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RAMESH MEHTA

v.

SANWAL CHAND SINGHVI AND ORS.

APRIL 20, 2004

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[V.N. KHARE CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

*Municipal Laws:*

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*Rajasthan Municipalities Act, 1959—Sections 3(36), 9, 65 and 72—Rajasthan Municipalities (Motion of No-confidence against Chairman/Vice Chairman) Rules, 1974—Rule 3(5), (8) and (9)—No-Confidence Motion against Chairman of Board—Counting of majority of 2/3 of the whole number of members of Municipal Board—If inclusive of nominated members in Municipal Board—Held: Prior to the 74th Constitutional amendment of 1994 and post 1994 the expression “whole number” of members connotes the ‘total number of elected members’—However, pursuant to Constitutional amendment of 1994, sections 9, 65 and 72 were amended and nominated members were denied right to vote—Hence, whole number of members exclude nominated members and as such the office of Chairman would stand vacated on passing of no-confidence motion by the requisite majority of members of the Board who are entitled to vote—Constitution of India, 1950—Article 243R.*

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**Sanchar Municipal Board consisted of 20 elected members, 2 nominated members and one MLA (ex-officio), in all 23 members. No confidence motion was moved against the Chairperson-appellant. In the presence of the SDO the motion was carried out as the whole number of members on Board excluding nominated members was 21 and 2/3rd of 21 being 14, against which 15 members voted. Appellant filed petition challenging the decision of SDO as whole number of members of Board was 23 inclusive of 2 nominated members and 2/3rd of 23 being 15.33 and not 14. Single Judge of High Court held that nominated members were included while counting the whole number of members, even though they had no right to vote. Aggrieved respondent filed an appeal. Division Bench allowed the appeal holding that the expression ‘whole numbers of members’ in rule 3(9) of Rajasthan Municipalities (Motion of No-confidence against Chairman/ Vice Chairman) Rules, 1974 read with sections 3 (36) and 9 of Rajasthan**

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Municipalities Act, 1959 excluded nominated members. Hence the present appeals. A

Appellant-Chairperson contended that the right to elect is a statutory right; that in each case of election and removal, the court has to examine the Act in question; that the expression "whole number of members" in the Act cannot be construed as 'whole number of elected members' since after the 74th Constitutional Amendment, the legislature did not amend the definition of 'member' under section 3(15) and "whole number" under section 3(36) which includes nominated members and the composition of Municipal Board under section 9(a)(i) and (ii) included nominated members, who formed the part of the whole number of the members; that on reading 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; and that the respondent is claiming *casus omissus* that the words 'whole number of members' must be construed as 'whole number of elected members'. B C D

Respondent No. 1 contended that the expression 'whole number of members' appearing in sub-rules (5), (8) and (9) of Rule 3 of 1974 Rules has to be read with section 3(36) of the Act which is a definition section and states that unless the context otherwise requires the expression "whole number of members" when used with reference to the members of a board would mean the total number of members holding office at the time; that prior to 1994 amendment, the co-opted members were at par with the elected members of the board, however after 1994 Amendment the nominated members had no right to vote and as such 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"; that pursuant to the 74th Constitutional Amendment, sections 9, 65 and 72 of the Act were amended by which nominated members were denied the right to vote but the 1974 rules remained unchanged and as such 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. E F G

Dismissing the appeals, the Court

*Per Kapadia, J. (for himself and V.N. Khare, C.J.):*

HELD: 1. 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 H

**A** from the scheme of removal of a person from that post. However, in each case, the Act is to be examined. [434-F]

**B** 2.1. Under the Rajasthan Municipalities Act, 1959 prior to the 74th Constitutional amendment of 1994 and post 1994, the legislative intent has been that the office of the Chairman/Vice-Chairman shall stand vacated on passing of no-confidence motion by the requisite majority of members of the board who are entitled to vote. [436-B]

