

(2001) 10 CAL CK 0007
In the Calcutta High Court
Case No : M.A.T. No. 1255 of 2001

Bhagawan Dutt Tiwari and Others

APPELLANT

Vs

Kabita Sarkar and Others

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

West Bengal Municipal Act, 1993 — Section 13, 13(1)(b), 14, 17, 18

Citation : 106 CWN 822

Hon'ble Judges : Tarun Chatterjee, J; Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Rupendra Nath Mitra, Amit Kumar Pan, P.S. Deb Burman, Ajoy Debnath and Sujit Saha, for the Appellant; Bikash Ranjan Bhattacharyay, Biswadeb Roy Chowdhury, Asimes Goswami and Minati Gomes, for the Respondent

Judgement

Tarun Chatterjee, J.—This appeal arises out of a judgment and/or order dated 17th of April, 2001 passed by a learned Judge of this court whereby the learned Judge dismissed the writ application filed by the appellants/petitioners. The writ application was moved by the appellants challenging a resolution dated 6th of April, 2001 as well as a notice dated 14th of April, 2001 issued by three Councillors convening a special meeting of the Champdani Municipality (hereinafter referred to as "the Municipality") in the District of Hooghly on 18th of April, 2001 for the alleged removal of the Chairman of the Municipality. The appellants and the respondent Nos. 1 to 12 having been elected as Councillors to the Board of the Municipality at a general meeting held for that purpose in the month of May, 2000 for a term of five years commencing from the date of first meeting of the Councillors held in July, 2001, the appellants and the respondent Nos. 1 to 12 are still functioning as such. By virtue of their election as the Councillors/Members of the Board of Councillors, the appellant Nos. 1 and 2 were holding the offices of the Chairman and Vice-Chairman of the Municipality since their election held in July, 2000. By a notice dated 19th March, 2001 the respondent Nos. 1 to 12 called upon the appellant No. 1/Chairman to convene a

special meeting of the Board of Councillors for removal of the appellant No. 1 from his office as Chairman. Since the appellant No. 1 had failed to convene the special meeting within the time prescribed under Rule 9 of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995, the Vice-Chairman, viz. the appellant No. 2 in exercise of his power by a notice dated 2nd of April, 2001 convened a special meeting for removal of the Chairman on 6th of April, 2001. On 6th of April, 2001 the special meeting of the Board of Councillors as called was held at the Meeting Hall of the Municipality. In the said special meeting, 11 Councillors/Members out of the total number of members elected to the Board of Councillors of the said Municipality figuring 22, voted in favour of "No Confidence Motion" for removal of the Chairman and 10 voted against the Motion and against the removal of the Chairman. The remaining Member, however, neither attended nor voted in the said special meeting. By a resolution adopted in the said special meeting it was resolved that "No Confidence Motion" against the Chairman was carried by 11 voters as against 10 and the Chairman was removed by such resolution from his office. It is this resolution removing the Chairman and a notice thereof were challenged in the writ application by the appellants. The learned Trial Judge held that since the majority of the total number of elected members by the resolution had removed the Chairman, the Chairman or the other elected members who are appellant before us could not be said to have any case. Feeling aggrieved by the order of the learned Trial Judge, this appeal has been preferred by the appellants.

2. We have heard the learned Counsel for the parties. We have also considered the judgment under appeal and the relevant provision of the West Bengal Municipal Act, 1993 and the Rules framed thereunder. The learned Counsel appearing on behalf of the appellants after taking us through the provisions u/s 18(3) of the West Bengal Municipal Act, 1993 (hereinafter referred to as the Act) contended before us that as the resolution removing the Chairman of the Municipality was carried by 11 elected members of the Board of Councillors out of 22 elected members, the said resolution removing the Chairman from his Office could not be said to be legal and valid. According to the learned Advocate for the appellants, the resolution removing the Chairman of Municipality u/s 18(3) of the Act can only be carried by a majority of the total number of elected members of the Board of Councillors. The learned Advocate for the appellants submitted that since out of 22 elected members of the Board of Councillors only 11 elected members had voted in favour of the "No Confidence Motion", it could not be said that the resolution was carried by a majority of the total number of elected members of the Board of Councillors. Relying on the decisions in the case of *Raees Ahmad Vs. State of U.P. and Others*, and also to a Division Bench decision of the Punjab & Haryana High Court in the case of *Jardar Khan vs. State of Haryana & Ors.*, AIR 1988 P & H 249, the learned Advocate for the appellants contended before us that it could not be said that the majority of the total number of elected members of the Board of Councillors had voted in favour of the "No confidence Motion" against the Chairman of the Municipality as relying

on the aforesaid two decisions the learned Counsel for the appellant urged that since by casting of eleven votes in favour of removal, the Chairman could not be removed as there was no majority of total number of votes of the elected members of the Board of Councillors.

