arose out of the writ-petition challenging Minister's order was disposed of on 17.4.1989 by this Court with the following observation:
"Since the order made by the Hon'ble Minister is evidently in the nature of aninterim order, it is open to the petitioner to move the Minister for final disposal. It is hoped that the Minister, having regard to the importance of the matter, will expeditiously dispose of the matter. The minister will also consider whether the scheme in question is in conformity with the statutory provisions. With these observations the special leave petition is dismissed."

Special Leave Petition (Civil) No. 3293 and 3268/1989 which arose out of the order in W.P. 1765 of 1988 and the writ-petition preferred against the advertisement were also dismissed with the following observation:

"In view of the above order in Special Leave Petition (Civil) No. 3222 / 1989 these special leave petitions are dismissed."

9. Later, the Minister disposed of the revision application by his order dated 3.8.1989. The Minister took into account the order made by the High court in Writ Petition No. 1765/1988 and was persuaded to the view that that decision could not be ignored by him. That apart, he also went into the merits of the scheme and recorded findings against the appellants. Against this order of the Minister, appellants preferred a fresh Writ Petition No. 2404/1989 before the High Court. The present appeal before us arises out of the High Court's order dismissing the said W.P.
The High Court was of the view that the orders made by this Court in the earlier SLPs indicated that all the decision of the Minister. The High Court, however, also went into the merits as well and held that there were no grounds to interfere.

10. Sri. R.K. Jain, strenuously contended before us that the High Court misdirected itself as to the scope of the proceedings before it on an obviously erroneous view this Court, while disposing of the earlier SLPs, had precluded any further enquiry into the merits after the Minister's decision. Sri Jain submitted that this Court while disposing of the special leave petitions had merely indicated its disinclination to interfere at that stage and had left the matter to be dealt with under the statute by the Minister which obviously meant that at an appropriate stage when the correctness of the Minister's order came to be assailed the matter would require to be examined on its own merits. It was erroneous to think, contended Sri. Jain that the effect of the orders of this Court was to impart a finality to the Minister's order whatever its vitiating features.

There might be some force in what Sri. Jain says if the observations which Sri. Jain takes exception to are alone taken into account. The High Court was possibly wrong in its view as to the effect of this Court's earlier order. But what appears clear is that the High Court also went into the
merits of the matter. Therefore the grievance that the High Court abdicated its jurisdiction on an erroneous interpretation of this Court's earlier order may not be correct. However, in order that there be no dissatisfaction on the question that the matter did not receive adequate consideration in the High Court, we asked the appellants to present their case on the merits also so that any need for a remit of the matter to the High Court at this late stage was obviated. Parties placed their case fully before us.

11. Sri. Jain raised a number of contentions touching the power of the Municipal Council to make such disposal of Municipal property as was implicit in the scheme and on, what Sri. Jain called, a manifest susceptibility of the scheme for arbitrariness in the matter of the choice of the developer. The main thrusts of Sri. Jain's argument are, first, that the project, in substance, envisaged a disposed of the property rights of the Municipal Council in favour of respondent No.6 which, in turn, became entitled to further deal with the properties squarely attracting the prohibition u/s 92 of the Act; and secondly, that the scheme was a wholly non-conventional one unknown to settle principles of public finance. Sri. Jain strenuously urged that the non-conventional and unorthodox features of the scheme particularly as to the mode of its finances were tailored with respondent 6 in mind and were intended to, and did, confer on respondent 6 a pre mediate largesse, in flagrant
violation of financial disciplines and morality. It was also urged that the project gave enormous pecuniary advantage to respondent 6 wholly disproportionate to its outlay of funds on the project.

In the ultimate analysis, the contentions of Sri. Jain admit of being formulated thus:

(a) That the scheme of financing of the project was not one that was, as a matter of policy, open and permissible to a Governmental authority. The Municipal authority could either have put-up the construction itself departmentally or awarded the execution of the whole project to a building contractor. The method of financing and execution of the project are, in short, ultra vires of the powers of the Municipal authority under the Act.

(b) That the terms of the agreement with the developer that the latter be at liberty to dispose of the occupancy-rights in the commercial complex in such manner and on such terms as it may choose would amount to an impermissible delegation of the statutory functions of the Municipal council U/s. 272 of the Act to the developer.

(c) That the project, in effect, amounted to and involved the disposal of Municipal property by way of a long term lease with rights of sub-letting in favour of the developer violative of S.92 of the ‘Act’.
(d) That the scheme is arbitrary and unreasonable and is violative of Art. 14 of the Constitution. The project is patently one intended to and does provide for an unjust enrichment of respondent No. 6 at public expense.

