

CHAPTER XXIII

THE INTERREGNUM

THE Act of 1872 was passed as a temporary measure operative for three years, but power was given to the Governor in Council to extend its operation from time to time. Before granting a new lease of life to the Act, Government invited the views of the Town Council on the subject of possible amendments of its provisions. A Committee was appointed to report on the question but it took so long to formulate its recommendations that the term of the operation of the Act had to be spasmodically extended to the end of the year 1877, with such modifications as the experience gained by the Municipality during the previous three years appeared to justify.

The Council prepared a memorandum containing several alterations which the Commissioner, Pedder, forwarded to Government in July 1876 with his own suggestions. The most important constitutional change proposed by the Council was the extension of the franchise. By section 2 of Act II of 1873—an Act passed to amend the original Municipal Act—the franchise was conferred on rate-payers who paid house-rates and police and lighting rates amounting to not less than Rs. 50. Payment of wheel-tax was no qualification. Consequently, the electoral body then consisted of only 3,541 voters, or about $1\frac{1}{2}$ per cent of a population of 645,000. The wealthy owners of real property monopolized the franchise; the most intelligent and useful classes, the mercantile and professional, were largely excluded. It was, therefore, urged by the Council that

the franchise should be extended by lowering the qualification to Rs. 30 and by adding the wheel-tax to the qualifying rate. They calculated that if the franchise were widened as suggested the number of electors would reach the figure of 10,000. They also proposed that Fellows of the University who were, as such, qualified to be members, but had no vote, should be enfranchised and that, instead of giving each candidate one vote only, the voter should be given the option of registering in favour of a candidate as many votes as there were members for his ward.

All these proposals the Commissioner cordially supported, but in an unpublished letter to Government he made some astounding suggestions without the knowledge and against the express wishes of the Council. The Council had proposed that no Municipal executive officer should be a member of the Corporation, whereas Commissioner Pedder recommended that the Municipal Commissioner should be *ex officio* a member of the Corporation, and that the number of members should accordingly be increased from 64 to 65. He also urged that the Commissioner should be *ex officio* Chairman of the Town Council.

The main principle of the Municipal constitution was that the initiative in municipal administration and all executive power should vest in the Commissioner; that the Town Council should possess full knowledge of his proceedings and a general control over them; and that the power of the purse should vest in the Corporation. No more ideal working constitution could have been devised for the requirements of the times, but there was nevertheless a general feeling among the members of the Corporation that it would be well to tighten in some degree the control of the Council over the Commissioner. Pedder would have gladly seen their control

over the general functions of the Commissioner strengthened, if—but not otherwise, it being a very modest if!—the Commissioner was made Chairman of the Council. His reasons for this innocent proposal may be given in his own words:—

‘The present system appears to have been devised solely to put a drag on an energetic Commissioner, and it is—*parva componere magnis*—as inconvenient and anomalous as if a British Minister were permitted to attend in Parliament, but not to propose or vote on any measure. The Municipal Commissioner is not obliged, or even entitled, to attend meetings of the Town Council; he might, if he fell out with the Council, absent himself altogether, and things would at once come to a deadlock The Municipal Commissioner is the only person who can frame in detail important measures requiring the approval of the Town Council or Corporation; as he cannot propose them in the Council, he must privately induce the Chairman or some other member to do so; and if he cannot succeed in this they cannot be proposed at all. I may say that it would have been almost impossible for me to get satisfactorily through the Council a number of measures based on my ‘Proposals’ of 1873 if it had not happened that I was on intimate terms and living together with Mr. Curry, the first Chairman The Chairman of the Town Council has to lay before the Corporation the Budget, and similarly it is convenient that he should propose to the Corporation any other measures approved by the Council. He is thus the ‘Member in Charge’ of any measure, but as he cannot have an intimate knowledge of details, he has to refer to the Commissioner for much of the information required by the Corporation.’

A plausible statement, indeed, albeit in some respects more specious than sound. At this distance of time, however, the arguments have merely an academic interest, and the subsequent history of the Town Council and of the Corporation offers ample evidence that the work of local bodies and committees can be carried on with remarkable success without an official chairman. Even Government, who were in favour of appointing the

Municipal Commissioner to be a member of the Corporation and the Town Council, did not approve of the proposal to elevate him to the position of Chairman of the Council.

The rates were then divided into two classes, the owners' rates and the occupiers' rates, a division which led to considerable difficulties in collection. The number of occupiers who were liable to pay police and lighting rates and from whom those rates should have been demanded by the Municipality, did the owners not find it more convenient to pay them, was far greater than the total number of assessed properties, about 100,000; yet the proportion of occupiers who themselves paid the rates was extremely small and was annually diminishing. In 1873 the number of assessed properties was 21,055, and that of occupiers paying the occupiers' rates 2,838; in 1875 the number of properties rose to 22,445, but that of occupiers paying their own rates fell to 2,003. Nevertheless, the Council was not in favour of making the landlords liable for the payment of all Municipal rates. All they wanted was that in case of default an owner should be entitled to recover from his tenant the occupiers' rates and the halalkhore cess which he had to pay to the Municipality. The Municipal Commissioner, however, proposed the entire abolition of the police and lighting rates and the substitution for them of a tax of the nature of an Income Tax or License Tax. As, however, this proposal did not meet with general approval, he supported an alternative proposal to consolidate owners' and occupiers' rates into a single rate on owners.

The outcome of these representations was the introduction into the Legislative Council, on 14th September 1877, of a Bill to amend the Act of 1872, and to retain the latter in its amended form, but a series of blunders,

committed before the Bill was introduced and became law, led to an interregnum, to which, strangely enough, not a single publication dealing with the history of the Corporation has made any reference.

Both the Corporation and the Town Council were defunct from the latter part of July until 11th September 1877. Between the 10th July and 24th September no meeting of the Corporation could be held and there was a corresponding break in the proceedings of the Town Council. The circumstances that led to the *impasse* may be briefly noted. Act III of 1872 provided that rate-payers in order to qualify themselves as voters at Municipal elections and as members of the Corporation must have paid a sum of at least Rs. 50 for the house rate and police and lighting rates. When the Act was amended by Act II of 1873, the same qualification was laid down for electors, but in the case of members no particular amount was specified, the only stipulation being that the sixty-four members should be rate-payers who had severally paid the house rate and police and lighting rates. This discrepancy was not noticed when Government issued a notification on 30th May 1877, for holding the general elections and specified that rate-payers, in order to qualify themselves as electors and members of the Corporation, should have paid before 31st December 1876, a sum of not less than Rs. 50 for that year's rates.

When the elections were impending, objection was taken to the qualification of a candidate for a seat in the Corporation on the ground that he had not paid the Municipal taxes specified in the amended Act of 1872. Before the date of the amendment, the payment of police and lighting rates to the amount of Rs. 50 had been considered sufficient qualification and the election lists were prepared accordingly, but the argument now raised was

that the rate-payer should have paid house rate as well as the other two imposts. As a matter of fact, the house rate was payable by the owner, and the other rates by the occupier. The Advocate-General was, therefore, asked to suggest a way out of the difficulty, but replied that the payment of all the three rates was 'essential for a qualification.'

The position, in brief, was as follows. Only persons occupying their own houses and those who paid the house assessment under agreement with their landlords were entitled to be on the register; the great majority of persons previously considered eligible was disfranchised both for membership of the Corporation and for the right to vote at elections. The electoral body was, in consequence, reduced to a skeleton. To increase the embarrassment, a further conundrum was pronounced for the entertainment of the Municipal authorities, namely whether, as the law stood, the mere fact of a rate-payer having paid all the necessary rates was not of itself sufficient to entitle him to be elected, or to vote, although his name might not have appeared on the lists prepared by the Commissioner.

The Bombay Government, being apprised of the difficulties, hurriedly issued a notification, dated 18th July 1877, superseding the notice of 30th May, and stating that the qualification for membership was the payment of the house, police and lighting rates for the year 1876, and for voting, the payment of not less than Rs. 50 on account of the same rates. Blunders, like misfortunes, rarely come singly. Another difficulty now arose. The lists of persons qualified to vote and to be elected had already been prepared in accordance with the terms of the notification of 30th May; the larger number of voters so registered had become eligible under the amended notification; the elections had been fixed for 26th

July and there was no time to publish another register. Once more, the Advocate-General was consulted. He advised that it would be futile as the law stood to proceed with the elections and he added, on further examination, that 'both the Corporation and the Town Council were defunct.' Why and how the melancholy event came to pass we have no means of ascertaining either from the Municipal Commissioner's administration report or from the annual proceedings of the Corporation. It may be inferred, however, from the preamble of the resuscitating Act that was shortly afterwards passed that the elections previously held were also invalid and that even if the members constituting the Corporation had been duly elected they would have all ceased to be councillors on 26th July, which was the last day on which fresh elections ought to have been but were not held.