3. The contentions of the learned Counsel for the appellants were hotly contested by Mr. Bikash Ranjan Bhattacharyay, the learned Senior Counsel appearing on behalf of the respondents. According to Mr. Bhattacharyay, the court should always give a harmonious construction of the provisions of the Act and the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995 (hereinafter referred to as "the Rules") and if Sections 18(3) and 51A of the Act of the Act and the Rule 19 of the Rules are conjointly taken into consideration and if harmonious construction can be given in respect of the words used in the aforesaid two sections then it cannot be disputed that the word "majority" within the meaning of Section 18(3) of the Act would mean only the "majority" to fact. Accordingly Mr. Bhattacharyay, learned senior counsel! appearing on behalf of the respondents submitted that as in this case admittedly 11 members of the Municipality had voted in favour of removal of the Chairman of the Municipality and admittedly 10 members had voted against it, the provisions of section 18(3) of the Act were duly complied with. Mr. Bhattacharyay further contended that since one of the members had not attended the special meeting for removal of the Chairman of the said Municipality and to view of the admitted fact that majority of the elected members had voted to favour of the removal of the Chairman of the Municipality, the resolution removing the Chairman of the Municipality must be said to have been passed to accordance with section 18(3) of the Act. In order to satisfy the Court on the question of giving harmonious construction of the word "majority" used in Section 18(3) of the Act, Mr. Bhattacharyay relied on the decisions of the Supreme Court reported in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, and reported to *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, and also another decision of the Supreme Court to the case of *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, and a decision reported to (1978)1 AER 948 (*Stock vs. Frank Jones (Tipton) Ltd.*).

4. Before we proceed further, we may take note at this stage that for the purpose of interpreting the words "by a majority of total number of elected members of the Board of Councillors" as used to Section 18(3) of the Act it would be helpful for us to consider certain definition clauses and other relevant provisions of the Act and the Rules and thereafter to take into consideration the words used to Section 18(3) of the Act as mentioned hereinabove to which we are concerned in this appeal. Section 2(11A) of the Act defines "Councillor". It says that "Councillor" in relation to a Municipality means a person chosen by direct election from a ward of the Municipality. Sub-section (32A) of Section 2 defines "Member" which says that a "Member" in relation to a Municipality means a Councillor or a person nominated under clause (b) of sub-section (1) of Section 13. From the definition of "Member" it is clear that either a Councillor or a

person nominated under clause (b) of Sub-section (1) of Section 13 of the Act becomes a "Member" of the Municipality. Sub-section (51) of Section 2 of the Act defines "Quorum". It says that one-third of the total number of Councillors holding office for the time being shall be a "Quorum" for a meeting. As noted hereinafter, "Councillor" means either an elected member or a member nominated u/s 13(1)(b) of the Act. Therefore, for the purpose of "Quorum" one-third of the total number of Councillors includes elected members and persons nominated u/s 13(1)(b) of the Act. Therefore, the "Quorum" necessary for the transaction of business at any meeting of a "Municipality" under this Act shall be one-third of the total number of Councillors of the "Municipality". Section 13 of the Act defines "the Municipality". It says that "the Municipality" established for a town shall mean the Board of Councillors charged with the authority of municipal Government of the town and shall consist of - (a) such number of elected members as there are wards within the municipal area, and (b) persons having special knowledge or experience in municipal administration as may be nominated by the State Government from time to time, provided that such persons shall not have the right to vote in the meetings of the Municipality. From a plain reading of the provisions as made in Section 13 of the Act which clearly says about the constitution of the Municipality, it is clear that a "Municipality" shall mean the Board of Councillors which shall consist of elected members and the persons nominated by the State Government. Therefore, for the purpose of function of a Municipality it is required that the Municipality shall be said to have been established with the Board of councillors which includes elected members of the wards of the Municipality as well as the persons nominated by the State Government. Section 14 of the Act deals with the "Constitution of Board of Councillors". Sub-section (1) of Section 14 of the Act clearly says that the Councillors elected in a general election or a by-election of a Municipality and the members nominated by the State Government under clause (b) of sub-section (1) of Section 13 shall constitute the Board of Councillors. From the aforesaid two provisions, viz. Sections 13 and 14 of the Act it is, therefore, clear that the Board of Councillors, as noted hereinabove, shall consist of elected members and also the members nominated the State Government under clause (b) of sub-section (1) of Section 13. Let us now consider the most material section with which we are mainly concerned in this appeal. This is section 18 of the Act. To interpret the words used in Section 18 of the Act, it is necessary to quote the section 18 of the Act here and now which reads as under:

