

(1970) 02 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 157 of 1969

Bhaskar Narayan Hardikar and Another

APPELLANT

Vs

S.G. Daithankar and Others

RESPONDENT

Date of Decision : 06-02-1970

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35(2)
Constitution of India, 1950 — Article 368
Maharashtra Municipalities (Conduct of Business) Rules, 1966 — Rule 3(2)
Maharashtra Municipalities Act, 1965 — Section 18, 18(1), 19, 19(1), 2(49)
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 167, 19(2), 49(7), 56(2), 63

Citation : AIR 1971 Bom 188 : (1971) 73 BOMLR 851 : (1970) MhLj 953

Hon'ble Judges : Padhye, J;Deshmukh, J

Bench : Division Bench

Advocate : M.N. Phadke and M.W. Puranik, for the Appellant; S.M. Hajarnavis, Addl. Govt. Pleader, P.R.K. Murty and B.A. Masodkar, for the Respondent

Judgement

Padhye, J.—In a general election held on 3-6-1967, 22 Councillors were elected to the Municipal Council, Bhandara. In the first meeting held thereafter on 2-7-1967 the petitioner No. 1 Bhaskar was elected as the President of the Municipal Council and one Fattu Meshram was elected as the Vice-President Two persons were co-opted to the Council and thus the total number of the Councillors in the Bhandara Municipal Council was 24 after the co-option of the two Councillors. The Vice-President Fattu Meshram died on 18-1-1969 and his seat as an elected Councillor became vacant with the result that on his death the Council actually consisted of 21 elected Councillors and two co-opted Councillors though the normal strength of the Council was 22 elected Councillors and two co-opted Councillors.

2. On 24-1-1969, 11 members of the said Council gave a requisition to the Collector for convening a meeting to pass a resolution to remove the President of the Council, the petitioner No. 1. Accordingly, the Collector by notice dated

27-1-1969 contended a meeting of the Councillors for 1-2-1969 to consider the resolution for removing the President. The meeting was held on 1-2-1969 as scheduled at which 14 Councillors which included one co-opted Councillor were present. Some points of order were raised in the said meeting but they were over-ruled, with the result that out of the 14 Councillors two Councillors walked out leaving only 11 elected Councillors and one co-opted Councillor. The resolution was put to vote and 11 elected Councillors voted for the resolution to remove the President from his office as President.

3. After the notice as issued by the Collector and before the meeting was held, one Councillor, namely, the respondent No. 22 Natwarlal Patel, wrote a letter to the Collector that he was not served with the notice of the meeting to be held on 1-2-1969. That was one of the points of order raised in the said meeting. This letter, which is Document No. 2 at page 30 of the paper book complains that he did not receive the notice three days prior to the date fixed for the special meeting and therefore he was unable to attend the meeting and hence the special meeting called on 1-2-1969 be cancelled. He also complained that the notice was not served on him personally, but it was served on a servant as he was out.

4. The petitioner No. 2 is one of the Elected Councillors. By this petition, the petitioners challenge the resolution dated 1-2-1969 removing the petitioner No. 1 from the office of the President of the Council and also ask for a writ of mandamus against the respondents restraining them from giving effect to the resolution dated 1-2-1969 and prohibiting them from in any way interfering with the continuing of holding of the office of the President by the petitioner No. 1. By the order of this Court dated 5-2-1969 at the time of the admission of the petition, the election of a new President in place of the petitioner No.1 was ordered to be stayed.

