

CASE NO.:
Appeal (civil) 6133 of 2002

PETITIONER:
Ramesh Mehta

RESPONDENT:
Sanwal Chand Singhvi & Ors.

DATE OF JUDGMENT: 20/04/2004

BENCH:
CJI V.N. KHARE & S.H. KAPADIA.

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL Nos.6134-6135, 6136 & 8564 OF
2002 AND CIVIL APPEAL No.2393 OF 2003.

KAPADIA, J.

The question raised in these civil appeals is whether in counting "the whole number of members of the municipal board" in terms of rule 3(9) of the Rajasthan Municipalities (Motion of No-Confidence against Chairman/Vice-Chairman) Rules 1974, nominated members have to be taken into consideration?

For sake of convenience, we refer to the facts in Civil Appeal No.6133 of 2002.

On 19.8.2000, elections were held for the Municipal Board, Sanchar, district Jalore. The appellant Ramesh Mehta was elected as Chairperson of the Municipal Board. On 24.10.2000, the State Government nominated two members on the Board. On 6.10.2001, the total number of members of the municipal board consisted of 20 elected members, 2 nominated members and one MLA (Ex-officio). Thus, the total number of members on 6.10.2001 were 23. On that day, the no confidence motion was moved against the Chairperson, in which 15 members voted for the motion. The motion was conducted by the SDO, Sanchar as a nominee of the Collector, Jalore. According to the SDO, the no confidence motion stood carried out as the whole number of members on the board, excluding the nominated members, was 21 and 2/3rd of 21 was 14, against which 15 members voted for the motion. According to the appellant, the decision of SDO was erroneous as the whole number of members of the board was 23 and not 21 as determined by the SDO and 2/3rd of 23 being 15.33, the motion stood defeated. The decision of the SDO was challenged by the appellant herein in the High Court by filing petition no.4178 of 2001. By judgment and order dated 21.5.2002, the learned Single Judge of the Rajasthan High Court, Jodhpur Bench held that in counting the whole number of members, nominated members have also to be taken into account even though they had no right to vote. The learned Single Judge relied upon the judgment of this Court in the case *Raees Ahmad v. State of U.P.* reported in [(2000) 1 SCC 432]. Aggrieved by the decision, the respondent herein carried the matter in appeal to the Division Bench of the High Court, which took the view that

the expression "whole number of members" used in rule 3(9) of Rajasthan Municipalities (Motion of No-Confidence against Chairman/Vice-Chairman) Rules, 1974 (hereinafter referred to as "the 1974 Rules") excluded nominated members. It was observed by the Division Bench that the said rule 3(9) of the 1974 Rules is required to be read with section 3(36) and section 9 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Act") and if so read, the expression "whole number of members" would exclude nominated members. Consequently, the appeal was allowed and the decision of the SDO was confirmed. Hence, the original petitioner, the ousted Chairman of the Municipal Board has come by way of civil appeal. The question herein is common in all civil appeals herein.

Shri Manish Singhvi, learned counsel appearing for the appellant submitted that the right to elect is neither a fundamental right nor a common law right. It is a statutory right. He submitted that the electoral college which elects a person may be different from the electoral college which removes such person from the post. In this connection, he placed reliance for purposes of illustration on Articles 54 and 61 of the Constitution. He submitted that in each case of election and removal, the Court has to examine the Act in question. Elaborating his argument, it was urged that the entire thrust of the argument of the respondent was that the words "whole number of members" must be construed as "whole number of elected members" and, therefore, the respondent is claiming casus omissus. He submitted that this Court has repeatedly held that a matter which should have been but has not been provided for in a statute cannot be supplied by the Courts. In this connection, he relied upon the judgment of the Privy Council in the case of Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd. reported in [AIR 1933 PC 63] and Smt. Hira Devi & Ors. v. District Board, Shahjahanpur reported in [1952 SCR 1122]. He next contended that despite the 74th Constitutional Amendment, the legislature did not amend the definition of "member" under section 3(15) and the definition of the words "whole number" under section 3(36) which includes nominated members. Thus, the composition of municipal boards under section 9(a)(i) and (ii) included nominated members, who formed the part of the whole number of the members of the board and, therefore, the expression "whole number of members" in the Act cannot be construed as "whole number of elected members". He submitted that under Article 243R(2)(b), the legislature may by law provide for a manner of election of the Chairman. He submitted that the rules of 1974 provided for removal of chairman, which was different from election of the chairman. In this connection, he submitted that even though a chairperson may be elected from the electoral college of elected members, the removal could be due to 2/3rd of the members including nominated members. In the circumstances, he submitted that if one reads rule 3(8) and rule 3(9) of 1974 Rules along with section 3(36) of the Act, it is clear that the no-confidence motion has to be carried by requisite majority of 2/3rd of the whole number of members including nominated members. He, therefore, submitted that the High Court erred in holding that the words "whole number of members" must be construed as "whole number of elected members".