With the advice of the Advocate-General before them it was clear that neither the Corporation nor the Town Council could perform any corporate act. No meetings were held, but payments could not be stopped. By a special authorization from Government the members of the Council continued to sign cheques on the Municipal Fund. A Bill was promptly introduced to grant indemnity for past omissions and commissions and to enable the Corporation to function again, and it was passed by the Legislative Council on 5th September 1877. The preamble of this enactment, Act II of 1877 'to validate the appointment of certain members and for the temporary continuance of the Municipal Corporation of the City of Bombay', ran as follows :

'Whereas doubts have arisen whether the several persons elected and nominated since the passing of the Bombay Municipal Act of 1872, as members of the Municipal Corporation of the City of Bombay and Town Council and as Chairman thereof

respectively, were elected and nominated according to law; and whereas under the provision of the said Act many of such persons if they had been duly elected members of the said Corporation in or subsequently to the year 1875 would on the 26th day of July last have ceased to be such members and fresh elections according to law ought to have been, but were not, held; and whereas it is desirable to render all such elections and nominations as enforced valid, and for the present to postpone such new elections and to provide for the temporary continuance of the said Corporation and Town Council as they purported to be constituted on the 25th day of July last; it is enacted, etc. . . .'

Under the validating act all 'persons elected since the passing of the Municipal Act of 1872' as members of the Municipal Corporation and of the Town Council and as Chairman of the Corporation and Town Council were to be deemed to have been duly elected and to continue to be such members and Chairman, respectively, until the 31st day of December 1877, and until such further date as might be notified by the Governor in Council. All acts done, sanction given, and payments made by the Municipal Commissioner, by the Corporation and Town Council as the Chairman thereof, respectively, since the passing of the Act of 1872, were to be deemed to be of the same force and validity as they would have been if the members of the Corporation and the Town Council had been elected and nominated according to law.

After this serious instance of carelessness, one might have expected the Municipal Commissioner to show more circumspection in matters pertaining to elections. The very next year, however, the legislative machinery had to be set in motion for another validating Bill. The voters' list should have been published on the 1st July 1878, whereas the notice of publication did not appear in the newspapers until the day following. As this irregularity might have been held to invalidate the

list and the elections held in accordance with it, the complacent Government once more came to the rescue of the Commissioner and placed the validity of the list beyond question by hurriedly passing Bill No. 7 of 1878.

CHAPTER XXIV

THE BILL OF 1877

THE principal changes incorporated in the Bill of 1877 may now be examined. In recognition of the need for extending the franchise this new piece of legislation contemplated the lowering of the qualifying rate to Rs. 30. It being impracticable to collect the taxes from the occupiers, the Bill also proposed (1) to abolish the distinction between owner's and occupier's rates; (2) to convert the house, police and lighting rates into one 'consolidated rate'; (3) to make the consolidated rate, as well as the water and halalkhore rates, leviable under the general name of 'Property Rates' from the landlords, giving them the right, in respect of the water rate and halalkhore rate, to recover the same from their tenants; and (4) to provide for the levy of all property rates in a lump sum instead of by separate bills as before.

The chief alterations in the administrative portions of the Act were designed (1) to empower the Town Council to revise assessments; (2) to make provision for indemnifying officers of the Fire Brigade and others acting with them for any acts they might necessarily do whilst employed in saving life or property from fire; and (3) to provide efficiently for preventing the spread in the city of infectious diseases. One very controversial proposal embodied in the Bill was to make the Municipal Commissioner *ex officio* a member of the Corporation. The Select Committee, to whom the Bill was referred, was of opinion that it was not desirable that the Municipal Commissioner should be a member of the Corporation or Town Council, but it suggested at the same time that

he should be entitled to be present at the meetings of both those bodies and to take part in the proceedings without the power of voting.

Another important alteration made by the Select Committee was the provision that cheques for payment in excess of Rs. 100 should be signed by the Municipal Commissioner as well as by a member of the Town Council and Secretary. The Act of 1872 required that no payment out of the Municipal Fund should be made without the sanction of the Town Council and that such payments should in *all* cases be made by cheque. This was in practice impossible. Had the Municipal authorities attempted to comply literally with this provision, work would have come to a standstill. Their bankers would have refused to cash an immense number of cheques for small amounts and the Town Council would not have found it feasible to sanction individually all the payments that had to be made. To obviate the difficulty, payments of sums exceeding Rs. 100 were made by cheque, and small payments were made in cash from the proceeds of cheques for Rs. 1,000 drawn in favour of the cashier, the sanction of the Town Council to such payments being assumed to have been included in their general approval of the Budget. As this practice was not strictly in accordance with the provision of the law, its adoption was legalized by a modification of the section.

It was proposed in the Bill that the Executive Engineer and the Executive Officer of Health should be appointed for an unlimited period. But while agreeing that the term of three years imposed in the original Act was too short, the Select Committee were not prepared to abolish the limit altogether, and therefore extended it to five years.

The Town Council had asked and the Bill had

provided that the Council should have the power to dispose of complaints and revise assessments. The Select Committee, however, did not consider that that was a duty which could or should be performed by the members of the Town Council.

After the Select Committee had submitted its report a few supplementary amendments were submitted by the Town Council over the signature of their Chairman, James MacLean, on 9th December 1877. Although they were time-barred, an informal meeting of the Select Committee was convened by the President of the Council and the additional recommendations were very carefully considered. Some of the alterations were adopted, others were accepted in a modified form, and some were rejected.

One of these supplementary proposals raised the interesting issue whether the Commissioner of Police should be eligible for membership of the Corporation and the Town Council. The Town Council urged that the holder of this office should be disqualified from being a councillor, but gave no reasons for its opinion. Their object was, however, disclosed in a minute appended to their memorandum by Navroji Fardunji who was a member of the Town Council and appeared to have fathered nearly all the proposals. As already noticed, the Police Commissioner was no longer directly under the authority of the Municipal Commissioner. But, the veteran tribune of the people argued, he was 'undoubtedly a Municipal executive officer and servant of the Corporation paid out of the Municipal Fund,' and, as such, ought to be disqualified for election or nomination as a member of the Corporation. This reasoning, however, did not convince the majority of the Select Committee. They held, as also did Government, that a Police Commissioner was not a Municipal servant

within the meaning of the Act. If, however, he was a servant of the Municipality, he was already ineligible for a seat in the Corporation, and, said the President of the Council, anyone who had any objection to the Police Commissioner sitting there could 'take the matter into Her Majesty's High Court.' He pointed out that every Commissioner of Police had not been, *ipso facto*, a member of the Corporation, merely because he was a Commissioner of Police. It was only very lately, he believed, that Sir Frank Souter had been placed in that position, and he found that the majority of the gentlemen interested in the matter were of opinion that his presence in the Town Council was often very useful, because he was able to give more detailed information about portions of the City than any other official. The Honourable Mr. Rogay took up the cudgels on behalf of the Town Council and argued that all the information possessed by the Police Commissioner could be obtained through the Municipal Commissioner. The proposal, was, however, negatived, and from that day the Commissioner of Police has invariably been a member of the Corporation and of the Standing Committee and has unquestionably been a very useful member of the latter body. For instance, no one was more welcome to the civic chamber than S. M. Edwardes, who had been for several years the Commissioner of Police before he was appointed to be Municipal Commissioner. There is no doubt that if the proposal were revived to-day, the same reasons would be urged in favour of retaining the Police Commissioner on the Committee as were given in the case of Sir Frank Souter, who was appointed Chairman of the Town Council as well as of the Corporation, and whose marble bust in the civic chamber offers eloquent testimony to the services he rendered to the Corporation.

The Town Council also advocated the omission of

a section which exempted public buildings from taxation. Two questions were involved : (1) whether the Legislative Council had power to make the properties of the Crown liable to the payment of Municipal rates and taxes ; and (2) whether the Council had at that stage the power to consider any proposition to amend the Bill before it by adding a clause affecting the Presidency revenues. As regards the first point, Naoroji Fardunji had cited in his minutes the opinion of no less an authority than the Advocate-General to the effect that Government properties could be taxed. The Honourable and learned member of the Council said he was not in the least disposed to recede from that opinion, but pointed out that the powers of the Council were controlled by Section 38 of the Indian Councils Act of 1861, which laid down that it was not lawful for any member or additional member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge should be imposed on the revenue. It was clear, therefore, that a proposal to make Government buildings assessable to Municipal rates could not be placed before the Council at that stage. Government properties thus remained exempt from taxation, but in accordance with a separate arrangement previously made, Government continued to contribute a compounded sum in lieu of the property taxes, until the Act of 1888 legalized specific arrangements for the assessment of such properties.