5. The petitioners challenge the aforesaid resolution removing the petitioner No. 1 from the office of the President No. 1 from the office of the President on two grounds. The first contention is that the resolution dated 1-2-1969 has not been passed by the requisite majority of the Councillors and there for the resolution does not have the effect of the petitioner No. 1 ceasing to be the President of the Bhandara Municipal Council. According to the petitioners the majority that was required for such removal of the President in this Council would be of 13 Councillors since the Council has a strength of 24 Councillors which includes two co-opted Councillors. In the alternative it is urged that the total strength of the elected Councillors of this Council is 22 and the majority would be of 12 Councillors, and therefore the resolution passed by 11 Councillors only is ineffective to remove the petitioner No. 1 from the office of the President. The second contention raised was that the notice of the meeting were not served on the Councillors as per Rule 3(2) of the Rules framed under Sub-section (2) of Section 321 read with Clause 11, 13 and 19 of Section 81 of the Maharashtra, Municipalities Act, 1965, which rules are called the Maharashtra Municipalities

(Conduct of Business) Rules, 1966. Though this second point was canvassed for something by the learned counsel for the petitioners it was subsequently not pressed by Mr. Phadke, the learned counsel for the petitioners and the point No. 1 stated above alone survives for consideration in this petition.

6. For appreciating the contention raised by the learned counsel for the petitioners it would be necessary to refer to certain provisions of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as the Act). Section 9 of the Act provides for the composition of Councils. Besides the elected Councillors some Councillors are also required to be co-opted for giving representation to persons having some special qualifications such as special knowledge or practical experience in the field of public health local self-Government or education. The Municipal Councils are divided into three categories A, B and C according to the population of the towns and for every class of Municipal Council the minimum and the maximum number of elected Councillors is fixed. Proviso (iii) to Sub-section (1) of Section 9 of the Act provides that the total number of co-opted Councillors shall not exceed ten per cent of the number of elected Councillors fixed under Sub-section (2) and in determining such number a fraction shall be ignored. Besides the co-opted Councillors there is another class of Councillors who are called the nominated Councillors. u/s 18 of the Act if at a general election or a bye-election, no Councillor is elected from any ward a fresh election shall be held to elect a Councillor from that ward and if there is a failure to elect a Councillor at the fresh election, such vacancy has to be filled by nomination of a duly qualified person by the State Government. Such a person nominated by the State Government under Sub-section (1) of Section 18 of the Act shall be deemed to be elected at an election under this Act.

7. The number of Councillors to be elected to a particular Municipal Council is fixed by the Director on the calculations made as provided by Sub-section (2) (a) of Section 9 of the Act. This number includes the nominated Councillors, if any. Section 2 (7) of the Act defines "Councillors" and it means a person who is duly elected or co-opted or nominated as a member of the Council. By Section 2 (6) "Council" is defined to mean a Municipal Council constituted or deemed to be constituted under this Act for a municipal area. All these categories of Councillors form a Municipal Council. Section 2(49) defines "total number of Councillors" which in relation to a Council means the total number of the elected and the co-opted and nominated Councillors, if any, of that Council.

8. Section 19 of the Act provides for declaration of the results of election. After the elections are held and the counting of votes is completed, the Collector of votes is completed the Collector has to publish the results in the official Gazette as soon as conveniently may be. The Collector, however, need not wait for the results of election in all the wards, if on account of some un-avoidable reasons the elections are not held in some wards, though however, the elections in more than two-thirds of the number of the wards are a necessary requirement. Section 19 provides that if at a general election the poll could not be taken in any ward

or wards for any reasons on the date originally fixed for the purpose but it was taken on that date but in more than two-thirds of all the wards, the Collector shall as soon as possible after the counting of votes in the said wards is over, publish the available results in the official Gazette and as regards the remaining ward or wards the Collector shall subsequently publish the results in the official Gazette as and when the poll is taken and counting of votes therein is over. It further provides that after every general election upon the publication of the results, or as the case may be, the first publication of the results in the official Gazette under Sub-Section (1) of Section 19 of the Act, the Council shall be deemed to have been duly constituted. It will thus appear that the Council can be constituted as soon as elections have taken place in two thirds of the number of the wards, even though the election to the remaining wards could not take place on account of some reason.