Shri S.K Jain, the learned counsel appearing on behalf of respondent No.1, Shri Sanwal Chand Singhvi, submitted that Rule 3(9) of 1974 Rules contains the expression "whole number of members". He urged that one has to read the said expression

in the context of section 3(36) of the Act which is a preliminary definition section and which states that unless the context otherwise requires the expression "whole number of members" when used with reference to the members of a board shall mean the total number of members holding office at the time. It was further contended that under section 9(5) of the Act, prior to 1994 amendment, the co-opted members had to be treated for all purposes as elected members of the board which position changed after 1994 Amendment under which nominated members had no right to vote. It was, therefore, urged that even prior to 1994 Amendment to the Act the expression "whole number of members" appearing in Rule 3(8) and (9) meant the "total number of elected members". Learned counsel for respondent No.1 further pointed out that in 1994, sections 9, 65 and 72 of the Act were amended in pursuance of the new chapter XIV-B being inserted in the Constitution by Constitution (Seventy fourth) Amendment Act, 1994. It was pointed out that under the proviso to sub-Article (2)(a)(i) of Article 243R, persons nominated were precluded for voting. In pursuance of the said amendment in the Constitution, Sections 9, 65 and 72 of the Act were amended by which nominated members were denied the right to vote. It was pointed out that although the Act stood amended, the 1974 Rules remained unchanged and, therefore, the 1974 Rules have to be construed in accordance with amended provisions of sections 9, 65 and 72 which debar the nominated members from voting in the meetings of the Municipal Boards. In support of the above submissions, reliance was also placed on section 3(36) of the Act, which, as stated above, is the definition section which begins with the words "unless the context otherwise requires". For the reasons herein, it was submitted on behalf of the respondents that the "whole number of members" appearing in sub-Rules (5), (8) and (9) of Rule 3 of 1974 Rules must be construed as "total number of elected members".

Before advertng to the arguments advanced on both sides, we reproduce hereinbelow the relevant provisions of the said Act (pre and post 1994):\027

A comparative chart showing the provisions of the Rajasthan Municipalities Act, 1959 before and after the Amendment in 1994:\027

Provisions Prior to Amendment

Provisions After Amendment

"9. Composition of boards.\027(1) Subject to the provisions contained in the succeeding sub-sections, every board shall consist of such number of seats as may be fixed by the State Government from time to time by notification in the Official Gazette.

(2)-(3) xxx \005 xxx \005 xxx

4. All the seats fixed for a board, general as well as reserved, shall be filled up by election held in the manner provided for by and in the order made under Section 29.

5. To every board there shall be appointed by co-option in the manner provided for by order published in the official Gazette\027

(i) Two persons belonging to the female sex if no such person has been returned to the board by election referred in sub-sec.(4), or

(ii) One person belonging to the female sex if only one such person has been returned to the board by such election, and such co-opted person or persons being treated for all purposes of this Act as elected member or members of the board, and the number of seats fixed for that board under sub-sec.(1) being deemed to be increased accordingly.

"65. Every board to have a chairman and a vice-chairman\027

(1) For every board, there shall be chairman and a vice-chairman.

(2) The chairman shall be elected, in accordance with rules made by the State Government in that behalf, by the members of the board from amongst themselves.

(3) The vice-chairman shall be elected by the members of the board from amongst themselves in accordance with rules made in this behalf.

(4) For every council there shall be a president and a vice-president.

(5) The president and the vice-president shall be elected in accordance with rules made by the State Government in that behalf, by the councilors of the council from amongst themselves.

(6) to (8) xxx xxx xxxx

(9) Every chairman and every vice-chairman of a board shall forthwith be deemed to have vacated his office, if a resolution expressing want of confidence in him is passed by the votes of a majority of the whole number of members at a special general meeting convened for the purpose.

(10 to (15) xxx xxx xxx"

"72. Motion of non-confidence against chairman [or vice-chairman].\027 (1) A motion expressing non-confidence in the chairman [or vice-chairman] shall be made only in accordance with the procedure laid down in this section.

(2) A written notice of intention to make a motion of non confidence in the chairman [or vice-chairman],

signed by such number of members of the board as constituted not less than one-third of the whole number of such members, together with a copy of the motion which it is proposed to make, shall be sent to the prescribed authority, who shall thereupon convene a meeting for the consideration of the motion to be held at the office of the board on the date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

(3) The prescribed authority shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and of the date and the time to be appointed therefore to every member of the board.