We may now deal with these contentions.

12. Re: Contention (a)

The mode of financing of the project is stated to be unconventional one and does not accord with any recognised or accepted norms of functioning and financial discipline of Governmental bodies. It is urged that while the Municipal Council could have engaged a contractor to execute the work against payment in accordance with well accepted procedures for Government body. This contention of the appellants, as a legal contention is not somewhat vague and does not admit of clearcut legal contours. As we apprehend the contention, it pertains to the legality or propriety of a policy-option. However, reliance was placed on certain observations of this Court in Ramana Dayanand Shetty V. International Airport Authority (1979 (3) SCR 1014 : (AIR 1979 SC 1628) and Kasturilal Laxmi Redy V. state of J & K (1980 (3) SCR 1338) : (AIR 1980 SC 1992).

In those cases relied this Court pointed out that with the growth of a welfare state and with the Government assuming a pluralist role as provider of social welfare
services and with the corresponding increase in the magnitude of the Governmental functions and the consequent evolution of new forms of wealth and new forms of property, the scope for conferment of largesse by Government in the disposal of such properties, rights or privileges should not be unlimited and arbitrary:

Sri Jain said that in the present case the project involved purely commercial considerations and had no social objectives and the securing of terms to the best advantage of the Municipal Council should have been the objective. It is urged that the Municipal Council disregarded this criterion and resorted to a method which gave uncontrolled discretion and authority to respondent 6 to exploit the commercial potential of the property for its own aggrandisement. Sri Jain said that the avowed reason why the Municipal Council did not itself, with all its vast financial resources, undertake the execution of the project was that the Municipal Council wanted to save itself from the difficulties involved in the process. Sri Jain said that if the developer could finance the project of the occupancy rights and make huge profits, there was no reason why the Municipal Council itself could not have done the same.
13. Sri Singhvi, for the Municipal authority submitted that the execution of the project of this magnitude involved a degree of financial outlay and management expertise well beyond the immediate sources of the Municipal Council and that though the Municipal Council had a budget which indicated crores of rupees on the receipt side, the increasing revenue expenditure and other financial commitments rendered it well neigh impossible to set apart the financial inputs requisite for this project. Sir Singhvi said that in the matter of management of the transactions relating to the disposal of occupancy-rights and prompt mobilisation of funds, the deficiencies and limitations of the bureaucratic machinery should not be put out of consideration in assessing the value and utility of the alternatives. Sri Singhvi pointed out that despite the heterogeneity of their political affiliations, the members, the Municipal Council, passed all the resolutions in regard to this project unanimously. Sir Singhvi said that although popular support could not validate an ultra vires action, it might become relevant to the question whether a certain action was reasonable or not, and that the circumstance that all the resolutions had been passed unanimously would lend credence to the propriety and wisdom of the measure. Sri Singhvi claimed that the estimates and calculations on which the scheme was worked out by the Municipal Council would show that the developer would not have any opportunity of making any runaway profits or exploitative gains.
On a consideration of the matter, it appears to us that the argument that a project envisaging a self-financing scheme, by reason alone of the particular policy behind it, is beyond the powers of the local authority is somewhat too broadly stated to be acceptable. A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is no doubt, a degree of public accountability in all governmental enterprises. But the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost over-runs in projects, balancing of costs against time-scales, quality-control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with
concomitant economic expediencies. These are essentially matters of economic policy with lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bonafide and within the limits of authority. We might recall the memorable words of what Justice Brande is said:

"The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error. In large measure, these advance have been due to experimentation."

"...... There must be power in one States and the Nation to remould, through experimentation, of our economic practices and institutions to meet changing social and economic needs ..."

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment ...."
".... But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles ...."

In regard to Courts and policy we might recall the following words of a learned author:

"The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, something overwhelming must appear before the Court will intervene. That is, and ought to be, a difficult on us for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, the Court's view of the range of policies open under the statute or of what is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Court's opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators .... "
"The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable ...." (Emphasis Supplied)

In Forward Construction Co. v. Prabhat Mandal, (1986 (1) SCC 100) : (AIR 1986 SC 391), a similar self financing project was embarked upon by the Municipal Corporation of Bombay. It is true, the present argument as to the manner of execution of the project being ultra vires the powers of the local authority was not in terms raised there. But some of the arguments have a familiar ring. This Court, noticing the financial feature of the scheme observed (at page SC 399: AIR 1986):

"The mere fact that the Corporation was to make a gain of the non-refundable premium did not mean that was the only purpose which was in view. The purpose obviously was the best utilisation of the available space. If in a commercial zone the Corporation was able to make available accommodation for commercial purposes we do not see why such a venture cannot be one either for the purpose of promoting public safety, convenience or in the nature of facilities being made available as a part of the improvement of the city. If commercial activities are to be pin-pointed in a commercial zone and for that purpose the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being
acquired or held for purposes other than the purposes of the Act."