9. After the Council is formed, it has to elect a President and a Vice President. They have to be elected from amongst the Councillors who are elected or deemed to be elected. This is provided by Section 51 (1) of the Act. The co-opted members have no right of vote in the election of the President or the Vice President. In fact the co-option does not take place till the President and the Vice President are elected as will be apparent from Sub-section (6) of Section 51 of the act. Section 52 of the Act provides that the term of office of the President and Vice-President shall be conterminous with the term of the elected Councillor. Section 53 of the Act provides for resignation by the President from his office. Then comes Section 55 of the Act which provides for the removal of President and Vice-President. This section is the subject-matter of the main controversy in the petition and the result of the petition depends on the construction of this section 55 (1) reads as under:

"Section 55(1) A President or a Vice President shall cease to be President or Vice-President as the case may be, if the Council by a resolution passed by a majority of the total number of" Councilors (excluding the co-opted councilors)at a special meeting so decides.

(4)*****

The co-opted Councillors present at the meeting shall have no right to vote on any resolution relating to the removal of the President or the Vice President."

10. The whole controversy in this petition revolves on the meanings to be given to the term "total number of Councilors "At one time it was contended on behalf of the petitioners by Mr. Phadke that the majority in this case must be from out of the whole strength of the Councillors of this Council including the co-opted Councillors. Concretely put his contention is that the strength of the Council is 24 which consists of 22 Councillors by election and 2 by co-option and as such, the minimum number for passing such a resolution of non-confidence would be 13, that is $24/2 = 12$, plus one. This contention on the face of it is devoid of any

substance. Whatever the meaning that may be given to the phrase "total number of Councilors" the co-opted Councillors have to be excluded and the subparagraph of Sub-section (4) of Section 55 of the Act makes it quite clear that they no right to vote in the matter of such a resolution and the majority has to be of only the elected Councillors which would also included the nominated Councillors, if any. This contention however, was later on abandoned and we were only left with the question as to whether in the case of this Council the minimum number of Councillors in favour of the motion of no confidence against the President is 12 and not 11 as in the present case. According to the contesting respondents, the majority must be taken of those Councillors who actually occupied in the Council that is who are entitled to sit in the Council and vote and not the majority of the total strengthen the Council or total number of seats in the Council being elected Councillors the number of which is fixed by the Director u/s 9 of the Act. According to the contesting respondents, owing to the death of Fattuji Meshram, the total number of Councillors excluding the coopted Councillors was only 21, and therefore, 11 Councillors formed a majority.

11. The learned Counsel for the respondents heavily relied upon a Full Bench decision of this Court in *Namdeorao v. Dulaji* 1969 MLJ 74, for the contention that the "total number of Councillors" would only be those Councillors who are entitled to sit and vote. We do not think that this decision could be taken as a binding authority for the question that is before us, though the same phrase "total number of Councillors" came for consideration before the Full Bench. The Full Bench was dealing with a case of a motion of no confidence against the President of the Zilla Parishad under Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (Act V of 1962). The relevant Section 49 (7) of the said reads as under:

"Section 49 (7): If the motion is carried by a majority of the total number of Councillors (other than associate Councilors)the President or as the case may be, the Vice President or as the case may be, the Vice President shall cease to hold office forthwith; and the office held by such President or Vice-President shall be deemed to be vacant."

The Zilla Parishad also consists of elected Councillors and Co-opted Councillors besides associate Councillors. The constitution of the Zilla Parishad is entirely different from the constitution of a Municipal Council under the Act. On the basis of the population of a town, the Director fixes the number of Councillors to be elected and the number of co-opted Councillors is of a certain percentage of the elected Councillors. The nominated Councillors are in place of some of the elected Councillors and the number of elected Councillors in a Municipal Council is fixed and invariable. In the case of a Zilla Parishad however, the position is entirely different and it cannot be stated with any certainty as to what will be the number of the elected Councillors of the Zilla Parishad. In the Zilla Parishad, if there are no female candidates elected in the general election two women Councillors have to be co-opted. If there is only one woman Councillor elected,