A brief reference may be made to another interesting point, to which the President of the Council called attention—a point which has not been clearly grasped even up to the present time and has apparently led to many anomalies in the system of allowing drawback in lieu of refund of property taxes. The principal Act provided that in the case of any *chawl* or building, let for hire in

single rooms, either as lodgings or godowns¹ for the storage of goods, the house rate should be levied in respect of the assessment of the rent on each floor, and that the owner should be entitled to a remission of one-fourth part of the annual house rate, provided that the owner of such *chawl* or building applied for the remission within fourteen days after the first day of January or the first day of July, and furnished all particulars of the situation of any such *chawl* or building, the number of the rooms and godowns therein, and the names of the occupiers thereof. The Town Council sought an amendment of this provision so as to require the owner concerned to apply for remission on the first day of January or the first day of July 'on account of the half-year then commenced.' It also asked for the insertion of a proviso that the owner of a room in any *chawl* or building, where work was done or where goods were sold, could not claim any remission.

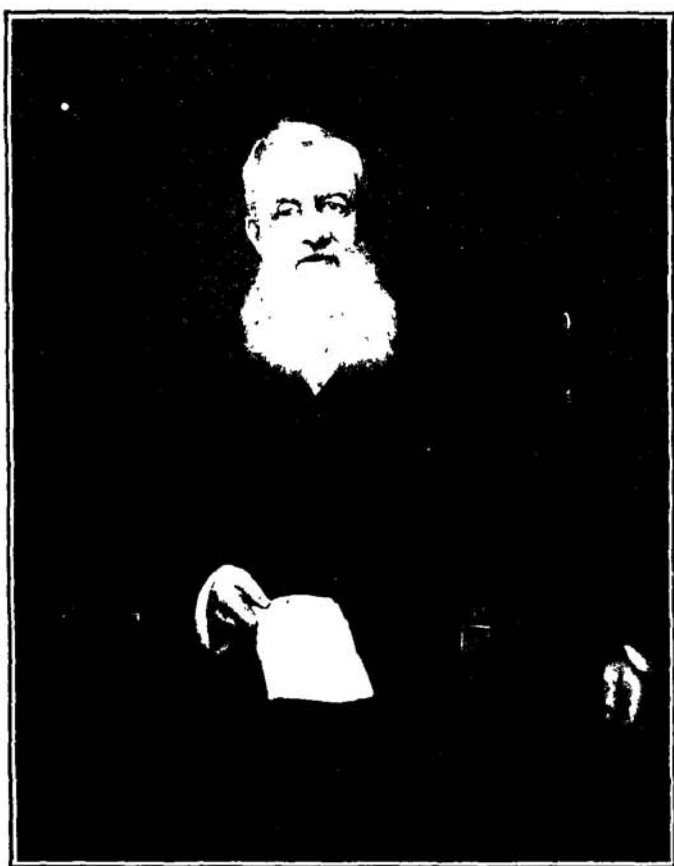
Referring to this provision the President made certain observations which indicate the object and nature of this composition.

'The purport of Sections 76 and 82,' he said, 'was carefully considered by the Select Committee, and it was found that in cases where persons let out *chawls* in single rooms, and where a good many rooms were vacant from time to time, the shorter plan had been followed whereby instead of the owner giving notice and obtaining a refund, one-fourth of the regular assessment should be abated *at once* in satisfaction of all such claims. Section 82 of the Act gave power to make refunds in cases where parts of houses or *chawls* were let off, and some portions were empty; but it was not intended that owners should obtain abatements by both these means, by *compounding*, as it were, and afterwards getting the refund.'

The same principle runs through the provisions of the Act of 1888. If a property is let to two or more persons

¹ From the Malay word *gadong*, a warehouse, storehouse, or depository.

in separate occupancy, the Commissioner may either treat the whole of it as one property or with the written consent of the owner treat each several holding or any two or more of the holdings or each floor or fiat as a separate property. But once he decides to treat the holdings as one property, he must allow drawback of one-fifth part of the General Tax subject to general conditions prescribed by the Standing Committee. The general conditions are, however, so framed as to involve an investigation of particulars concerning the extent and duration of previous vacancies, entailing all the labour to the municipal staff and all the inconvenience and annoyance to the owners which the sort of composition contemplated by the Act was intended to obviate. Herein the Municipal executive as well as the Standing Committee have lost sight of the fact that the system of composition incorporated in the Act is taken from the Municipal Corporations Act of England under which the owner of a building containing small tenements compounded and paid to the local authority the rates of his tenants and obtained an abatement of 15 per cent and a further 15 per cent if he agreed to pay rates for a year, whether his rateable hereditaments were occupied or not. The drawback rules of the Bombay Municipality are a travesty of the system contemplated by the Legislature and it is strange that deterred by a judgment of the High Court given under a previous enactment in a case involving other issues the rate-payers have hitherto acquiesced in such rules.



LORD RIPON

The Father of Local Self-Government in India

CHAPTER XXV

LORD RIPON'S BENEDICTION AND BOMBAY CASTLE'S HESITATION

Hardly was the ink dry on the notification heralding the Consolidating Acts of 1872 and 1878 than the Town Council commenced suggesting alterations in its provisions. By the middle of the year 1880 a long list of amendments had been prepared, and in the month of October of the same year, the Municipal Commissioner submitted a codified statement of such emendations for the consideration of the Corporation.

Most of the amendments pertained to the domain of administration. The only proposal for a change in the constitution was to give the Fellows of the Bombay University the right to elect four representatives and accordingly to increase the number of the Corporation to 68. A Committee appointed to consider the amendments saw no special grounds for extending the franchise to the Fellows, as such, inasmuch as they already exercised the privilege of voting, either as rate-payers or as Justices.

While these proposals were in the melting pot, Lord Ripon issued his memorable resolution of 1882, which gave a fresh impetus to local self-government throughout India. The advanced policy inaugurated by the resolution aimed not only at broadening the foundations of local government, but also indicated the desirability and feasibility of several local and administrative reforms in all provinces, and definitely laid down general principles for the decentralization of provincial finance for local government by the readjustment of certain items of revenue and expenditure. The revenue

items comprised tobacco duties and liquor licenses, and the expenditure items primary education, medical relief and police charges.

The Bombay Corporation hailed the resolution with delight and forthwith opened negotiations with the Government of Bombay as to the best ways and means of transferring provincial receipts and burdens. At a special general meeting, held on 10th January 1883, the following proposition, moved by Vishwanath Narayen Mandlik and seconded by Pherozechah Mehta, was passed :—

‘ This Corporation humbly offers its respectful thanks to His Excellency the Viceroy for his noble efforts to systematize and properly direct the measures for the extension and consolidation of local self-government in India, and expresses the earnest hope that in the Bills now under consideration the Municipal Laws of Bombay, passed by the Governments of Sir Seymour Fitzgerald and Sir Philip Wodehouse, may be further amended by investing the representatives of the City with a larger and more substantial share in the administration of their own affairs.’

In reply the Corporation were informed that His Excellency the Governor had received with much satisfaction the expression of confidence from ‘ a body which had shown itself so capable of appreciating and of adequately discharging the responsibilities of local self-government.’ Beyond this formal exchange of compliments, however, the Bombay Government did little to further the object which Lord Ripon had in view. Of all provincial governments it was the least enamoured of the policy enunciated in the Government of India resolution. The Corporation on the other hand were determined not to allow the grass to grow under their feet, while ‘ Bombay Castle ’ was preparing for a campaign of flank attacks on the proposed measures of reform.

In a resolution passed on 10th January 1883 the Corporation expressed the earnest hope that the local government would move the Legislature at an early date to take steps to relieve the Municipality from any payment on account of police charges, as contemplated by the resolution of the Government of India, and on 17th January 1883, a Committee of the Corporation was appointed, to report what amendments in the Act were desirable in connexion with the 'new Local Self-Government scheme.' In the following month a letter was received from Government, stating that they proposed to relieve the Municipality of the charges on account of the Bombay City Police and to effect some arrangement by which the burdens which then devolved on Provincial Revenues to an amount equivalent to the cost to the Municipality of the Police (Rs. 300,000), should be borne by Municipal Funds, or to make an equitable settlement in some other way. One solution of the question was that in return for being relieved of the police charges the Municipality should abandon its claim to the fixed payment of Rs. 1,43,750 on account of Liquor Licenses and of Rs. 1,46,000 on account of tobacco duty. An alternative course was the transference to the Municipality of the maintenance of certain medical and educational institutions and of the roads, gardens and other public works maintained at the cost of Provincial Revenues.

On the 2nd March 1883, the Town Council appointed a sub-committee, to confer with the Municipal Commissioner and report to the Council as to the probable amount of the different charges that would be entailed on the Municipality by the transfer to it of the various items of expenditure.' The sub-committee promptly presented a report which was considered at a meeting of the Town Council on the 4th May 1883. The report

showed that the Police charges amounted to Rs. 2,87,732 and that the Municipal receipts from Tobacco Duty and Liquor Licenses amounted to Rs. 2,89,670. The Town Council recommended that in consideration of being relieved of the expenditure on Police and their contribution of Rs. 30,000 towards the expenses of the Goculdas Tejpal Hospital (Rs. 3,17,732), the Municipality should forego the income from Tobacco Duty and Liquor Licenses and shoulder the charges on account of the Government Middle and Primary Schools and certain Public Works expenditure amounting to Rs. 27,813.