**C** 2.2. Article 243R of the Constitution brought about a drastic change in the matter of composition of municipalities. Under the 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 Article precludes person nominated under sub-clause (i) from having a right to vote in the meetings of the municipality. Therefore, the Constitution makes **D** 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 Rajasthan Municipalities Act, 1959 were amended. Prior to the amendment, the co-opted members were at par with the elected members, both having right to vote to remove Chairman/Vice-Chairman from his office on passing of no-confidence motion, however, after **E** 1994 only elected members and members of the legislative assembly have a right to vote under section 9(1) of the Act. Under section 65(2) as amended, the Chairman has to be elected by 'elected members of the board'. 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 **F** had a right to vote. This phrase was changed in section 65(2) as amended and was substituted by the expression 'elected members of the board'. In fact, the 'whole number of members' earlier appearing in sections 65 and 72 of the Act have been deleted. 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 **G** members of the board. [435-C-G]

*Raees Ahmad v. State of U.P.*, [2000] 1 SCC 432, distinguished.

**H** 2.3. Section 3 of the Act begins with the words 'unless the context otherwise requires' and 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) of the Rajasthan Municipalities (Motion of No-confidence against Chairman/Vice Chairman) Rules, 1974. Hence, rule 3(5), (8) and (9) have to be read in the context of the provisions of the said Act. Hence, the expression “whole number” or “total number” connotes the ‘total number of elected members’. [436-A-B]

2.4. Word ‘majority’ means ‘majority of persons entitled to vote. It finds place in sections 65(9) and 72(9) of the Rajasthan Municipalities Act, 1959 prior to amendment. The words “whole number of members” under rule 3 of the 1974 Rules meant total number of members who have voting rights.

[434-D-E]

*Knowles v. Zoological Society of London.*, [1959] 1 1 WLR 823, referred to.

*Law and Practice of Meetings by Shackleton*, 8th Edition p. 66, referred to.

2.5. It cannot be accepted that the respondent is claiming *casus omissus* that the words “whole number of members” must be construed as ‘whole number of elected members’. 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. [436-D-E]

*State of Karnataka v. Union of India and Anr.*, AIR (1978) SC 68, referred to.

*Per Sinha J: (Supplementing):*

1.1. A right to contest election although arises under a statute but having regard to the Constitution 74th Amendment Act, the interpretation thereof must be made keeping in view the constitutional scheme. Democracy at the grass-root level was sought to be introduced by reason of the said amendment in the Constitution. Once the concept of a grass-root democracy is accepted, a pragmatic and purposive meaning to the provisions of the Act must be assigned. [438-D-F]

1.2. The interpretation clause in the Rajasthan Municipalities Act, 1959 is prefaced with the expression “unless otherwise requires by the context”. A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The

A definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned. [439-B-C]

*State of Maharashtra v. Indian Medical Association*, [2002] 1 SCC 589; and *National Insurance Co. Ltd. v. Swaran Singh and Ors.*, [2004] 3 SCC 297, referred to.

1.3. A subordinate or delegated legislation must also be read in a meaningful manner so as to give effect to the provisions of the statute. In selecting the true meaning of a word regard must be had to the consequences leading thereto. If two constructions are possible to adopt, a meaning which would make the provision workable and in consonance with the statutory scheme should be preferred. [440-B-C]

*Reema Aggarwal v. Anupam and Ors.*, [2004] 3 SCC 199, relied on.

*Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd., Baroda*, (2004)3 SCALE 546, referred to.

*R. v. Secretary of State for the Home Department ex. D. Venables*, (1998) AC 407, referred to.

2.1. Rajasthan Municipalities (Motion of No-confidence against Chairman/Vice-Chairman) Rules, 1974 laying down the procedure have not been altered despite the fact that amendments have been carried out in the Municipalities Act in the year 1994 in consonance with Article 243R of the Constitution of India. All members who were not elected members under the unamended provisions were treated as elected members. Their rights were at par with them. The very fact that the Constitution made a difference between an elected member and nominated member in the matter of election and removal of a Chairman is suggestive of the fact that now a new interpretation is called for. Nominated members are persons with special knowledge in the subject. They are nominated so that they may render their advices properly to the members of the Board which would enable it to run the municipal affairs efficiently. They remain as member of the Board irrespective of the fact that as to who is the person occupying the post or his political affinity. He is not concerned with election. He does not take part in it. *A fortiori* he has also not been assigned any role to play as regard removal of the Chairman or Vice-Chairman. [438-G-H; 439-A-B]