one more has to be co-opted. The chairmen of the Panchayat Samitis under the jurisdiction of the Zilla Parishad ipso facto become the Councillors of the Zilla Parishad. If some of the chairmen of the Panchayat Samitis are also elected Councillors from the Zilla Parishad, then there may be vacancies in the Zilla Parishad and those seats may have again to be filled up. There is thus no fixity about the total number of the Councillors in a Zilla Parishad and it always is a fluctuating and fluid body and its membership may be added to, or subtracted from as the occasion arises. That is why the Full Bench took the view that the "total number of the Councilors "under the Zilla Parishads and Panchayat Samitis Act would mean "total number of those Councillors who are entitled to sit and vote". It may also be noted the though the term" Councilor "has been defined in the Zilla Parishads Act, the term "to talk number of Councilors "has not been defined, which has been done in the Act. The Full Bench decision therefore, would be no authority for the question before us.

12. The term "total number of Councilors "has been used in the Act at several place and would be found in Sections 81(2), 81 (9) (a) (i) and (ii) 81 (15), 19(2), 63 (1) 65(2) and proviso to Section 167 of the Act. As against this, there are other terms used in the different other sections, for example, in Section 81 (11) proviso, the decisions are to be taken by a majority of votes of the Councillors present and voting and at other places the word" Councilors "has been used: for example, in Section 56 (2) and 81(14) of the Act. When the Act defines a particular term it is that definition which has to be taken for that term wherever it occurs in the Act and it would not be permissible to construe the said term in any other manner. Further as far as possible the different provisions in the Act must be reconciled with each other and a harmonious construction has to be put so as to bring out the intention of the Act without doing any violence to the language used. If the meaning of the words is clear, then the effect has to be given to those words and it would not be permissible to read something into it which is not there. We have therefore, to construe the phrase "total number of Councilor "used in Section 55 (1) of the Act in the light of this principle.

13. The phrase "total number of Councilors "can have two meanings. It can mean the actual number of Councillors at the given time who are entitled to sit and vote. It can also be number of as many Councillors as there are seats in the Council. The definition of the phrase "total number of Councilors "in Section 2 949) of the Act provides a clue to the meanings to be given to this phrase. In defining this phrase to mean the total number of the elected, co-opted and nominated Councillors, if any, of that Council, it is " in relation to a Council." It presuppose that the elections are complete and persons are elected for all the seats which are to be filled in ad there-after the necessary number is co-opted. It also presupposes that if any elected seat is not filled in after the required procedure is followed, then those seats are filled in by nominated Councillors and the whole Council is complete. Different Councils may have different number of elected and co-opted Councillors depending upon the category in which the Council is placed and depending upon the population in the area and the number