(4) to (7) xxx xxx xxx

(8) Upon the conclusion of the debate or upon the expiry of the said period of four hours, as the case may be, the motion shall be put to the vote of the board and the prescribed authority or his nominee shall neither speak on the merits thereof nor vote thereon.

(9) If the motion is not carried by a majority specified in sub-section (9) of section 65 or if any meeting cannot be held for want of a quorum, no notice of any subsequent motion of non-confidence in the same chairman (or vice-chairman) shall be received until the expiry of a period of six months from the date of the meeting."

"9. Composition of boards\027(1) Subject to the provisions contained in the succeeding sub-sections, but save as provided in the following provisions of this sub-section, all seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies known as wards, the number of such seats, not being less than thirteen, being fixed by the State Government from time to time by notification in the Official Gazette:\027

(a) the following shall be represented on the board, council or corporation, as the case may be, viz:\027

(i) a member of the Rajasthan Legislative Assembly representing a constituency which comprises wholly or partly the area of a municipality; and

(ii) three persons or ten percent of the number of elected members of the municipality, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the State Government by notification in the Official Gazette:

Provided that\027

(i) the provisions contained in section 26 and section 59 of this Act shall be applicable to the persons to be nominated or nominated under sub-clause (ii);

(ii) the State Government shall have power to withdraw a member nominated under sub-clause (ii) at any time;

(iii) the term of co-opted members, if any, who were co-opted and are continuing as such on the date of commencement of the Rajasthan Municipalities (Second Amendment) Act, 2000 (Act No.22 of 2000) shall come to an end upon such commencement:

Provided further that a member referred to in sub-clause (ii) shall not have the right to vote in the meetings of a board, council or corporation as the case may be;

(b) A member of the house of people representing a constituency which comprises wholly or partly the area of a municipality with a municipal council or as the case may be, a municipal Corporation shall be represented on the Council or Corporation of such municipality:

Provided that a member referred to in sub-clause (i) of clause (a) shall have a right to vote in the meetings of a Board, Council or Corporation and a member

referred to in clause (b) shall have a right to vote in the meetings of a Council or Corporation;"

"65. Every board to have a chairman and a vice-chairman\027-

(1) For every board, there shall be a chairman and a vice-chairman.

(2) The Chairman shall be elected, in accordance with rules made by the State Government in that behalf, by the elected members of the board from amongst themselves.

(3) The vice-chairman shall be elected by the elected members of the board from amongst themselves in accordance with rules made in this behalf.

(4) For every council there shall be a president and a vice-president.

(5) The president and the vice-president shall be elected in accordance with rules made by the State Government in that behalf, by the elected councilors of the council from amongst themselves.

(5A) to (8) xxx xxx xxx

(9) Every chairman and every vice-chairman of a board shall forthwith be deemed to have vacated his office, if a resolution expressing want of confidence in him is passed in accordance with the procedure prescribed.

(10) to \005 xxxxxx xxxxxx"

"72. Motion of non-confidence against chairman.\027(1) Motion expressing non-confidence in the Chairman or the vice-chairman shall be made and considered in the manner prescribed.

(2) No notice of motion under this section shall be made within one year of the assumption of office by a Chairman or a Vice-Chairman.

(3) If a motion under sub-section (1) is not carried, no notice of a subsequent motion expressing non-confidence in the same Chairman or Vice-Chairman shall be made until after the expiration of two years from the date of the meeting in which the

motion was considered."

Article 243R(1)&(2) of the Constitution was inserted by Constitution (Seventy Fourth) Amendment Act, 1994 under Chapter XIV-B. It lays down guidelines with regard to the Constitution, composition, election and rights of the members of a municipality. We quote hereinbelow the relevant provisions:\027

"243R. Composition of Municipalities.\027 (1) Save as provided in Clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide\027

(a) for the representation in a Municipality of\027

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) The Chairpersons of the Committees constituted under clause (5) of Article 243S;

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality."

As stated above despite the constitutional amendment and the amendments to sections 9, 65 & 72 of the Act, the 1974 Rules were not amended. We quote hereinbelow section 3(36) of the Act which defines the term "whole number of members" as well as Rule 3 of the 1974 Rules which as stated above have remained unamended even after 1994:\027

"Section 3. Definitions \026 in this Act unless the context otherwise requires -

(36) 'whole number' or 'total number' when used with reference to the members of a board, means the total number of members holding office

at the time."