While the concern of public law is to discipline the public power by forging "legal techniques as both part of the way in which public power is made operational and part of the process through which it is attempted to render such public power legitimate and to think of issues of legal regulation of public power in a way that goes deeper than particular instances and seeks to elaborate issues of general principle". There is, however, as Professor Wade points out, ample room, within the legal boundaries for radical differences of opinion in which neither side is unreasonable. In Tameside case Lord Denning pointed out the error of confusing differences of opinion, however strong, with unreasonableness on the part of one side or the other. Lord Diplock said that the very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred.

In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. Referring to the "Role of the judge in Public Law Litigation" a learned author says:
"Administrative law is, in essence, a search for a theory of how public policy should be made. Two powerful traditions mark the boundaries of that search. On one side, we leave the choice among competing values to a largely unstructured process of pulling and hauling by individuals directly accountable to the citizenry. On the other side, we demand a highly structured process of party-controlled proof and argument before a neutral arbiter to resolve disputes over the application of rules to specific. Between these extremes is that vast landscape we call policy making - the reconciliation and elaboration of lofty values into operational guidelines for the daily conduct of society's business."

It appears to us that in the context of expanding exigencies of urban planning it will be difficult for the Court to say that a particular policy option was better than another. The contention that the project is ultra vires of the powers of the Municipal Council does not appeal to us.

15. We hold that Contention (a) does not justify quashing of the impugned Resolution of the Municipal Council.

16. Re: Contentions (b) and (c)

Sri Jain contended that the transaction essentially concerns the disposal of Municipal property by way of a lease and violates Section 92 of the "Act". Section 92 of the Act
provides:

"(1) No Council shall transfer any of its immovable property without the sanction of the State Government,

(2) ..... Omitted as unnecessary

(3) Notwithstanding anything contained in sub-section (1), a Council may lease its immovable property for a period not exceeding three years, and the lessees shall not be allowed to make any permanent constructions on such immovable property. Such lease may be renewed by the Council beyond the period of three years with the permission of the Director, so, however, that the total period of any lease shall not exceed seven years.

No such lease or any renewal thereof shall be granted unless supported by a resolution passed at a meeting of the Council ".

The question is whether the present transaction amounts to lease. Sri Singhvi submitted that the transaction is limited to the disposal of occupancy - rights covered by Section 271 (1) of the Act and is not one of transfer or lease of immovable property under Section 92. Sri Singhvi says that even otherwise the two areas of the statute are mutually exclusive and provisions of S. 272 (1) were intended to and did meet a special situations pertaining to municipal markets while S. 92 dealt with transfer or lease of other
properties. It is unnecessary in the present case to examine the larger question raised by Sri Singhvi whether Section 92 has no application at all to "municipal markets". But the transaction would be out of Section 92 if it is not a lease or a transfer prohibited by that section. On this Sri Singhvi says that the transaction relates to mere rights of user without transfer on an interest in the property.

In the present case it is possible to fit the power exercised by Municipal authority into Section 272(1) of the Act. The relevant provisions say:

272 (1) The Council may
(a)

(i) to (iv) omitted as unnecessary

(b) put up to public auction or dispose of by private sale, the privilege of occupying or using any stall, shop, stand, shed, pen or space in a municipal market or municipal slaughter house for such period and on such conditions as it may think fit.

(2) to (4) omitted as unnecessary

If it is reasonably possible to fit in the basic conceptions of this project into what can be held to be comprised in the power under S 272(1), there is no reason why the provision to stifle be interpreted unduly restrictively to exclude such enterprise.
As to the contention of an impermissible delegation of power to the developer Sir Singhvi would say that the occupancy rights in respect of certain portions of the commercial complex were granted to the developer in lieu of the monetary outlay that he would make on the project and that the fact that the developer in respect of such accommodation was enabled to induct his nominees would not, in principle, detract from the character of the transaction as long as the Municipal Council, in turn, recognised such nominees as grantees of the occupancy.