of the Councillors is to be determined u/s 9 of the Act in relation to that Council. When therefore, the total number of Councillors in relation to such a Council is to be determined, it would be the total number of the Councillors who have filled in all the elected seats and all the co-opted seats, and also the nominated Councillors in respect of such seats which are required to be filled in by nomination. If the phrase "total number of Councilors" were to be given the meaning which the contesting respondents want to give namely, the actual occupants of the elected the co-opted seats or nominated seats, then the definition would have been in a different form and would not have been defined as "in relation to a Council." The words "elected" and "co-opted" apparently seem to be in past tense so as to give scope for the arguments as has been done on behalf of the contesting respondents that the total number of Councillors would consist only of those persons who at particular point of time have been actually elected, co-opted or nominated and therefore, must mean only the Councillors who are entitled to sit and vote. We do not think, such a construction can be given on the basis of those words. The words "elected" "co-opted" or "nominated" are only of a descriptive nature to describe the seats in the Council as elected seats or co-opted seats or nominated seats and do not refer to the Councillors already elected. It is true that the term "Councilor" in Section 2 (7) would mean a person who is duly elected or co-opted or nominated as a member of the Council. Unless a person is elected, or co-opted or nominated to a seat in the Council, he could not be termed a Councillor, and therefore, in order to become a Councillor he must necessarily have been elected co-opted or nominated. The contesting respondents want that in the phrase "total number of Councilors" for the word "Councilors" the definition of "Councilor" in Section 2 (7) should be read and so read it would according to the respondents, mean the total number of only such persons who have already been elected, co-opted or nominated as Councillors. If that were so, then it was not necessary to give the definition of the phrase "total number of Councilors" in Section 2 (49) of the Act. In the absence of such a definition, it would have been possible to give the meaning suggested by the respondents, wherever the phrase "total number of Councilors" has been used, but we have here a separate and distinct definition of composite phrase "total number of Councilors" and it is that definition of that composite term as a whole that has to be taken into consideration wherever that phrase has been used in the Act and it would not be permissible to substitute in this phrase the definition of the word "Councilor" given in Section 2 (7) of the Act for the word "Councilor" in Section 2 (49) or at other places in that Act where the phrase "total number of Councilors" has been used. To do so, would amount to ignoring the definition of the phrase "total number of Councilors" given in Section 2 (49) altogether. Likewise, if the meaning as contended on behalf of the respondents was to be given then it would have been necessary at all to define the phrase "in relation to a Council" and secondly, to state further to mean "the total number of the elected, co-opted and nominated Councilors" because the word "Councilor" has already been given that meaning in Section 2 (7) of the Act.

14. In the Zilla Parishads and Panchayat Samitis Act. the phrase "total number of Councilors "has not been defined though this phrase has been used in the Act at several places and the word "Councilor "was given the meaning as a member of A Zilla Parishad constituted under the Act and the constitution of the Zilla Parishad was given in Section 9 therefore as consisting of Councillors chosen by direct election co-opted Councillors. Chairmen of the Panchayat Samitis and Chairmen of five federal co-operative Societies. In view of this definition of the word "Councilor "and the absence of the definition of the phrase "total number of Councilors "coupled with the fact that in view its constitution the Zilla Parishad was fluctuating or a fluid body it was possible to give to the phrase "total number of Councilors "the meaning that it was a total number of Councillors entitled to sit and vote as has been done by the Full Bench. We do not think that in view of a specific definition of the phrase in the Act and the non-fluctuating character of a Municipal Council and which has a fixity as regards the number of the seats, such a construction could be given as in the Full Bench case, though the phrases used in both the Acts are the same.

15. By giving the meaning to the phrase "total number of Councillors used in Section 55 (4) of the Act as we are doing, the intention underlining the provision is no way affected or jeopardised. So far as the Village Panchayats Panchayat Samitis or Zilla Parishads are concerned they are new creation, compared to the Municipal Councils which have now been in existence for quite a long time Local Self-Government by Municipalities has taken deep root and the considerations which apply to lower local Self-Governments such as Village Panchayats. panchayat Samitis and the Zilla Parishads would not be suitable in the case of Municipal Councils and for the proper and efficient administration of the Municipal Council which has greater responsibilities to perform a different standard of removing the head of the body, such as the President may be necessary and a different provisions in the case of a Municipal Council is therefore understandable. In the Bombay Village Panchayats Act. the provision for removal of the Sarpanch is different Section 35 (2) which deals with the motion of no confidence against the Sarpanch or the Upa-Sarpunch and under which the motion has to be carried provides that the motion of no confidence is to be carried by a majority of not less than two-thirds of the total number of the then members of the Panchayat . This provision therefore clearly refers to the members of the Panchayat who at the time are entitled to sit and vote that is the actual number of the members who at that particular point of time constitute the Panchayat irrespective of the number of seats in the said Panchayat. It would thus be seen that wherever the Legislature desired that the majority should be formed by the members who are entitled to sit and vote the intention has been clearly expressed by using appropriate words therein. If that was the intention in the case of Municipal Councils also nothing was easier than to express that intention by putting in some words as in Section 35 (2) of the Bombay Village Panchayats Act which was already before the Legislature when the Municipalities Act was passed The requirement of a majority of the total number of seats in the house is

not something which is unknown.