Considerable discussion ensued in the Corporation on the subject. Several proposals were made, but the amendment moved at a meeting held on 16th May 1883, by Vishwanath Mandlik, seconded by Javerilal Yajnik, expressed more forcibly than any other the sentiments of practically the whole body. It ran as follows:—

‘ That the Corporation regrets that it is unable to accept the scheme of local self-government proposed by Government . . . inasmuch as by the operation of that scheme the Municipality would in no way be benefited financially or educationally, or in matters of municipal administration generally. The Corporation, therefore, respectfully trusts that Government will be pleased to issue a modified scheme, conceding to the Corporation larger and more extensive powers of local self-government as intended by the order of the Government of India.

This amendment, however, was not adopted by the House. While it expressed emphatically the dissatisfaction of the Corporation at the niggardly policy and obstructive attitude of Government, it suggested no means of promoting the object in view. No one wanted a deadlock; every one was anxious that some means should be devised to carry into effect the beneficent policy of Lord Ripon. The question, however, required

patient consideration. Kashinath Telang, therefore, proposed, and the House acquiesced in, the appointment of a Committee of the Corporation 'to consider and report what department of administration the Municipality should ask Government to hand over to it for management and how the various outstanding claims of the Municipality against Government should be now settled.' The Committee was also asked to report what amendments of the Municipal Acts were desirable in connexion with the new scheme.

It was a strong and representative Committee—a Committee of all the talents, such an unique combination of able and experienced men as rarely falls to the lot of a city to enlist simultaneously in its service. Blaney and Peterson, Navroji Fardunji and Mandlik, Telang and Tyebjee, Mehta and Sayani, Geary and Grant and Yajnik were names to conjure with in those days. The Corporation have never again been able to provide such an assemblage of stalwarts. The Committee submitted its report on 11th August 1883, recommending the deprovincialization of various items of provincial expenditure.

In coming to a decision the Committee was guided by two main considerations. As regards any such transfer it was, in its opinion, extremely desirable that the Municipality should endeavour to get the control, not of parts here and parts there of heads of expenditure, the balances of which were left to be administered by the officers of Government, but, so far as other considerations did not render it inadvisable, of the whole of such heads of expenditure as might recommend themselves as most suitable for transfer. The transfer, observed the Committee, was of the nature of an experiment, and the results of the experiments would be keenly scrutinized. Its ultimate success was by no means doubtful, but the

Committee believed that it would be in the interests of the Corporation to set up, by the successful administration of less than might fairly be asked for, such a claim for larger concessions in the future as Government might be able to admit, rather than by overhaste in the beginning to strain such administrative appliances as the Corporation then possessed, or could readily improvise, and so possibly to prejudice at the outset the success of the movement. So also, on the other hand, the Committee submitted that it was in the interests of the State generally that, so far as possible, the two sets of administrative machinery—that of the Government and that of the Municipality—should not be left in control of different parts of one head of expenditure. Such an arrangement must involve a great deal of unnecessary expense to the tax-payer, and constant friction between the two sets of authorities, which it would require much good sense and forbearance on both sides to render innocuous. After careful consideration the Committee recommended the Corporation to ask for the control of the following institutions :—

- (1) The Goculdas Tejpal Hospital.
- (2) Five Anglo-Vernacular Schools.
- (3) Primary Schools.
- (4) Aid to Indigenous Schools.
- (5) Victoria and Albert Museum.
- (6) Statues of the Queen Empress and of Marquis Wellesley and Marquis Cornwallis.
- (7) Chowpatty Gardens, Garden near the Queen Empress's Statue, Garden round the University Buildings.
- (8) The Esplanade Estate as formerly administered by the Esplanade Fee Fund Committee.
- (9) The conduct and management of the Department for the issue and control of liquor licenses within the City.
- (10) Public Land Conveyance Licensing, including issue of number plates and badges.

As regards the Police charges, the Committee submitted that the duty of maintaining order was the first function of Government and that the sum required should, like the cost of the army, be provided by Government out of the general revenues. They recommended that Government should be asked to include the whole of the sum then levied from the Corporation for the Police in the additional revenue which the Local Government had been invited by the Government of India to make in view of the large additions that had been or were to be made to Provincial Funds, the Corporation in its turn undertaking to relieve Municipal tax-payers of the Police rate. The Committee further advised the Corporation to prefer several outstanding claims against Government in respect of assessment of Government property, Water rates, Liquor License Fees, and balances of License Fees in respect of Land Conveyances. Geary and Grant dissented in regard to Police Charges and outstanding claims, but after prolonged discussion almost all the recommendations of the Committee were accepted.

The demands of the Corporation did not err on the side of modesty. Not even its most sanguine members could have expected the acquiescence of Government in the proposed arrangement. The reply received from them was, however, more disappointing than the pessimists among them had expected. In their letter of 9th January 1885, Government did not attempt to disguise their annoyance and indignation at the 'discussion of subjects which were not referred to the Municipality.' The Governor in Council was unable to regard some of those subjects as being open to discussion at all and he did not think that the others could with advantage be discussed in connexion with the question which the Corporation were asked to consider, namely, the

incidence and adjustment of Police Charges. It was obvious that that question was entirely distinct from that of transferring the control of expenditure of a specially local character together with receipts sufficient to meet it. That was a subject which His Excellency in Council was not unwilling to consider separately, but it was not essential to that of the incidence of the Police expenditure. He declined to reopen former accounts, either as regards the outstanding claims in respect of assessment of Government properties, or as regards the contributions towards the cost of the Police and the compensation for the loss of fees for liquor licenses. The arrangements of which the Corporation complained were either based on contract or carried out in exercise of powers given to Government by the law.

Among the institutions which the Corporation desired to take over was the Goculdas Tejpal Hospital. It was, however, one of the conditions attached by Goculdas Tejpal to his donation that the hospital should be 'maintained by Government and the Municipality for ever.' If Government divested themselves wholly of the management of the hospital and made it over for maintenance exclusively to the Municipality, legal difficulties might arise. The Governor in Council, therefore, thought that the best course would be for Government to retain the management in their own hands, receiving, as before, a contribution from the Municipality.

It appeared to be quite impossible to discover charges suitable for transfer to the Municipality which would be equal in amount to the Police Charges, for which the Municipality was responsible. Government were desirous of carrying out the wishes of the Supreme Government, but they thought that if an adjustment of charges was found to be impracticable, there would not

be any anomaly in continuing the state of things that existed, or at any rate in requiring the Municipality to continue to pay so much of the charge as was in excess of other charges transferred to it.

With a leader like Pherozesha Mehta in the chair, the Corporation were not in a mood to acquiesce in this attitude of *non possumus*. A Committee was appointed to suggest within a fortnight the lines on which the communication received from Government should be dealt with. Its report was a forcible yet dignified exposure of the specious arguments urged in defence of the obstructive attitude of Government. In the course of the report the Corporation informed Government that they were still respectfully of opinion that when administrative and financial questions were under consideration, as they then were, it was desirable that they should be dealt with not piecemeal, but as a whole, and that a final settlement should be arrived at, so as to leave as few as possible of such questions still outstanding as matters for further controversy and correspondence. In their letter Government had called attention to a sentence in the Supreme Government's letter of 10th October 1881, which, it appeared to them, the Corporation had overlooked. That sentence ran as follows:—

'The Governor-General in Council would, therefore, be glad to see Municipal bodies relieved altogether of the charge for Police, an equal amount of expenditure on education, medical charity, and, if possible, public works of local interest, being transferred to them with as full control as may be practicably expedient over the details of such expenditure.'

The Corporation submitted that they had not lost sight of this passage, but that they had also in mind further passages in the despatches received from the Government of India, which the Government of Bombay

appeared to have conveniently overlooked. One of these despatches stated :

'The only function which the Municipalities discharge in regard to Police is the provision of funds for the purpose of meeting the whole or a portion of the cost of the Municipal Police Force. They practically exercise no control over the Police and cannot therefore be expected to take any special interest in the efficiency of the Force, or to look with sympathy on a provision of the law which treats them as a machinery for raising taxes to be spent on a department over which they have no control, and in the efficient and economical expenditure of which they have but little direct interest and not immediate responsibility.'