On a consideration of the matter it appears to us that the appellants have not been able to establish that the essential elements of the transaction are such that Section 92 of the Act is violated. It would, indeed, be unduly restrictive of the statutory powers of the local authority if a provision enabling the establishment of markets and disposal of occupancy-rights therein are hedged in by restrictions not found in the statute. The point to note is that the developer to the extent he is authorised to induct occupiers in respect of the area earmarked for him merely exercises, with the consent of the Municipal Council, a power to substitute an occupier in his own place. This is not impermissible when it is with the express consent of the Municipal Council.
Indeed, in the course of his submissions, Dr. Chitale for respondent 6 stated that the project had turned out to be white-elephant for respondent No.6; that the shops and other commercial accommodation made available to him are not, indeed, goods selling propositions and that the project had proved quite burdensome. Dr. Chitale, on behalf of his client frankly stated in view of the adverse and embarrassing publicity the litigation had generated, respondent 6 was ready and willing to surrender the agreement and all his rights thereunder if the work done by him so far was valued and paid for in terms of the specific clauses of the agreement in this behalf. Dr. Chitale also submitted that the allegation that respondent No.6 could make disproportionately high returns is unfair and that while in respect of some of the shops the financial estimates of the Municipal Council were built on the expectations of a return of Rs. 3,40,000/- per shop and in respect of others at Rs.2,50,000, respondent No.6 has not been able to get even so much from the intending or prospective occupants.

17. On as consideration of the matter we find no substance in contentions (b) and (c) either.

18. Re : Contention (d)

The contention is that the resolutions of the Municipal Council touching the approval of the project and authorised its execution by respondent 6 are vitiated by
'unreasonableness' and 'arbitrariness'. The unreasonableness is said to consist in the choice of the manner of the execution of the project and arbitrariness in the process enabling the choice of respondent 6. Both these sins, according to the contention, were the result and in furtherance of the anxiety on the part of the Municipal Council to favour respondent 6.

Sri Jain urged that in the process of putting the project to tender the criteria on which the competitive merits of the tenders could be evaluated were not susceptible of such comparative assessment at all as, according to Sri Jain, there was no common denominator or objective-standard with reference to which one specific offer could be evaluated in comparative terms against the other.

19. It was urged that the basic concept of the manner of the development of the real estate and disposal of occupancy rights were vitiated by unreasonableness. It is a truism, doctrinally, that powers must be exercised reasonably. But as Prof. Wade points out:

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion."
It is passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority ....'

In the arguments there is some general misapprehension of the scope of the "reasonableness - test in administrative law. By whose standards of reasonableness that a matter is to be decide? Some phrases which pass from one branch of law to another -- as did the expressions 'void' and 'voidable' from private law areas to public law situations -- carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words "reasonable", "reasonableness" etc. In Tiller v. Atlantic Coast Line Railroad Company, (318 US 54 at 68): (43 ALR 967), Justice Frank-furter said:

"A phrase begins life as a literacy expression; its felicity leads to its lazy repetition; and repetition soon
establishes it as a legal formula indiscriminately used to express different and sometimes contradictory ideas."

Different context in which the operation of "reasonableness" as test of validity must be kept distinguished. For instance as the arguments in the present case invoke, the administrative law test of 'reasonableness' as the touchstone of validity of the impugned resolutions in different from the test of the 'reasonable man' familiar to the law of torts, whom English Law figuratively identifies as the "man on the clapham omnibus". In the latter case the standard of the 'reasonable man'; to the extent such a 'reasonable man' is Court's creation, is in a manner of saying, a mere transferred epithet. Lord Radcliffe observed.

"By this time, it might seem that the parties themselves have become so far disembodied spirits that their actual persons should be allowed to rest in peace. In their place there rises the figure of the fair and reasonable man. And the spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is, and must be, the Court itself ..."

(Emphasis Supplied)

Yet another area of reasonableness which must be distinguished is the constitutional standards of 'reasonableness' of the restrictions on the fundamental rights of which the Court of judicial review is the arbiter.
The administrative -- law test of reasonableness is not by the standards of the "reasonable man" of the Torts Law. Prof. Wade says:

"The is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do so. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which to reasonable authority could have come. This is the essence of what is now commonly called 'Wednesbury unreasonableness', after the now famous case in which Lord Greene MR expounded it."

(Emphasis Supplied)

To the same effect are the observations in "Legal Control of Government" (Bernard Schewartz and H.W.R. Wade) at page 253:

".... Confusion has perhaps arisen because the test of reasonableness in this context is the law of tort and elsewhere. In applying the latter standard the judge merely enforces what he thinks it reasonable. But in condemning unreasonable administrative action he asks himself whether the decision is one which a reasonable body could have reached. On other words he allows some latitude for the
range of differing opinions which may fall within the bounds of reasonableness ...."