16. A similar provision is to be found in the Constitution of India for carrying out an amendment in the Constitution. Article 368 of the Constitution provides that for effecting an amendment to the Constitution, the bill has to be passed in each House by a majority of not less than two thirds of the members of that House present and voting and the total membership is the strength of the House whether all the seats are filled in or not. It is true that the phrase used therein, namely "total membership" is different from the words used in the Act where it is "total number of Councilors". We are, however, pointing out this provision only for the purposes of showing that such a requirement is not altogether unknown to the Legislature and to meet the contention that the construction which we are putting on the phrase "total number of Councilors" is not a reasonable or a possible construction. As one goes higher up in democratic institutions such a provision appears to be a healthy one, as otherwise, there would be no stability in the office of the head of the institution in consequence of which the administration would suffer. It is the whole Council which has normally to act and it has to be expected that all the seats in the Council are always filled in. If any seat becomes vacant for some reason or other, immediate steps have to be taken to fill in that vacancy so as to make the Council complete. At a given time on account of some accident or unforeseen reason quite a few seats which were occupied by Councillors favourable to the President may become vacant and it is further likely that in the bye-election the President may get support of such Councillors who would be elected and he would still enjoy the support of the majority. If however on such seats becoming vacant and before the bye-elections are held the President has no majority support in the then existing Council, he could be removed by the opposite group because of the accident of some seats of his supporters becoming vacant for an unforeseen cause and for no fault of his. Again, if he regains the majority support after the bye-election, a similar thing would happen to the President who came in his place and he would again be elected as the President on the strength of his majority. In such circumstances, the whole administration would be in chaos and administration would be in chaos and unstable and such an administration would not be conducive for the proper and efficient administration of the Local Self-Government. It is, therefore, necessary that the President must continue to function so long as he enjoys the support of the majority of the total number of the Councillors who fill in all the seats which are to be filled in the Council. Such a construction appears to us to be a rational and reasonable construction.

17. The learned counsel for the contesting respondents contents that the Municipal Corporation is a continuing body, has a perpetual succession and has to act through its members as may be there at a given time and cannot cease to function even if there are any vacancies in the seats of the Council. It is contended that the administration of the Corporation has to be carried on with such of the members as are in existence at a given time irrespective of the strength of the Council. It is further contended that the constitution of a

Corporation may provide for a particular number, but the act of the Corporation may be by a stated number. It is also urged that form taking a decision, it is not necessary also that every member of the Corporation must be present and the decision could be taken by a majority of the members present and voting. We do not doubt the correctness of this proposition. In all the Local Self-Governments and the Legislatures the ordinary routine business has to be carried on with the help of the majority of members present and voting. Even in the present Act such a provision has been made at several places. However, the Legislature may provide for different majorities for different matters, In several Acts such provisions have been made. For example, in some matters a simple majority of the members present and voting is sufficient: in others the majority required is two-thirds and in still others, it is three-fourths. In some cases it has been provided that the majority must be of the members entitled to sit and vote and yet in other cases it has also been provided that the majority must be of the total membership or of the total strength of the council. Even in the present Act except for the provision for the removal of the President and Vice-President and few other provisions, on the construction we put on the phrase "total number of Councilors" the simple majority of the members present and voting or of the members entitled to sit and vote is considered sufficient. A different provision as the removal of the President is not to be treated so lightly, depending upon the fluctuating circumstances.