Section 18. Terms of office of Chairman. - (1) The Chairman shall cease to hold office as such if he ceases to be a Councillor of the municipal area.

(2) The Chairman may, at any time, by giving a notice in writing to the Board of Councillors, resign his office, and the procedure for acceptance or otherwise of the resignation shall be such as may be prescribed.

(3) The Chairman may be removed from office by a resolution carried by a majority of the total number of (elected, members) of the Board of Councillors

holding office for the time being at a special meeting to be called for this purpose in the manner prescribed upon a requisition made in writing by not less than one-third of the total number of (elected members) of the Board of Councillors, and the procedure for the conduct of business in the special -meeting shall be such as may be prescribed:

Provided that no such resolution shall be moved before the expiry of six months from the date of assumption of office by a Chairman, and if such resolution is not carried by a majority of the total number of (elected members), no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved." (Emphasis supplied)

5. From a plain reading of Section 18 of the Act it appears to us that Section 18 deals with the terms of office of Chairman of the Municipality. Sub-section (1) of Section 18 says that the Chairman shall cease to hold office as such if he ceases to be a councillor of the Municipal area, Sub-section (2) of Section 18 of the Act clearly states that the Chairman may, at any time, by giving a notice in writing to the Board of Councillors, resign his office, and the procedure for acceptance or otherwise of the resignation shall be such as may be prescribed. Let us now consider the vital Sub-section (3) of Section 18 of the Act. On a plain reading of Sub-section (3) of Section 18, in our view, it cannot be disputed that a Chairman can only be removed from office by a resolution carried by a majority of the total number of elected members of the Board of Councillors holding office for the time being at a special meeting to be called for this purpose upon a requisition made in writing by not less than one-third of the total number of elected members of the Board of Councillors. Proviso to this provision also clearly says that no such resolution shall be moved before the expiry of six months from the date of assumption of office by a Chairman and if such resolution is not carried by a majority of the total number of elected members, no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved. At this stage we may also consider the other relevant provisions on which Mr. Bikash Ranjan Bhattacharya, the learned senior Counsel appearing for the respondents also placed strong reliance. This is Section 51A of the Act which defines "Quorum". Section 51A of the Act reads as under :

Section 51A "Quorum". - (I) The quorum necessary for the transaction of business at any meeting of a municipality under this Act shall be one-third of the total number of (Councillors) of the Municipality.

(2) If at any time during a meeting of the Municipality there is no quorum, it shall be the duty of the Chairman or the person presiding over such meeting either to adjourn the meeting or to suspend it till there is a quorum.

(3) Where a meeting has been adjourned under sub-section (2) the business which would have been brought before such meeting if there had been a

quorum, shall be brought before, and may be transacted at, an adjourned meeting, whether there is a quorum or not.

(4) All matters required to be decided by the Municipality at a meeting shall, save as otherwise provided in this Act, be determined by a majority of the members of the Municipality present and voting at such meeting.

