

PART V

URBAN ENVIRONMENTAL INFRASTRUCTURE AND SERVICES

XXII. Private Sector Participation Agreement and Assignment to Other Agencies

24. *Having regard to the provisions of article 243W which state that the Legislature of a State may, by law, provide for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein with respect to (i) the preparation of plans for economic development and social justice; (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matter listed in the Twelfth Schedule, the question is as to what urban environmental functions may be assigned to the Municipalities at the various levels.*

- (1) Conventionally, the subject matter in this Part which has now been rechristened as *Urban Environmental Infrastructure and Services* was covered in the Part entitled *Civic Services* which included provisions for water supply, drainage and sewerage, and solid wastes management.

The Part on *Town Planning, Land and Land Use Controls* covered matters relating to lighting of streets, markets and slaughterhouses. However, there were no provisions in the law relating to “Communication Systems, Public Amenities including Street Furniture, Transportation System Infrastructure and Traffic Engineering Schemes” as also “Commercial Infrastructure”.

All these have now been consolidated and dealt with under one Part.

- (2) The erstwhile municipal laws were based on the premise that all the civic services were to be provided by the Municipalities and the list of *Obligatory* and *Discretionary* functions did not make major differentiation between the functions which could be assigned to any agencies other than the Municipalities.

The only major difference was that certain functions were assigned to parastatal agencies such as the Water Supply, Sewerage and Drainage Boards or Government Departments such as the Public Health Engineering Departments.

- (3) Of late, there is urgent concern for *commercialization of selected urban and civic services and private sector participation* through options such as service contracts, management contracts, leases and concessions; design-build-own-transfer arrangements; joint ownership and full or partial divestiture.

- (4) As regards *Solid Wastes Management*, assignments had not been made regarding the “bio-medical wastes” and the “hazardous wastes”.

The legal provisions relating to solid wastes were examined by a Committee appointed by the Hon’ble Supreme Court of India in March 1999 based on which *Guidelines* were issued for framing the legal provisions.

- (5) Under the powers conferred by sections 6, 8 and 25 of the *Environment (Protection) Act, 1986*, the Ministry of Environment and Forests, Government of India published the *Hazardous Wastes (Management and Handling) Rules, 1989*, and the *Bio-Medical Waste (Management and Handling) Rules, 1998*. In 1999, this Ministry also published the *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

There is need for promoting an interface between the Municipalities and the Central Government and the State Government agencies in the implementation of these Rules.

- (6) Another new dimension pertains to the roles of the *Committee for District Planning* as may be constituted under article 243ZD and the *Committee for Metropolitan Planning* which may be set up under article 243ZE. These Committees provide new dimensions for the roles of the people’s representatives in preparation of plans, including plans for infrastructure development. Such Committees, when constituted, would, obviously, play important roles for deciding the policies, the priorities and the investment strategies.
- (7) The *new legislative scheme* would have to provide for the following :

- (a) amendment of the duties and functions of the Municipalities whereby scope would be created for performance of functions by the Municipalities, or by the parastatal agencies, or other agencies, or by the private sector, or by any combination thereof;
- (b) provisions would be necessary for governing costing and pricing of services based on economic principles, and the basis for any cross-subsidies would have to be specified;
- (c) enabling provisions would have to be introduced so that the Municipalities may attract funds from the capital markets, including by issue of municipal

bonds, and covering provisions pertaining to various matters related thereto including the municipal rating methodology, credit enhancement measures and the eligible issuers of bonds;

- (d) enabling provisions would also be necessary for constitution of State-level financial intermediaries for urban infrastructure finance where the Municipalities are unable to access funds from the markets directly;
- (e) provisions would have to be made for introduction of accrual-based system of accounting to ensure transparency in financial transactions, and also to ensure the creditworthiness of the Municipalities;
- (f) provisions would also have to be made for the role of rating agencies which would be important for assessing the creditworthiness of the Municipalities; and
- (g) the laws would have to provide for constitution of Regulatory Authorities which may function independently and may not be subject to directions by the Municipalities or even by the State Governments.

These provisions would either be by way of amendment of the relevant provisions in the conventional municipal laws, or in terms of new provisions, or by way of new State enactments.

- (8) It has been observed that in the existing municipal laws, very large number of sections (110 sections in the case of the Calcutta Municipal Corporation Act, 1980) mostly relate to the exercise of statutory and regulatory powers which the Municipal Authorities, and more particularly, the Municipal Commissioner, may exercise.