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2.2. By reason of the amendment, however, no indication has been given that by reason thereof a special right is sought to be created in the nominated members although they would not participate in such a proceedings and would not have any voting right either at the election of the Chairman or in the proceedings for his removal. The Rules which were made in the year 1974 having not been amended; with a view to give an effective and proper meaning must be construed to mean that only members with voting right are entitled to participate in that proceedings and not the nominated members. [443-C-E]

*The Workmen of M/s. Firestone Tyre & Rubber Co. of India (P) Ltd. and Ors. v. The Management and Ors., AIR (1973) SC 1227 and Raees Ahmad v. State of U.P. and Ors., [2000] 1 SCC 432, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6133 of 2002.

From the Judgment and Order dated 14.8.2002 of the Rajasthan High Court in D.B.S.A. No. 329 of 2002

WITH

C.A. Nos. 6134-35, 6136, 8564/2002 and C.A. No. 2393 of 2003.

Manish Singhvi, Naresh Kumar, Ms. Monica Arora Garg for Goodwill Indeevar, Ms. Sandhya Goswami, Sushil Kumar Jain, A.P. Dhamija, H.D. Thanvi, Sarat Sinthania, Punit Jain, L.P. Singh and Ms. Pratibha Jain for the appearing parties.

The Judgment of the Court was delivered by

**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

A 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 and 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

**A** 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) :-

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

**Provisions Prior to Amendment**

**Provisions After Amendment**

**F** **“9. Composition of boards. - (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.

**“9. Composition of boards - (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

**G** (2) - (3) xxx .... xxx ..... xxx

**H** 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 -**

- (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.

the Official Gazette:-

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

(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 -

(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

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- A commencement of the Rajasthan Municipalities (Second Amendment) Act, 2000 (Act No.22 of 2000) shall come to an end upon such commencement:
- B **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;**
- C (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:
- D **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;**
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- F **“65. Every board to have a chairman and a vice-chairman -**
- G (1) For every board, there shall be chairman and a vice-chairman.
- H (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.*
- “65. Every board to have a chairman and a vice-chairman -**
- (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 members of the board from amongst themselves in accordance with rules made in this behalf.

(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.

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

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

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(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.*

(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.*

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(6) to (8) xxx xxx xxxx

(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 by the votes of a majority of the whole number of members at a special general meeting convened for the purpose.

(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.

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(10) to (15) xxx xxx xxx”

(10) to..... xxxxxx xxxxxxxx”

“72. Motion of non-confidence against chairman [or vice-chairman] - (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.

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

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

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

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A 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

B 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

C appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

D (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.

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(4) to (7) xxx xxx xxx

F (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.

G (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

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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."

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.”

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Article 243R (1) and (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:-

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**“243R. Composition of Municipalities.** - (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.

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

(a) for the representation in a Municipality of -

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

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(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;

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(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:

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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

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A 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 :-

B **"Section 3. Definitions - 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.*"

C **"Rule 3. Procedure etc. - (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.**

D (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.

E (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.

F (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.

G (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.*

H (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

- A 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
- B 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
- C 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,
- D 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
- E 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,
- F 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.
- G 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
- H 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*

A *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*".

C 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 and 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.

F 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.

S.B. SINHA, J. A short but interesting question as regard application of principles of interpretation of statute arises for consideration in this appeal.

G The State of Rajasthan enacted Rajasthan Municipalities Act, 1959 (for short "the said Act"). Section 9 of the said Act provides for composition of boards. The Board consists of elected members as also members nominated by the State Government having special knowledge or experience in municipality and the member of the House of People representing a Constituency comprising H wholly or partly the area of the municipality.

The State made Rajasthan Municipalities (Motion of No-Confidence against Chairman/Vice-Chairman) Rules, 1974 in exercise of its power conferred under Section 257 of the said Act. The rules *inter alia* lay down the procedure for removal of a Chairman. Upon coming into force of the Constitution 74th Amendment in terms whereof Article 243R was inserted, the provisions of the said Act were also suitably amended. But the Rules were not amended.