6. Before we proceed further we may take note of the fact that to the year 1995, by an amendment made u/s 6 of the West Bengal Municipal (Amendment) Act, 1995 the words "elected members" have been substituted in place and stead of "members". Similar amendment has been incorporated in Section 17 of the Act, which also says that one of the elected members of the Board of Councillors can be selected as Chairman of the Municipality. It is not in dispute that before the incorporation of the words "elected members" in the aforesaid provisions of the Act, the provisions before the amendment were members" and not "elected members". If we now consider sub-section (3) of Section 18 of the Act and also the provisions and the definitions as noted hereinafter, there would be no difficulty for us to reach a conclusion that the legislature has incorporated in Section 18(3) of the Act and other provisions as noted hereinafter, the words "elected members" to contemplate that majority of the total number of elected members of the Board of Councillors can only remove a Chairman by a resolution made u/s 18(3) of the Act. As noted hereinafter, the word "member" as used before the amendment and considering the definition of "member" in Section 2(32A) of the Act we are of the view that the legislature by incorporating the words "elected members" contemplated that the members who have been elected for the purpose of interpreting the words "majority of the total number of elected members of the Board of Councillors". In this connection we may also reiterate the Sections 13 and 14 of the Act. From a plain reading of Sections 13 and 14 of the Act read with sections 17 and 18 of the Act we are of the view that the incorporation of the words "elected members" of the Board of Councillors by an amendment in the year 1995 by which the word "members" omitted and the words "elected members" have been incorporated, would clearly mean that a member nominated by the State Government would not be permitted to vote in the matter of removal of Chairman of a Municipality u/s 18(3) of the Act. From the discussions made hereinabove, we are, therefore, clearly of the view that "majority of the total number of elected members of the Board of Councillors" would be allowed to cast their votes and to remove the Chairman of the Municipality. In this connection the word "total" as used in Section 18(3) of the Act would also be very vital for giving, proper interpretation of the words "majority by a total number of elected members of the Board of Councillors". In our view, if it was the intention of the legislature to interpret the word "majority" it was open to the legislature not to incorporate the words "total number of elected members of the Board of Councillors". Therefore, the intention of the legislature was that in order to remove a Chairman from the Municipality u/s 18(3) of the Act it is required that "majority of the total number of elected members of the Board of Councillors" must be there, even when one of the

elected members had not voted in the same. But when the total number of elected members are calculated, no doubt the persons who had not voted should also be included. Therefore, the dispute now centers round whether a Chairman could be removed by a resolution, which was carried by 11 members of the Board of Councillors out of 22 elected members, one of whom did not cast his vote. As noted hereinabove, one had not voted out of 21 elected members, one of whom did not cast his vote. As noted hereinabove, one had not voted out of 21 elected members of the Municipality, 11 had voted in favour of removal whereas 10 had voted against removal. Therefore, in our view, in view of our discussions made hereinabove and in view of the words used by the legislature in Section 18(3) of the Act i.e. "majority of the total number of elected members of the Board of Councillors", the plain reading of the aforesaid words as used in Section 18(3) of the Act is that "majority of the total number of elected members of the Board of Councillors". Therefore, in our view, there is no ambiguity in the said words for which one has to give a harmonious construction of the interpretation of the said words as used in Section 18(3) of the Act. Since the words have been made in plain language and there is no ambiguity we are of the view that the words "total number of elected members of the Board of Councillors" would clearly mean that majority of total number of elected members and not the total number of elected members present and voting. In view of our discussions made hereinabove it is, therefore, clear that a chairman can be removed by a majority of total number of elected members of the Board of Councillors whereas for the purpose of "Quorum" u/s 51A of the Act it must be held that all matters required to be decided by the Municipality at a meeting shall be determined by a majority of the members of the Municipality present and voting at such meeting. In Section 18(3) of the Act, however, the words "present" and "voting" have been deliberately omitted by the legislature to give a dictionary meaning of the words "majority of the total number of elected members of the Board of Councillors". Therefore, in view of the admitted fact that the resolution for removal of the Chairman was carried by 11 elected members, it must be held that the resolution could not be carried by the majority of the total number of elected members of the Board of Councillors as the Municipality was having 22 elected members of the Board of Councillors.