Another passage which, it appeared to the Corporation, had escaped the notice of the Governor in Council was paragraph II of the Resolution of the Government of India No. 3353 of 30th September 1881, quoted, elucidated and reaffirmed in the Government of India's memorable resolution of 1882. The Supreme Government distinctly suggested in that paragraph that 'the Provincial Governments, while being now largely endowed from Imperial sources, may well in their turn hand over to Local Self-Government considerable revenues, at present kept in their own hands, but similar in kind to many which have long been "locally" managed with success by Committees.' Taking their stand on this express desire of the Government of India, the Corporation maintained that in adjusting matters between Government and the Municipality, even as regards the Police expenditure alone, and still more so in examining the mutual position of Government and the Municipality as a whole, Government might justly consider that when some institutions were transferred to the Municipality for management, a part of the Police expenditure at all events should be removed from among the Municipal

burdens. As, however, the only basis upon which the Governor in Council was prepared to consent to release the Municipality from the burden of the local Police charges was that the Corporation should undertake other charges to an amount fully equivalent to that then expended on the Police, or, as an alternative, surrender to Government municipal revenue of an equivalent amount, the Corporation, in preference to surrendering their right to the special local duty on tobacco and snuff, and the revenue from liquor licenses, desired that the arrangements which then subsisted should continue. Thus did one of the principal objects of the liberal policy enunciated by the Government of India remain unfulfilled, and the question of the Police charges continued to remain a fruitful source of friction between the Municipality and the local Government.

While the question of transfer of revenues and liabilities was engaging the attention of that able Committee of the Corporation, two other Committees appointed respectively on 17th January and 9th April 1883, were busy formulating such amendments in the Municipal Act as were considered desirable in connexion with the new Local Self-Government scheme. Joint meetings were held by these Committees and a joint report was submitted by them, dated 7th August 1883. Their work was considerably lightened by the draft Municipal Act, which the Commissioner, Charles Ollivant, had prepared. He was specially placed on deputation for three months to do this work, and to assist him in the transaction of ordinary business, a Deputy Commissioner was appointed. This was the first occasion on which a Deputy Commissioner had been appointed and the officer selected for the post was H. A. Acworth, who subsequently succeeded Ollivant. 'Without binding themselves to every detail,' the Committees recommended Ollivant's

draft as a fair model for the amending Act. The following main issues were considered by the Committees :—

1. Whether it was desirable to alter, to any material extent, that portion of the Municipal Law which related to the constitution and functions of the Corporation and the Town Council ;

2. Whether the Commissioner should be appointed by Government or by the Corporation ; and

3. Whether it would be in the interests of the City that the Town Council should become an executive, in supersession of, or in conjunction with, the Municipal Commissioner.

As regards the first issue, the Committees recommended that in view of the growth of the population, the number of members of the Corporation should be increased from 64 to 72 to be elected or nominated as follows :—

36	Elected by the Ratepayers.
24	do. do. Justices.
2	do. do. Fellows of the University.
2	do. do. Chamber of Commerce.
8	Nominated by Government.

They were of opinion that irrespective of the payment of taxes, graduates of the Bombay University and other Universities of India and of the Universities of the United Kingdom, and all barristers, advocates, solicitors, vakils and pleaders of the High Court should be enfranchised and that with a view to protecting the interests of the minorities the cumulative system of voting, which had been tried with success in the case of the School Board elections in England, should be adopted.

Concerning the powers and functions of the Corporation and the Town Council the Committees recommended that the powers of control vested in these two bodies should in no way be lessened, but rejected the suggestion

to entrust executive work to the Town Council. It had been suggested that the Commissioner should be the Chairman of the Town Council and that the Council should be the executive authority of the Corporation, each of the members sharing with the Commissioner the responsibility for all acts of executive authority. The Committees disapproved of this proposal for reasons which had best be stated in their own words :—

‘ Unless there was an entire change of organization, the general body of the Council could not of itself actually carry on the administrative work of the City, which required constant attention, great energy and special aptitude. At best the Council would only meet once or twice a week to discuss the sanction of the Commissioner’s actions and in all cases where urgency was pleaded they would be obliged to agree to the action taken by him, and to share in the full responsibility for the same, although they might disapprove of what had been done. Practically, he must still have executive authority ; the Council’s power would be only nominal. The express power for which the Council exists is that of “ securing the due administration of the Municipal Fund ” and the Committee do not see how the Council could perform that function if they were bound by all the actions of the Commissioner. ’

They considered that the Commissioner should remain the chief executive officer and that his appointment should remain in the gift of Government. They strongly opposed his appointment as Chairman of the Town Council which, they urged, should have the right to elect its own Chairman.

An interesting minute of dissent was, however, appended to the Committees’ report by Jhaverilal Yajnik. He was of opinion that under the new scheme of local self-government the sub-committees of the Town Council should be made ‘ more of administrative or working bodies ’ than they were. Ollivant’s draft provided for the formation of permanent Standing Committees on the lines of the

London County Council Committees, and Yajnik supported the proposal. It was, in his opinion, all the more necessary, seeing that the Committees had negatived the proposal to make the Town Council an executive body in supersession of, or in conjunction with, the Municipal Commissioner. Apart from the utility of such Committees, he emphasized the insight into the executive administration of the Municipality which the proposed division of labour would afford to members. The revenues of the Bombay Municipality, he observed, were equal to those of a good-sized district in the Bombay Presidency, and the part taken by its members in their administration would be by far the best preparation for higher administrative work. In Dr. Peterson, Yajnik found an able supporter, but they were in a hopeless minority. After prolonged discussion, the Corporation endorsed the recommendations of the Committees and the draft amended sections of the Act were forwarded to Government with the expression of opinion that they constituted 'a fair model on which an Amendment Act may be based.'

On the 21st October 1885, an Amending Bill, drafted by the Legal Remembrancer to Government, was forwarded to the Corporation. The Bill had to be submitted to the Secretary of State for India. The Corporation were therefore told that if it was to be passed that cold season, it was desirable that their views should be submitted to Government at once.

Another Committee was appointed and its report was laid before the Corporation on 29th January 1886. The Committee observed that the draft Bill had been drawn on lines widely divergent from those recommended by the Corporation after prolonged and careful deliberation. It considered that the principles contained in the previous letter of the Corporation to Government were 'sound in theory and carefully and cautiously founded on the results

of their working ever since the formation of the present Municipal Constitution.' As a result the Corporation virtually reiterated their previous recommendations.

No reply having been received to this communication, the Corporation decided on the 5th July 1886 to send a reminder to Government. The following resolution was passed:—

'That in view of the protracted delay there has been in the passing of the Amended Municipal Bill, the Chairman be requested to ask Government to favour the Corporation with copies of the Bill, as now amended, at as early a date as possible, in order that members may have an opportunity of making any representations on the sanitary and other provisions of the Bill generally, between this time and November next, when it is understood the Legislative Council will have the Bill before them, and in order to save much valuable time, by placing the measure before the Legislature in such a form as will ensure its having the concurrence of the Municipality.'

Government, however, indignantly repudiated the charge of procrastination and told the Corporation that they were themselves responsible for the delay. Although the Bill as originally drafted had been sent to them in October 1885, they had delayed their report and had asked for further amendments necessitating the recasting of the draft. In accordance with the usual practice Government proposed to submit the revised draft to the Secretary of State for sanction and to publish it after that sanction had been obtained. The Corporation or any individual members of that body would then have every opportunity of expressing an opinion on its provisions.

The revised Bill (No. 4 of 1887) at last came up for discussion on 9th June 1887. It was denounced by the Corporation and the public with one voice as the most retrograde measure ever brought forward by the Bombay Government. According to this new piece of legislation

the first most important authority in civic affairs was the Commissioner, next but far below him, was the Standing Committee and last, the Corporation, whose duty it was to vote funds and stand aloof ! To tear this new-fangled measure into pieces the Corporation resolved themselves into a Committee of the whole house.

CHAPTER XXVI

FIGHT FOR THE SUPREMACY OF THE CORPORATION

BEFORE the Committee could complete its vivisection of the Bill it was introduced in the Legislative Council on 16th July 1887. The Hon'ble Mr. Naylor, who stood sponsor to the Bill, explained that the object aimed at was the perfection of municipal government, the attainment in the highest possible degree of those conditions which secured to the inhabitants of the City health, convenience and comfort, and which would enable the City to maintain its place among the finest cities of the world without imposing upon the people undue taxation. 'The object kept in view in every chapter,' he said, 'is to secure to the citizens of Bombay the greatest possible efficiency in municipal services with the most complete possible control over expenditure.' Replying to the critics who condemned the Bill as a retrograde measure, he urged that great care had been taken in framing Chapter II which dealt with the question of the constitution of the municipality. With a view to assimilating the English models he had provided for the distribution of the work of the Town Council among sub-committees of the Council. Each of these sub-committees, with the Municipal Commissioner as Chairman, was to have charge of one or more branches of the executive work of the Municipality.

'This view,' he said, 'commended itself to me as being an important step in the direction of real self-government and the first draft of the Bill was devised to give effect to it. The draft proposed to deprive the Commissioner of the sole executive authority, and to vest such authority in sub-committees of the

Town Council, of which the Commissioner would be the Chairman. The draft was referred by Government to the Corporation for the favour of their opinion, but that body disapproved of the proposed change. Government did not press the new departure, when those, in whose interest it was suggested, were unwilling to accept it, and the Bill had therefore to be entirely recast . . . It appears that there does not exist in Bombay the class of gentlemen upon whom Municipal Institutions in England so greatly depend—gentlemen who are both able and willing to devote a considerable share of their time and attention, without remuneration, or for comparatively little remuneration, to local public affairs, and to incur the responsibility which participation in the conduct of such affairs necessarily involves.'