"Rule 3. Procedure etc. \027 (1) A written notice of intention to make a motion of non-confidence in the Chairman or Vice-Chairman signed by one third members of the Board together with a copy of the motion which is proposed to be made, shall be sent to the Collector of the District, who shall thereupon convene a meeting for the consideration of the motion to be held at the office of the Board on the date and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

(2) The Collector shall send by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time fixed thereof to every member of the board.

(3) The Collector or his nominee shall preside at such meeting and if within half an hour from the time appointed for the meeting collector or his nominee is not present or is unable for any unavoidable cause to preside at the meeting, the meeting shall stand adjourned to the date and the time to be fixed and notified to the members.

(4) A meeting convened for the purpose of consideration of the motion of no-confidence under these rules shall not for any reason except stated at sub-clause (3) be adjourned.

(5) As soon as the quorum is present, the Collector or his nominee shall read the motion for the consideration of which the meeting has been convened and declare it to be open for discussion. No meeting for the consideration of motion of non-confidence shall be held unless the quorum is present. One-third of the whole number of members shall form the quorum.

(6) Such discussion shall not be adjourned and shall automatically terminate on the expiry for four hours from the time fixed for the commencement of the meeting unless it is concluded earlier.

(7) If the conclusion of the debate or upon the expiry of the said period of four hours, as the case may be, the motion shall be put to the vote of the Board and the Collector or his nominee shall neither speak on the merits thereof nor vote thereon.

(8) If the motion is not carried by 2/3rd majority of the whole number of members, or if any meeting cannot be held for want of quorum, the motion of no-confidence against Chairman or Vice-Chairman, as the case may be, shall be deemed to have been lost.

(9) If the motion is carried by a majority of 2/3rd number of whole number of members, the motion

shall be deemed to have passed against the Chairman or Vice-Chairman shall forthwith be deemed to have vacated his office."

The question involved in the present civil appeals is whether nominated members in a municipal board are to be counted for calculating the majority required for carrying a no confidence motion against a chairman/vice-chairman of the board.

At the outset, we may notice the legal position prior to 1994. Section 3, which is a definition section, begins with the words "unless the context otherwise requires". Section 3(36) defines the expression "whole number" or "total number" to mean total number of members holding the office at the time. Under section 72 read with section 274 of the said Act, the State Government enacted the 1974 Rules, which have remained unchanged till date. Rule 3 prescribes procedure for passing no-confidence motion. Rule 3(5) states that no meeting for consideration of no-confidence motion shall be held unless the quorum of 1/3rd of the whole number of members is present. Rule 3(8) states that if the motion is not carried by 2/3rd majority of the whole number of members or if any meeting cannot be held for want of quorum, the motion of no-confidence against the chairman/vice-chairman shall be deemed to have been lost. Rule 3(9) states that if the motion is carried by a majority of 2/3rd of the whole number of members, the motion shall be deemed to have been passed. Section 9(4) dealt with co-option of two members. Under clause (ii) of sub-section (5) of section 9, the co-opted members had a right to vote on all motions and accordingly they were put on par with elected members. Under section 65(9) of the Act, the office of the chairman/vice-chairman stood vacated as and when no-confidence motion was passed by a majority of "the whole number of members" and conversely if the motion was not carried by a majority, such motion would fail. Reading the above provisions of the un-amended Act and the 1974 Rules, it is clear that even prior to 1994 the legislative intent was that the chairman/vice-chairman had to vacate his office on passing of no-confidence motion by requisite majority of members who had the right to vote, which included the co-opted members. In Law and Practice of Meetings by Shackleton [8th Edition Page-66] while explaining the word "Majority" the learned author states that in legislative assemblies it is usual to decide the questions by a majority of those who have voting rights. The learned author, further states, that in cases where a motion is to be determined by a majority consisting of 2/3rd of the votes, the word "Majority" would mean majority of persons entitled to vote on the proposal and once the motion is voted upon by the requisite majority, it becomes resolution of the meeting. Therefore, the word "majority" would mean majority of persons entitled to vote. In the present case, the word "majority" finds place in sections 65(9) and 72(9) of the Act prior to amendment. Therefore, even prior to 1994 amendment of the Act, the legislature intended that the chairman/vice-chairman of the municipal board shall be removed only by a requisite majority of members having right to vote on the motion. We are, therefore of the view that even prior to 1994, the words "whole number of members" under rule 3 of the 1974 Rules meant total number of members who have voting rights.