Article 243R of the Constitution reads thus:

“243R. COMPOSITION OF MUNICIPALITIES.

(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 -

(a) for the representation in a Municipality of -

(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.”

It is not in dispute that in terms of proviso to Article 243R as also Section 9 of the Rajasthan Municipalities Act, voting right has expressly not been granted to the co-opted members.

**A** But the definition of the member or total number of members has not been amended which are contained in Sections 3(15) and 3(36) of the Act which are as under:

“3(15) ‘member’ means any person who is lawfully a member of a board;”

**B** “3(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.”

**C** In terms of the rules, a motion of ‘No Confidence’ in the Chairman must be carried out by a 2-3rd majority of the whole number of members or if any meeting cannot be held for want of quorum, such motion shall be deemed to have been lost.

**D** A right to contest election although arises under a statute but having regard to the Constitution 74th Amendment Act, the interpretation thereof must be made keeping in view the constitutional scheme. Democracy at the grass-root level was sought to be introduced by reason of the said amendment in the Constitution. Once the concept of a grass-root democracy is accepted, a pragmatic and purposive meaning to the provisions of the Act must be assigned.

**E** One of the Constituency in question had merely 23 members out of whom two were nominated members and one was the member of the Legislative Assembly. 15 votes were cast in favour of the No Confidence Motion, still the appellant was not found liable to be removed having regard to the definition of ‘total number of votes’.

**F** The ‘whole number of votes’ whether should, in our opinion, be read as total number of elected votes or total number of members as it patently appears from the definition; is the question.

**G** It is accepted that the Rules have not been altered despite the fact that amendments have been carried out in the Municipalities Act in the year 1994. All members who were not elected members under the unamended provisions were treated as elected members. Their rights were at par with them. The very fact that the Constitution made a difference between an elected member and nominated member in the matter of election and removal of a Chairman is suggestive of the fact that now a new interpretation is called for. Nominated

**H** members are persons with special knowledge in the subject. They are nominated

so that they may render their advices properly to the members of the Board which would enable it to run the municipal affairs efficiently. They remain as member of the Board irrespective of the fact that as to who is the person occupying the post or his political affinity. He is not concerned with election. He does not take part in it. A *fortiori* he has also not been assigned any role to play as regard removal of the Chairman or Vice-Chairman.

The interpretation clause in the said Act is prefaced with the expression “unless otherwise requires by the context”.

A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

In *State of Maharashtra v. Indian Medical Association*, [2002] 1 SCC 589, one of us (V.N. Khare, CJI) stated that the definition given in the interpretation clause having regard to the contents would not be applicable. It was stated:

“8. A bare perusal of Section 2 of the Act shows that it starts with the words “in this Act, unless the context otherwise requires ....”. Let us find out whether in the context of the provisions of Section 64 of the Act the defined meaning of the expression “management” can be assigned to the word “management” in Section 64 of the Act. In para 3 of the Regulation, the Essentiality Certificate is required to be given by the State Government and permission to establish a new medical college is to be given by the State Government under Section 64 of the Act. If we give the defined meaning to the expression “management” occurring in Section 64 of the Act, it would mean the State Government is required to apply to itself for grant of permission to set up a government medical college through the University. Similarly it would also mean the State Government applying to itself for grant of Essentiality Certificate under para 3 of the Regulation. We are afraid the defined meaning of the expression “management” cannot be assigned to the expression “management” occurring in Section 64 of the Act. In the present case, the context does not permit or requires to apply the defined meaning to the word “management” occurring in Section 64 of the Act.....”

A Examples are galore when with a view to make a statute workable the court has corrected obvious drafting errors. The court in suitable cases may add or omit or substitute words.

B In *National Insurance Co. Ltd. v. Swaran Singh and Ors.*, [2004] 3 SCC 297, it has been held that it is desirable to look into the legislative history of the provisions of the Act for their interpretation.

C A subordinate or delegated legislation must also be read in a meaningful manner so as to give effect to the provisions of the statute. In selecting the true meaning of a word regard must be had to the consequences leading thereto. If two constructions are possible to adopt, a meaning which would make the provision workable and inconsonance with the statutory scheme should be preferred.