The principal reason, however, why the proposal for the constitution of executive committees fell to the ground was the provision to instal the Commissioner in the presidential chair. In an official-ridden country like India the proposal to keep the sub-committees in the leading-strings of the Commissioner was even in those early days like the proverbial red rag to a bull. Stripped of that obnoxious feature, the proposed sub-committees would not have been so unwelcome to the Corporation. To divest the chief executive officer of his responsibility and to invest him with presidential power and pomp was a travesty of the principles on which Lord Ripon's scheme of liberalizing the municipal constitution was based. Telang, who followed Naylor, therefore, struck the right note when he said that the proposed sub-committees would have either proved obstructive or a 'perfect sham and delusion, preventing responsibility being imposed upon the person on whom it ought properly to rest.' 'It seems to me,' he observed, 'that no sufficient reason has been shown, and none can be shown, why the position of the Municipal Commissioner in the Corporation should be altered from what it is at present. The true principle which ought to guide us is that the



KASHINATH TRIMBAK TELANG

One of the most cultured councillors of Bombay

Municipal Commissioner should be merely the head of the Municipal executive. It will not do to make him an integral member of that body.'

It is well-known that Naylor was assisted in his work by Ollivant. From the standpoint of the Municipal Commissioner, the proposed reform was ideal, but what was meat for him was poison for the Corporation. For instance, the Bill provided that the Municipal Commissioner should be one of the sixteen members of the Corporation appointed by Government. Nothing could have been more subversive of the Municipal constitution than that. Another provision of the Bill bore the clear impress of the Commissioner's finger. Section 379 provided that whenever the Commissioner chose to certify to the presiding authority that a particular item of business should be given priority, it should be forthwith considered. Telang said it was tantamount to want of confidence in the Corporation and an unlimited trust in the Commissioner. It was like 'Lord Protector Cromwell sending about their business the Commons of Great Britain!' 'Local Government is a sham,' said the intrepid critic, 'if no trust is reposed either in the Corporation or in the Town Council. If popular Government cannot be trusted to cope with all the necessities of that pre-eminent position, let us abolish the Municipality altogether and let us have a strong administration and rule by means of the Governor in Council.'

Such an imputation of reactionary tendencies provoked a spirited rejoinder from the President of the Council, Lord Reay. He had come to Bombay with the reputation of being 'a philosophical Radical of pronounced type.'¹ 'The honourable member cannot accuse Government,' he said, 'of having, in the initial stages

¹ Wacha, *Bombay Municipal Government*.

of this reform, shown a retrograde disposition. Quite the contrary has been proved. Government was so progressive that the Corporation was not prepared to follow it. I am not contending that the diffidence of the Corporation was unwise. But our original offer should guarantee us from any taunt that we are imbued with retrograde proclivities.' He took decided objection to that portion of Telang's speech, in which he implied that the Corporation should be an omnipotent assembly and the ultimate master of the destinies of the city of Bombay.

'I do not see,' he pertinently remarked, 'why an assembly should be omnipotent, and I think it undesirable for the same reasons that omnipotence of individuals is to be deprecated. It is certainly contrary to the genius of the constitution of Great Britain; and in those countries where local self-government has reached its highest pitch of perfection—in the Low Countries—after centuries of experience a careful series of checks has been designed to prevent abuses. The Municipal Council checks the executive in town and village and the Council itself it checked by representatives of the districts or as we should call them collectorates. The Central Government has a further residuary control.'

The Bill was then referred to a Select Committee on which Telang and Mehta represented the Corporation. It made a lengthy report on 11th January 1888, elucidating several important changes it had made in the Bill to meet the wishes of the Corporation and the public. The provision that the Commissioner should be *ex officio* a member of the Corporation¹ was deleted. He had not

¹ The Select Committee had decided to use the term 'The Municipal Council of the City of Bombay' for the Corporation and the term 'councillor' for each member. These designations coincided with those of similar bodies and of the members of such bodies in other parts of the British Empire and the Committee considered them convenient and appropriate. In the Council, however, the old name was adhered to, but the designation 'Standing Committee' suggested by the Select Committee for the old 'Town Council' was accepted.

been a member before, and while on the one hand objections of principle had rightly been raised to the proposal, the Committee saw no strong reason, from considerations of utility, for conferring on him the right of voting and other privileges of full membership. The Committee was, however, unanimously of opinion that he should be at liberty to attend the meetings of the Corporation and take part in the discussions. The majority of the Committee suggested that it be held the function of the Commissioner, when present at a meeting, to place before the meeting, at the close of any speech of a councillor, 'correct information as to any material fact referred to in such speech' and to explain 'any matter which appears to him not to have been correctly stated to the meeting.' It was also considered advantageous to the Corporation that in certain cases an exception should be permitted to the rule which prevented him from moving any resolution at their meetings, and that in special cases the Standing Committee should be able to authorize him to take charge of a proposition which had to be moved in the Council.

The Corporation had suggested that each voter should have only one vote but the Committee were inclined to think that the system of cumulative voting, which the Corporation themselves had proposed in 1884, should be given a fair trial.

The Committee conceded to the Corporation the unfettered right of regulating their proceedings at their meetings, and the obnoxious provision requiring the approval of Government to the regulations framed by the Corporation was deleted.

Without assigning any reason the Corporation had proposed that the provision authorizing payment of fees to members of the Standing Committee should be abandoned. Fees were paid from the beginning to members of

the Town Council, and it was believed that payment had secured prompt attendance and prompt discharge of the several administrative duties devolving upon the Council. The Committee, therefore, retained the provision.

The Committee was in favour of giving Government the authority to determine from time to time whether a Deputy Municipal Commissioner was needed and if so to appoint him. To pacify the opposition, however, the Committee suggested that no such decision should be arrived at by Government without the Corporation and the Commissioner having been in the first instance consulted. It also made it clear that the Deputy was to act under the Commissioner's general direction and would not, therefore, 'relieve the latter of the sole responsibility for the executive with which it was the policy of the Bill to invest him.'

In the original Bill the clause defining in general terms the respective functions of the several Municipal authorities ran as follows:—

The respective functions of the Corporation, of the Town Council and of any Committee appointed under Section, shall be such as are specifically prescribed in or under this Act. Except in so far as authority is expressly vested by or under this Act in the Corporation or in the Town Council, or in any such Committee as aforesaid and subject, whenever it is in this Act expressly so directed, to the bodies aforesaid, the duty of the carrying out the provisions of this Act vests exclusively in the Commissioner.'

The authority proposed to be expressly vested in the Corporation was the power of the purse. With that exception, the entire residuary authority and jurisdiction was to be exclusively vested in the Commissioner. The Select Committee conceded that the supreme position of the Corporation, as the body entrusted with the Municipal government of the City, should be more distinctly

emphasized than it was in the Bill. Except in so far as the Act vested executive powers in the Commissioner and his subordinates, the Municipal Government should, it thought, be vested in the Corporation and their delegates, the Standing Committee. It accepted at the same time the principle that the entire executive power and responsibility for the purposes of the Act should be vested in one Commissioner which, in its opinion, implied that the Commissioner should be charged with entire executive power, subject only to such financial and other restraints as the Legislature might think fit or necessary to impose.

Two new sections were added to confer upon the Corporation the right, which the Select Committee thought they should possess, of calling for extracts of proceedings, returns, etc., from the Standing Committee, and for production of records, correspondence, plans, etc., or for returns, reports, etc., from the Commissioner.

The Bill contemplated the appointment of a Clerk of the Corporation by the Corporation and of a Municipal Secretary, who should be Secretary to the Standing Committee, by that Committee. Provision was made to admit of the Municipal Secretary holding, with the approval of the Standing Committee, the office of the Clerk of the Council. The Corporation had, however, proposed that there should be only one officer for the two posts, who should be appointed and be removable by the Corporation. The Select Committee was divided in opinion upon this subject.

The Corporation had asked that the power of appointing a Municipal Controller should be vested in them, and that the Standing Committee be authorized to obtain reports from the Controller direct. The Select Committee considered that as the Commissioner was responsible for the proper keeping of accounts, it was

reasonable that the choice of accountants from the Chief Accountant downwards should rest with him, and that they should look to him as their head, whether for promotion or any other official purpose. If, on the other hand, it was desired to effect a more perfect control over the accounts, it was obvious that such control should be exercised from outside the Commissioner's office and not through the instrumentality of his immediate subordinates, who, if friction and animosity were to be avoided and a proper discharge of duties was to be insisted on, should be under no inducement to slight the Commissioner's authority or to hesitate in fulfilling his orders.