There is no dispute with the proposition that the right to elect and the right to be elected is a statutory right and that the

mode and manner of election to any post could be different from the scheme of removal of a person from that post. However, in each case, we have to examine the Act in question, which we have done hereinabove. In the circumstances, we do not wish to discuss the judgments cited on behalf of the appellant in support of the above proposition. However, reliance was placed on the judgment of this Court in the case of *Raees Ahmad v. State of U.P.* reported in [(2000) 1 SCC 432]. In the said case this Court was concerned with the provisions of U.P. Municipalities Act under which the chairman is elected by direct election. Under section 43 of the U.P. Act the chairman is elected directly by the electorate on the basis of adult franchise exercised by the voters of the area. It is the case of direct election. On the other hand, in the present case under section 65 of the Rajasthan Municipalities Act with which we are concerned the chairman is elected from amongst the elected members of the board. This distinction, in our view, is very important. As stated above prior to 1994 the co-opted and the elected members were put on par. Both the categories had the right to vote. The chairman was elected from amongst the members of the board. Consequently, the chairman/vice-chairman had to vacate the office when such members voted in support of the motion. In the circumstances, the judgment of this Court in the case of *Raees Ahmad (supra)* has no application to the facts of the present case.

In the present case, on facts, we are concerned with post 1994 position. Article 243R brought about a drastic change in the matter of composition of municipalities. It lays down guidelines with regard to the constitution, composition, election and rights of the members of a municipality. Under the said Act, members of a municipality are persons chosen by direct election by the residents of a municipal area (ward). Article 243R(2)(a)(i) allows the legislature of a State to appoint any person as a member of the board who has special knowledge in the field of municipal administration, however, the proviso appended to the said Article precludes persons nominated under sub-clause (i) from having a right to vote in the meetings of the municipality. The Constitution, therefore, makes a distinction between elected members and nominated members who play essentially an advisory role. Pursuant to the 74th Constitutional amendment of 1994, sections 9, 65 and 72 of the Act were amended. Prior to the amendment the co-opted members were at par with the elected members, however, after 1994 only elected members and members of the legislative assembly have a right to vote under section 9(1) of the Act. Under sub-section (2) of section 65, as amended, the Chairman has to be elected by "elected members of the board". This change is very important. Prior to 1994, the Chairman was to be elected by the "members of the board", which is the phrase used in the unamended section 65(2), as the co-opted members had a right to vote. However, in 1994, section 65(2) of the Act was amended and the expression "members of the board" in the old section is substituted by the expression "elected members of the board". In fact, the expression "whole number of members" earlier appearing in sections 65 and 72 of the Act have been deleted because in section 65(2) it is expressly provided that the Chairman shall be elected only by elected members of the board from amongst themselves. Therefore, the scheme of post 1994 Act is that the chairman/vice-chairman shall be elected by the elected members of the boards and their office shall stand vacated on passing of no confidence motion by the elected members of the board. The position which, therefore, emerges is that both before and after 1994, the no-confidence motion had to be voted upon by members who were entitled to vote.

As stated above, section 3 of the Act begins with the words "unless the context otherwise requires". Section 3(36) defines the expression "whole number"/"total number" to mean total number of members holding the office at the given time. The said expression "whole number of members" finds place in rule 3(5), (8) and (9). Hence, we have to read rule 3(5), (8) and (9) in the context of the provisions of the said Act. As stated above, the basic scheme of the Act prior to 1994 and post 1994 has remained unchanged. In both cases, the legislative intent has been that the office of the chairman/vice-chairman shall stand vacated on passing of no-confidence motion by the members of the board who are entitled to vote. Hence, in our view, the expression "whole number" or "total number" connotes the "total number of elected members".

In the case of Knowles v. Zoological Society of London reported in [(1959) 1 WLR 823] it has been held by Court of Appeals that the expression "majority of fellows entitled to vote" in the bye-laws of a society would mean the majority of those present at a meeting and entitled to vote and not the majority of the whole electorate whether present or not. Before us, as stated above, it was urged that the respondent is claiming casus omissus in support of his argument that the words "whole number of members" must be construed as "whole number of elected members". We do not find any merit in this argument. In the case of State of Karnataka v. Union of India & Anr. reported in [AIR 1978 SC 68 at page 107], it has been observed by this Court that although a Court cannot supply casus omissus, it is equally clear that it should not interpret a statute so as to create a casus omissus when there is really none.

To sum up, under pre 1994 and post 1994 provisions, the legislature intended that chairman/vice chairman shall be removed on passing of no-confidence motion by requisite majority of members having right to vote.

For aforesaid reasons, we do not find merit in the civil appeals herein and accordingly the same are dismissed with no order as to costs.