D In *R. v. Secretary of State for the Home Department ex. p. Venables*, (1998) AC 407, one of the crucial issues was the length of time the applicants-children who had been convicted of murder and sentenced to be detained during Her Majesty's pleasure - should in fact be held. Keeping in view the welfare of the children the majority held that the Secretary of the State was obliged to keep the tariff period set under continuous review.

E In *Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd., Baroda*, [2004] 3 SCALE 546, a Bench of this Court laid emphasis that the object underlying the statute is required to be given effect to by applying the principles of purposive construction holding :

F "It is now well-settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. [See *High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors.*, JT (2003) 3 SC 50, *Indian Handicrafts Emporium and Ors. v. Union of India and Ors.*, [2003] 7 SCC 589, *Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.*, JT (2003) 9 SC 109, (2003) 9 SCALE 713 and *Ashok Leyland v. State of Tamil Nadu and Anr.*, (2004) 1 SCALE 224]. The object underlying the statute is required to be given effect to by applying the principles of purposive construction."

(See also *Reema Aggarwal v. Anupam and Ors.*, [2004] 3 SCC 199).

H The Bench in *Raees Ahmad v. State of U.P. and Ors.*, [2000] 1 SCC 432

whereupon the learned counsel for the appellant placed strong reliance did not address itself to any one of the questions referred to hereinbefore. A

In that case the rights were governed by a statute. The Act was amended in terms of the Constitutional scheme. The Legislature of U.P. was conscious of the consequences of such amendment. The vires of the said amendment was not questioned. B

In the instant case, however, the procedure is laid down in the rules which still remain unamended despite the fact that the Act had been amended in consonance with Article 243R of the Constitution of India.

The said decision in any event having been rendered by a 2-Judge Bench of this Court is not binding on us. C

Furthermore amendment in the legislation may not be decisive as regard the intention of the legislature as to whether it intended to alter the entire law. The question came to be considered upon insertion of Section 11-A of Industrial Disputes Act by this Court in *The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. and Ors. v. The Management and Ors.*, AIR (1973) SC 1227 wheretobefore this Court noticed its earlier judgment wherein it was held that in a case of no enquiry or defective enquiry it would be permissible for the employer to lead evidence before the industrial Tribunal or the Labour Court, as the case may be, as regard misconduct allegedly committed by a workman. Section 11A of the Industrial Disputes Act which was introduced on 15.12.1971 reads thus: D E

“11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workmen has been referred to a Labour Cour Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely H

A *only on the materials on record and shall not take any fresh evidence in relation to the matter.*"

[Undertaking is mine for emphasis]

B In view the said provisions, a contention was raised that the jurisdiction of the Tribunal was limited to consider the merit of the matter only from the records of the disciplinary proceedings. Repelling the said contention this Court held:

C ".....Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial Courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and if so, whether there is a clear expression of that intention in the language of the section."

D The Court held that the Tribunal is clothed with the power to reappraise evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman or not but despite the purported limitation of the tribunal's jurisdiction not to bring on its records any new material, it was held:

E "33. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the *employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal*. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the *section that the said right has been abrogated*. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held

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by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra.” A

[emphasis supplied]

The decisions of the courts as regard right of participation of the member who was an elected or who had a right equal to that of an elected member had been taken notice of by Brother Kapadia, J. The said decisions are pointers to the fact that only elected members and those who are to be treated at par were entitled to participate in a proceeding initiated for removal of the Chairman of the Municipality. B

By reason of the amendment in the Constitution and consequent amendment by the State Legislature in the Rajasthan Municipalities Act, however, no indication has been given that by reason thereof a special right is sought to be created in the nominated members although they would not participate in such a proceedings and would not have any voting right either at the election of the Chairman or in the proceedings for his removal. C D

We, therefore, are of the opinion that the rules which were made in the year 1974 having not been amended; with a view to give an effective and proper meaning must be construed to mean that only members with voting right are entitled to participate in that proceedings and not the nominated members. E

With these additional reasons, I entirely agree with the opinion of Brother Kapadia, J.

N.J.

Appeals dismissed.