The amended Bill, though a distinct improvement on the original draft, still possessed several objectionable features. The Corporation, therefore, addressed a long letter to Government on 2nd March 1888, acknowledging that 'the Bill on the whole had been decidedly improved by the Select Committee,' but at the same time calling attention to several important issues involving principles 'on the recognition of which depended the power of the Corporation as the body entrusted with the Municipal Government of the City.' Believing that even the amended Bill did not give them supreme power of management, they demanded absolute and perfect control of the Budget, power to obtain direct the opinions of Municipal officers and full information of any kind, and power to determine the general policy to be pursued by the Town Council and the Commissioner and other executive officers. The following plain and outspoken words showed that they were not in a mood to accept any other position:—

'The Corporation are anxious that their views of the case should not be ignored; either they are, or they are not, to be the governing body of this City; if they are to be the governing body,

they should be entrusted with full power to carry out what they believe to be right and best; if they are not to be the governing body, there is then no apparent necessity for their existence.'

The result of all this discussion and agitation was that the Bill, as finally passed, was purged of most of the obnoxious features to which the Corporation had objected. Throughout the passage of this legislation through the Council a conciliatory policy of give and take marked the attitude of the representatives of Government and the Corporation. Thanks to their skilful piloting, the City obtained a new charter of municipal government which has had the longest life in the history of Local Self-Government legislation and has remained up to the present moment a 'monument of wise and liberal and far-seeing legislation.' During the last thirty-six years the Act has been amended in several directions; but the framework is still the same and the basic constitutional features have remained unaltered.

Under the new Act all legislative authority, financial control and powers to impose taxes, to sanction large contracts, to call for the production of papers, to create new appointments or raise the salaries of officers, including the Municipal Commissioner, were vested in the Corporation. The Commissioner, as the chief executive officer, was subordinate to the Corporation in every respect, excepting the details of executive work in which his liberty of action was untrammelled. Such a limitation of authority, however, did not reduce him to the position of a mere servant of the Corporation. Although bound to carry out the behests of the Corporation within the sphere defined by law, he was individually charged with other statutory duties to be performed on his own responsibility. Nor was he, although appointed by Government, a servant of Government. His position, as pointed out by Lord Reay in winding up the historic

debate on the Bill, was to be substantially the same as that of officials lent by Government to the Native States. 'He will not receive,' said he, 'any instructions from Government except on the cases as provided by the Bill, and Government will have to pay a scrupulous regard to his independence. The Municipal Commissioner does not represent or commit Government by anything he says or does. He must in order to serve the rate-payers satisfactorily have the discretion, the qualified freedom of action, which the exercise of executive authority implies.'

Such is the history of the introduction of the Municipal Act of 1888. A discussion of some of its more important provisions may conveniently form the scope of a fresh chapter.

CHAPTER XXVII

THE ACT OF 1888 :

CONSTITUTIONAL PROVISIONS

THE keystone of the constitution is to be found in the following clauses of Section 64 of the Act which defines the relative position of the Corporation and the Commissioner :—

‘ Except as in this Act otherwise expressly provided, the Municipal Government of the City vests in the Corporation.

‘ Subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or the Standing Committee and subject also to all other restrictions, limitations and conditions imposed by this Act, the entire executive power for the purpose of carrying out the provisions of this Act vests in the Commissioner.’

It is well known that Pherozeshah Mehta played a prominent part in moulding this Section. It was a pleasure to hear him refer to this Section and expound the meaning and significance of every word of it, whenever there was an attempt on the part of the executive to flout the authority of the supreme body or on the part of individual members of the Corporation to trench upon the powers of the Commissioner. So enamoured was he of his handiwork that he appeared to regard it as the last word in the art of local self-government in India. In the midst of all movements which he led for the political advancement of the country, it never occurred to him till the last day of his life that a further step on the path of local self-government was long overdue.

The functions of a representative body such as the Corporation are general superintendence and check ; administrative, commonly called executive, work can

only be done by those who have been trained to it. That is the quintessence of wisdom in local self-government. The Municipal Act gave independent power to the Commissioner within his own specified sphere of activity, subject to general supervision and control by the Corporation and special and direct supervision and check by the Standing Committee. The Legislature having fully recognized the supreme authority of the Corporation, all the members of the Council at the close of the debate, including the representatives of the Corporation, Mehta and Telang, blessed the measure as 'the most liberal charter in the matter of local self-government possessed by any City in India' framed on sound principles, sound in theory and tested by experience. R. West observed that it had been drawn 'by careful induction from experience.' Facts and tendencies had been accepted as guides of policy and that gave 'the best prospect of future efficiency and success.' The President, Lord Reay, was so pleased with the measure, as finally adopted, that he decided to send it to Professor Gneist, the greatest living authority of the day on local government legislation. Forbes Adam alone struck a discordant note. Renowned for his public spirit and staunch radicalism, he formed with Mehta and Telang, in the words of Sir Dinsha Wacha, 'a stalwart trio who fought Daniel-like inch by inch, to secure the greatest freedom practicable for the citizens in the management of their own affairs.' He alone discerned a serious flaw in that superb piece of local legislation and he confessed that while he hoped it might be found in practice to work smoothly, he had grave misgivings.

'I regret,' said he, 'that Your Excellency's council has not seen its way to give such consistency and all-pervadingness to the great central principle of the Bill, the principle that the

Corporation is the governing body, that no possibility of question and uncertainty of clashing could hereafter arise. The idea of co-ordinate authority seems to me to be fraught with chances of friction and irritation. It is an attempt to reconcile what is irreconcilable. It possesses the elements of unsettlement and feud. I firmly believe the Bill might throughout all its sections have emphasized and accentuated its central principle without running the slightest danger of fettering and interfering unduly with the Commissioner in carrying out the details of the executive work of the Municipality.'

How that object could have been carried out it is needless to discuss now. How it may be accomplished in future will be subsequently considered. Meanwhile it must be observed that Forbes Adam's words proved strangely prophetic on several occasions of friction and contest between the Corporation and the Commissioner. Whether the march of subsequent events has not made the existing system an anachronism is a question that now calls for decision. What was best for the past generation can no longer be accepted as the ideal form of Government in these more democratic days, and it is not at all surprising that a radical change in the system of supervision and control, through special Committees, has recently been very freely advocated.

Another provision which bears closely on the constitutional relations between the supreme body and the Chief Executive Officer is clause (t) of Section 36 of the Act. The Select Committee proposed to give powers of speech to the Commissioner whereby 'the Commissioner was made into a wonderful embodiment of 72 members rolled up in one.' He could rise hurriedly every time a member sat down, to answer him and correct him. 'Any one,' said Pherozech Shah Mehta, 'who had any experience of managing meetings knew that such a Commissioner would be an intolerable nuisance.'

West also regarded this question as striking at the very centre of the constitutional principles of the Bill. It appeared to him undesirable that the Commissioner should have the right to interpose his voice as often as he pleased, even in correcting facts. He should have an opportunity of making an explanation of facts, but should not be in a position to force his explanation upon the Corporation at a moment which might conceivably prove inopportune. Such intervention, unless diplomatically timed, might result merely in exciting mutual irritation between the two component parts of the Corporation, namely the Commissioner, as representing the practical experience, and the members, the theoretical knowledge. At his instance, therefore, the clause was amended and adopted as follows :—

‘The Commissioner shall have the same right of being present at a meeting of the Corporation and of taking part in the discussions thereat as a Councillor, and with the consent of the majority of the Councillors present, ascertained by show of hands, without discussion, may at any time make a statement or explanation of facts, but he shall not be at liberty to vote or to make any proposition at such meetings.’

Another bone of contention was the proposal to allow the Commissioner to act as a member of the Legislative Council and of the Board of the Port Trustees. The Advocate-General, Latham, objected to overburdening the Commissioner with extraneous duties, but Pherozechah Mehta agreed with the mover of the Bill that on the Board of the Port Trustees the Commissioner would be a useful member. The President also called attention to the fact that the main object of the provision was to safeguard the interests of the town, ‘seeing how interwoven are the managements of the town and of the Port.’ It was thereupon agreed that the Commissioner should be allowed to serve as a Trustee of the Port, but

the proposal to provide for his nomination as a member of the Legislative Council was, in deference to the general opposition, abandoned.

With the relative position of the Corporation and their Chief Executive Officer thus defined, the Act constituted three Municipal Authorities : (1) the Corporation, the supreme administrative body and the custodian of the city's purse ; (2) the Standing Committee, the Financial Advisory Body and Working Committee of the Corporation ; and (3) the Municipal Commissioner, the Chief Executive Officer. Their duties and powers remained practically the same as in the Acts of 1872 and 1878. The composition of the Corporation was, however, slightly altered. It consisted of 72 Councillors, 36 elected at Ward elections by the rate-payers, 16 elected by the Justices, 2 elected by the Fellows of the Bombay University, 2 elected by the Chamber of Commerce and 16 appointed by Government.