7. In the case of *Raees Ahmad Vs. State of U.P. and Others*, , the Supreme Court while considering the provisions under the U.P. Municipalities Act, 1916 and while interpreting the words "by a majority of two-thirds of the total number of members of the Municipality" made the following observations:

For the purpose of finding whether a motion of no-confidence against the President has been carried, what has to be seen is whether it has been passed by "a majority of two-thirds of the total number of members of the Municipality". On a plain construction of the statute the number of the nominated members has to be taken into account in determining whether or not a motion of no-confidence against the President has been carried. That nominated members may not vote does not imply that they cease to be members of the Municipality

or that their number should be ignored in determining whether the President has lost the confidence of two-thirds of the members.

8. In paragraph 5 of the said decision the Supreme Court also observed as follows:

On behalf of the respondent emphasis is laid upon the proviso quoted above which stated that nominated members shall not have the right to vote in the meeting of the municipality. It is contended that inasmuch as the nominated members do not have the right to vote in the meetings of the municipality, they should not be counted as part of the total number of the members of the municipality, two-thirds of whose vote in favour is requisite for the passage of the motion of no-confidence. We find it difficult to accept this submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be members of the municipality or that their number should be ignored in determining whether the President has lost the confidence of two-thirds of the members.

(Emphasis supplied)

9. Applying the aforesaid observation as made by the Supreme Court in its decision and in view of our discussions made hereinabove, we are of the view that the removal of the Chairman of the Municipality could only be made by 12 members out of 22 members, when it could only be said that a Chairman was removed by a "majority" of the total number of elected members of the Board of Councillors.

10. Before we close this judgment Mr. Bhattacharyay, appearing on behalf of the respondents had placed strong reliance to Rule 19 of the Rules and contended that applying Rule 19 of the Rules along with Section 18(3) read with Section 51A(4) of the Act and applying the principles laid down by the Supreme Court as noted hereinafter that a harmonious construction should be adopted by the court, it must be held that the learned Single Judge was fully justified in rejecting the writ application on a finding that the resolution for removal of the Chairman was carried by "a majority of the total number of elected members of the Board of Councillors" as according to the learned Judge, 11 elected members of the Board of Councillors was in majority to that of 10 elected members of the Board of Councillors. In our view, this submission of Mr. Bhattacharyay is unsound. Before we take up this submission of Mr. Bhattacharyay we may readily refer to Rule 19 of the Rules here and now which reads as under:

Rule 19. Decision in the meeting - (1) All matters required to be decided at a meeting, shall be determined by the majority of votes of the Councillors present and voting.

(2) Subject to sub-rule (10) of Rule 3, in the case of equality of votes, the person presiding shall have a second casting vote.

11. From a plain reading of Rule. 19 of the Rules it is clear to us that all matters

required to be decided at a meeting shall be determined by the majority of votes of the Councillors present and voting, whereas the removal of Chairman u/s 18(3) of the Act clearly says that a Chairman can be removed as discussed hereinabove by a majority of the total number of elected members of the Board of Councillors. Since in Section 18(3) of the Act the legislature has intended to include the word "total" of the elected members of the Municipality and in view of the fact that in Rule 19 of the said Rule the legislature has incorporated the word "present and voting" we are clearly of the opinion that a Chairman of the Municipality can only be removed u/s 18(3) of the Act if it is found that in a special meeting for removal of the Chairman, a resolution was carried by a "majority of the total number of elected members of the Board of Councillors" as the total number of elected members would include a Councillor who had not attended special meeting nor had cast his vote. In view of our discussions made hereinabove we are clearly of the view that in removing a Chairman of the Municipality u/s 18(3) of the Act majority of the total number of elected members of the Board of Councillors would only be taken into consideration although some of the Councillors had not attended such meeting and had not cast their votes. Such being the position we are of the view that in the facts and circumstances of the case the removal of the Chairman of the Municipality was not carried by a majority of the total number of elected members of the Board of Councillors. Such being the position, we set aside the order of the Trial Court and hold that the resolution taken in the special meeting in which 11 elected members of the Board of Councillors had voted in favour of the removal of the Chairman of the Municipality, cannot be considered to be a majority of the total number of elected members of the Board of Councillors.

12. No other point was raised on behalf of the parties before us.

13. Accordingly, the impugned order of the learned Trial Judge is set aside.

14. The appeal is allowed to the extent indicated above.

15. This order, however, shall not prevent the elected members of the municipality from taking appropriate steps for removal of the Chairman in accordance with law. There will be no order as to costs.

Hrishikesh Banerji, J.

I agree.