Provisions Made in the Municipal Law

37. *The Municipal Law covers matters relating to private sector participation agreements by assignment to other agencies for provision of urban environmental infrastructure and services including assignments of projects to other agencies which may include a company, firm, society, trust or any body corporate or any institutional, statutory or government agency in financing construction, maintenance and operation of any project.*

38. *Clause 168 identifies the various types of private sector participation agreements.*

39. *Clause 169 provides that the Municipality may discharge its obligations for providing urban environmental infrastructure and services in relation to water-supply, drainage and sewerage, solid waste management, communication systems and commercial infrastructure on its own or enter into any private sector participation agreement with other agencies.*

Chapter XXII covers the provisions relating to Water Supply including the duty of Municipality to supply water, and supply of water for domestic purposes, non-domestic purposes, for hydrants and outside the municipal area.

It also provides for the planning, construction, operation, maintenance and management of water-works either by the Municipality, or under the provisions of Chapter XXI by concession agreements with other agencies.

It further deals with matters relating to the installation of meters and recovery of charges. It specifies that the payment for water supply shall be made at such rates as may be fixed by the Municipality, from time to time, provided that such rates shall, as far as practicable, cover the costs on account of management, operation, maintenance, depreciation, debt-servicing and other charges relating to water-works and distribution costs including distribution losses, if any.

Provisions have also been made relating to sinking of tube wells and digging of wells without permission (clause 184) and filling of wells (clause 185).

An important provision has been made in clause 179, for vesting of the sub-soil water resources in the Municipalities.

40. *Chapter XXIII on Drainage and Sewerage defines the functions of the Municipality in relation to drainage and sewerage and also provides for the roles of the Municipalities or other agencies in respect of drains and sewage disposal works and the powers for making drains as also the powers in relation to drainage of private streets and premises. This Chapter also deals with the trade effluents under clause 203 and clause 204.*

Chapter XXIV on Other Provisions Relating to Water-supply, Drainage and Sewerage contains numerous regulatory and other provisions such as -

- (1) *prohibition of construction, of buildings by railways and, of private streets, over water mains, or on municipal drains,*

- (2) *compulsion for adherence to the water supply rules and regulations while sanctioning building plans,*
- (3) *preparation of maps of underground water supply mains, supply pipes, drains, etc.,*
- (4) *licensing of plumbers,*
- (5) *levy of sewerage charge and sewerage cess, and*
- (6) *entrustment of operation and maintenance of sewerage works and billing and collection of sewerage charges and sewerage cess to private agency.*

41. *Under Chapter XXV on Solid Wastes, besides defining, under clause 221, the duty of the Municipality in respect of solid waste management and handling, clause 223 defines the functions of the Municipality and clause 226 and clause 227 specify the duties of owners and occupiers of premises as also of Co-operative Housing Societies and Apartment Owners' Associations with respect to collection of solid wastes in separate receptacles or disposable bags of appropriate size, for temporary storage of wastes other than recyclable wastes.*

Clause 222 provides for entrustment of management and handling of solid wastes and billing and collection of charge to private agency.

Enabling provisions have also been made for handling of bio-medical wastes and hazardous wastes, under clause 230 and clause 231.

42. *Chapter XXVI on State Municipal Regulatory Commission, inter-alia, provides for the following :*

- Clause 233 .. Constitution and incorporation of State Commission*
- Clause 234 .. Constitution of Selection Committee by State Government*
- Clause 238 .. Functions of State Commission*
- Clause 239 .. The State Municipal Advisory Committee*
- Clause 240 .. Objects and functions of State Municipal Advisory Committee*
- Clause 241 .. Representation before State Commission*

Clause 242 .. Appeal to High Court in certain cases

Clause 243 .. Determination of rates of user charges by State Commission

43. *In Chapter XXVII on Communication Systems, clause 260 specifies the surface transport system and accessories. The surface transport system shall include streets, roads, footpaths, pedestrian pathways, parking areas, transportation terminals -- both for passengers and goods, bridges, subways, over-bridges, ferries and inland water transport systems, and the transport system accessories shall include traffic engineering schemes, street furniture, street lighting, parking lots and bus stops.*

Clause 261 specifies that subject to the provisions of Chapter XXI, all public streets and parking areas in any municipal area shall vest in the Municipality.

Powers have also been defined for making new public streets under clause 263.

The regulatory provisions include specification of the minimum width of new public streets; power to acquire lands and buildings for public streets, public parking places and transportation terminals; closure of public streets for parking purposes; levy of parking fee; permanent closure of public streets and temporary closure of public streets under clauses 264 to 267.

New provisions have been made relating to traffic engineering schemes, installation of street furniture and provision of parking lots and bus stops, under clauses 270 and 271. Clause 272 provides for measures for lighting of streets.

44. *Chapter XXVIII on Markets, Commercial Infrastructure and Slaughterhouses, under clause 273, provides that the Municipality may implement any scheme for construction, operation, maintenance and management of commercial infrastructure including district centers, neighbourhood shopping centers, shopping malls and office complexes, by itself or by other agencies, and may rent out, lease or dispose of by outright sale, such commercial infrastructure or any part thereof, and under clause 274, provides for municipal markets and slaughterhouses, and regulation thereof.*