The Chairman of the Corporation was styled President. The Advocate-General who had opposed the proposal to call the Corporation the Town Council and who had also asked that the Town Council should be called the Standing Committee on the ground that the designation of Town Council had very often led that body to consider itself a sort of House of Lords, was not wholly satisfied with the designation of President. He evidently thought that there was a great deal in a name. In order to bring into prominence what he considered was the true position he proposed that the presiding authority of the Corporation should be designated Mayor instead of either Chairman or President. The designation had been in vogue in the city many years before either President or Chairman was dreamt of, and it would have brought the nomenclature into unison with that prevailing not only in England but on the Continent of Europe. Considering

the importance of the City of Bombay, he thought it only right that when its head was called upon to take his place, as Sir Henry Morland had to do only the year before, on the occasion of Queen Victoria's jubilee, with Mayors of English boroughs and the Lord Mayor of the City of London, he should enjoy as much dignity as any one of them. 'Our Mayor,' said he, 'might even become Lord Mayor of Bombay considering the relative importance of the City.'

Upon the member in charge of the Bill this suggestion came as a surprise. It had never before been urged by any one in Bombay. The proposed designation was one which was not used in India and would prove misleading to strangers. Certain powers were enjoyed by the President, but he did not possess such powers as would properly belong to a Mayor. Telang stated he had been told by an European friend that a Mayor would be expected to give various entertainments, which would make his office decidedly onerous. The amendment was lost.

Subsequent proceedings of the Corporation show that they would have been satisfied with a more modest title for their head. At the instance of Major Selby they sent a representation to Government stating that they were very desirous that the President's office should be invested with some dignity and that a title such as 'Honourable' might be attached to the office. In reply they were informed that while His Excellency the Governor in Council desired to recognize and to maintain in every reasonable way the dignity of the office of President of the Corporation, he was of opinion that that dignity was sufficiently expressed in the official designation itself and that the addition of any further title was undesirable.

Then came the question of investing the President

with the insignia of his office. It was Major Selby again who proposed that a chain and badge of office should be provided for the President. The Municipal Solicitors, however, advised the Councillors that by no possible straining of language it could be held that the provisions of the Municipal Act authorized such an outlay. Thereupon, an anonymous offer of a gold badge and chain for the President was promptly made. There is no harm now in divulging the name of the donor. It was Nanabhai Byramjee Jejeebhoy. The offer was, however, respectfully declined with thanks.

To return to the provisions of the Municipal Acts. Closely connected with the question of the Commissioner's responsibilities as Chief Executive Officer of the Corporation, was the proposal to provide for the appointment of a Deputy Municipal Commissioner. Pherozeshah Mehta moved that all the sections relating to the creation of the new appointment of a Deputy Commissioner be deleted from the Bill. Although the provision for the appointment was permissive, he maintained that it was made with the view of setting it in motion shortly after the passing of the Bill. A Deputy Commissioner was unknown to the Acts of 1872 and 1878. The short Act of 1885 was passed merely for a temporary and different purpose, namely to enable the Commissioner, Charles Ollivant, to leave Bombay on special duty, in connexion with the drafting of a Bill to amend the Municipal Act, leaving the *direction of affairs* to a Deputy. It was essentially different from the object of the Bill under discussion, which was to give the Commissioner a permanent Deputy to assist him in the discharge of his duties while he was fully engaged on the same work. The sole reason given for providing a Deputy was the increased volume of work in the Commissioner's office. There was a certain haziness about that argument. The

original complaint of excessive work did not refer to the legitimate duties of the Commissioner but to a mass of mechanical and routine work, such as the signing of an enormous number of documents, which he was legally required to perform under the peculiar wording of some of the sections of the Municipal Acts. The Bill under discussion had provided a special and comprehensive remedy for this burden, namely, the delegation by the Commissioner of several of his functions to subordinate officers. To provide a Deputy Commissioner, who would share the work of the Commissioner, was repugnant to the constitutional arrangements devised for the distribution of work. By those arrangements the Commissioner was to have deputies for special classes of work, such as the Health Officer and the Executive Engineer who, as was pointed out in the debates on the Bill of 1872, were Deputy Commissioners for special purposes. Moreover, the Corporation had appointed a Personal Assistant to the Commissioner and special officers for special work whenever necessary.

A still stronger objection of a positive character was urged against the proposal. The presence of a Deputy Municipal Commissioner would mar the integrity of the constitutional principle, on which much stress had always been laid, viz., that there should be a sole Municipal Commissioner invested with full executive power and responsibility. To give him another officer to whom he could make over certain general duties, would be tantamount to a division of that responsibility; and divided responsibility was no responsibility at all. The Bill provided that the appointment should vest in the Governor in Council. That provoked further discussion. The place might in time be systematically given to a junior member of the Indian Civil Service, who would 'consider himself entitled to a lien on the Commissionership.'

The practical result of such an arrangement would be, said Pherozechah Mehta, to place the Commissionership generally in the hands of a junior Civilian, notwithstanding that it was admittedly of the utmost importance that the place should always be filled by an officer of long standing and great experience.

Mehta found a powerful and sagacious supporter in Telang. As to the argument underlying the proposed creation of the appointment, viz., the great volume of work in the Commissioner's office, the Hindu Jurist remarked that it was not the class of work which had necessarily to be performed by the Commissioner or the Deputy Commissioner. He knew that Bombay was not an extinct volcano and that there would be plenty of work for the Municipality in future. But he was not sure that it would be the sort of work for which an officer of the kind suggested would be required. Ultimately Pherozechah Mehta's amendment was lost, His Excellency the President having given his casting vote against it. It is worth remarking that the vote recorded by His Royal Highness the Duke of Connaught was in favour of the amendment. The battle was not, however, altogether lost. A strategic move by Telang converted the defeat into a partial victory. Anticipating the fate of the amendment, he had given notice of another amendment, viz., that the power of appointing the Deputy Commissioner should vest in the Corporation. The Executive Engineer and the Health Officer were both appointed by the Corporation subject to confirmation by Government. Telang saw no reason why the Deputy Commissioner should stand in a different category. To this the answer of the member in charge of the Bill was that if it was right, as the Bill asserted it was, and as it was generally admitted to be, that the Commissioner should be the nominee of Government, they could not in

his view draw any distinction between the grounds which affected the Commissioner's appointment and those which affected the Deputy's appointment. A forcible argument for reserving to Government the right of appointment was that the section contemplated that the post should usually be temporary only, and that Government, having at their disposal a large number of officers in the several branches of service, would at all times be able to select a competent person from the ranks of the public service. That was a convenience which the Corporation did not and could not possess. To these arguments West added the somewhat fanciful suggestion that if the Deputy was appointed, not by Government, but by the Corporation, differences of opinion and friction might arise. 'For,' said he, 'the Deputy Commissioner, who would be a man having the greatest influence with the members of the Corporation, would thus hold his head quite as high as the Commissioner, whose subordinate he is supposed to be.' To this argument Pherozechah Mehta had a complete answer. The Health Officer and the Executive Engineer were officers entirely subordinate to the Commissioner. Yet ever since the passing of the Act of 1872 their appointment had been vested in the Corporation and it was well known that there had not been the slightest break of harmony between those officers and the Commissioner.

In the light of the existing experience of the manner in which the various Deputy Municipal Commissioners, since appointed by the Corporation, have carried out their duties, one can vouch for the fact that instead of emulating the poppies in their pride, these Deputies were bent upon making themselves altogether inconspicuous. At the most a sentence or two in the Municipal Blue Books refer to the influence which they have exercised on the administration or the work which they

have accomplished, so completely have their personalities been merged in the Commissioner.

On a division, the amendment was carried and the representatives of the Corporation had the satisfaction of wresting the newly-created appointment from the hands of Government.

The appointment of the Municipal Secretary and of clerks and servants subordinate to him was left without discussion in the hands of the Standing Committee. But a fierce battle was waged in the Council over the appointment of the Chief Accountant. Pherozechah Mehta moved that the right to appoint that officer should vest in the Corporation, submitting that the apprehensions of friction and insubordination which were entertained when the appointments of the Health Officer and the Executive Engineer were vested in the Corporation had been proved by experience to be utterly unfounded. The two officers in spite of their appointment by the Corporation had uniformly rendered most cheerful and loyal obedience to the Commissioner and he saw no reason why there should be friction if the Chief Accountant was also appointed by the Corporation. He could not imagine why the Head Accountant should be more under the Commissioner's immediate and absolute control, unless it was thought desirable that facility should be given to him for manipulation of accounts to hide irregular and unauthorized action. His proposal would save the Commissioner from all such temptations. Telang reiterated the same argument.

The mover in charge of the Bill explained that the officer in question was not the Controller of the Municipal Accounts. He was in fact little more than the Commissioner's Head Clerk. The real control of the expenditure and of the accounts was vested in the Town Council and in the Auditors appointed by the Corpora-