The 'reasonableness' in administrative law must, therefore, distinguish between proper use and improper abuse of power. Nor is the test the Court's own standard to 'reasonableness' as it might conceive it in a given situation. This is the essence of Lord Greene's dictum now familiar as the 'Wednesbury unreasonableness', in (1948) 1 KB 223). It was observed:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in Short v. Poole Corporation, (1926 Ch 66) gave the
example of the red-haired teacher dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration that it might almost be described as being done in bad faith; and, in fact, all these things run into one another).

Referring to the doctrine, Prof. Wade says:

"This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'reasonableness', in its classic formulation, cover a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.

Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing on self to the wrong question ..."

The point to note is that a thing is not unreasonable in the legal sense merely because the Court thinks it is unwise. Some observations of Lord Scarman in Nottinghamshire Country Council v. Secretary of State for Environment, (1968 AC 240
at 247) might usefully be recalled:

"..... But I cannot accept that it is constitutionally appropriate, save in very exceptional circumstances, for the Courts to intervene or the ground of "unreasonableness" to quash guidance framed by the Secretary of State and by necessary implication approved by the House of Commons, the guidance being concerned with the limits of public expenditure by local authorities and the incidence of the tax burden as between taxpayers and ratepayers. Unless and until a statute provide otherwise, or it is established that the Secretary of State has abused his power, these are matters of political judgement for him and for the House of Commons. They are not for the judges or your Lordships' House in its judicial capacity".

"For myself, refuse in this case to examine the detail of the guidance or its consequences. My reasons are these, such an examination by a Court would be justified only if a prima facie case were to be shown for holding that the Secretary of State acted in bad faith, or for an improper motive, or that the consequences of his guidance were so absurd that he must have taken leave of his senses .... "

When Lord Denning MR stated in the Court of Appeal that "Not only must (the probationer - Counsellor) be given a fair hearing, but the decision itself must be fair and reasonable" (emphasis supplied), the House of Lords though that the
statement of the learned Master of the Rolls, if allowed to pass into law, would wrongly transform the remedy of judicial review, as the statement would imply that the Court can itself sit, as in appeal, in judgement of the reasonableness of the decision instead of on the correctness of the "decision making process". "The purpose of judicial review", it was stated, "... is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which is authorised or enjoined by law to decide or itself a conclusion which is correct in the eyes of Court."

20. While it is true that principles of judicial review apply to the exercise by a government body of its contractual powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. For instance, in a matter even as between the parties here must be shown a public law element to the contractual decision before judicial review is invoked. In the present case the matter at placed before the Court falls far short of what the law requires to justify interference.

21. In regard to the allegation that the Project scheme was tailored to suit respondent 6 is one or that the project as put to tender and not admit of tenders on fixed comparable parameters, we find no merit. Sri K.K. Singhvi submitted that the tender papers were prepared by reputed architects
and the precise points on which comparative quotations were invited were specifically incorporated in the tender-papers. The point again that no other tenderer expressed any grievance. The tenders were such that the tenderer could identify the terms which form the basis of comparative evaluation. The charge of arbitrariness cannot be upheld. Tests to be applied in a given case may be influenced the extent to which a decision is supported by a democratic unanimity which evidences the decision - granted, of course, the power.

22. Sri R.K. Jain stated that the scheme enables respondent 6 to resort to certain well-known financial malpractices for tax-evasion now known to be rampant when properties change hands. Sri Jain said that the Court ought to take judicial notice of so rampant and pervasive an evil and interdict anything that ends to promote such unhealthy economic trends. While it is true that large scale tax-evasion and evils of unaccounted money bedevils the nations economic discipline and that with the increasing erosion of morality in public life and the serious personal degradations for unjust gains one sees alround, the situation is, indeed, serious. But we fail to see what the Court can do in a case like this. The present argument proceeds on two assumptions. The first is that respondent No.6 has, in fact indulged in such practices in the matter of disposal of occupancy -
rights. This is a mere allegation which is emphatically repudiated by respondent No.6. The second is that the accommodation in this commercial complex is such good competitive selling proposition that there is great demand and limited supply enabling respondent 6 to exploit the situation. This again is a matter of mere allegation. To condemn the municipal authority’s decision, otherwise valid, on the ground alone that the developer is likely to resort to transactions of unaccounted money would, as a judicial remedy, be plainly unthinkable.

Contention (d) requires to be and is also held against appellants.

23. On a consideration of the matter, we think that the conclusion reached by the High Court does not call for interference. These appeals are accordingly dismissed. In the circumstances, we make no order as to the costs.

Appeals dismissed.