18. It was contended on behalf of the contesting respondents that by putting the construction on the phrase "total number of Councilors" as is sought to be put by the petitioners and which we are putting, the Act would become unworkable and therefore, such a construction would not be a reasonable construction to be put. We were referred particularly to the provisions of Section 81 (9) and Section 87 (4) of the Act. Section 81 (9) provides for the quorum necessary for the transaction of business and it provides that the quorum at an ordinary meeting shall be one-half of the total number of Councillors. It is urged that if at a given time the number of Councillors occupying the seats is less than one-third of the total number of seats for an ordinary meeting or less than one-half of the number of seats for a special meeting, then there would never be a quorum for such a meeting, as contemplated by Section 81 (9) and then no business at all could be transacted which position cannot be contemplated. We do not think that such an apprehension is correct or such a situation can ever arise. In the first place, even if the position is, as illustrated by the learned Counsel and there could never be the requisite quorum, still there is a further provision that if there is no requisite quorum, then the business can be transacted after a stated time by the members present though they may fall short of a quorum. Such a provision is to be found in Section 81 (9) (b) and is always to be found in every Act or rules of business of Corporation. In the second place, such a situation is not a normal one. In the functioning of a Corporation, it is always expected that it will function normally. It is always expected that the Corporation will at all times consist of its full strength. No doubt, there are likely to be casual vacancies

off and on, but it is normally not expected that there would be at a given time such a large number of vacancies so as not to form even the requisite quorum. As soon as vacancies are caused, they are expected to be filled in at the earliest. Assuming that at a given time such a contingency does arise and the business of the Corporation cannot proceed, if the contention of the respondents is correct, then such a situation would continue only for a short while till these vacancies are filled in, which is expected to be done as early as possible and if the strength of the Corporation is so depleted as in the case illustrated, then it is desirable that such a Corporation should not take upon itself the task of doing the business in the absence of a large majority of the members. Such an act cannot be considered to be in the interest of the Corporation. Is a different thing that all the seats are filled in but the members present do not re-present even a quorum in which case it can well be taken that the absentee members have given their implied consent to abide by the decision which may be taken by a majority of the members present and voting at the meeting. This, however, cannot be said where a large number of seats are vacant and the Corporation is not fully represented. We do not think that the Act would become unworkable as is contended on behalf of the contesting respondents.

19. We were also referred to Sub-section (2) of Section 92 of the Act, by which a proposal for the transfer of any Immovable property of the Council is required to be accompanied by a resolution the Council passed at a meeting by a majority of not less than two-thirds of the total number of Councillors. It was contended that if during any particular period the Councillors of a Council are less than the two-thirds of the strength of the Council, then the power under Sub-section (2) of Section 92 could never be exercised. That would be so, but we do not think that there is anything wrong in such a provision. Such a provision would be a healthy provision as no right could be given to an under represented body to fritter away the property of the Council. The Council re-presents the whole population of the area and two-thirds majority of the representatives of the whole population is to be the authority to propose any transfer. If any seats are vacant, then the Council will not be fully representative of the whole population and the two-thirds majority of only the representatives of the part of the population would be taking upon themselves the power to dispose of the property of the Council which would not be very desirable. It is no doubt true that it has to be with the sanction of the State Government, but the State Government must also have the benefit of the view of the two-thirds of the majority of the representatives of the whole population of the area for which the Council stands. Similar argument was advanced on the basis of the provisions of Sections 63, 65 and 167 proviso of the Act. In fact, these provisions would support the contention of the petitioners. Taking for example, the provision to Section 167 of the Act. It would be ridiculous on the construction sought to be put on behalf of the contesting respondents that at a given time a small number of Councillors should be able to write off any tax, fee or other amount due to the Council. The proviso requires that the amount could be written off if a resolution is passed by a majority of not less than three-

fourths of the total number of Councillors. In a case where in a Council of the strength of 24, there are only 8 members filling in the seats at a given time then by a vote of 6 members only the debts due to the Council should be written off while on the construction on behalf of the petitioners the minimum votes required could be 18 and that seems us to be reasonable. So also would be the case with Sections 63 and 65 of the Act. We have said earlier that it is in exceptionally rare cases bordering to wards impossibility that a situation would arise where the elected and co-opted members would be less than the strength required for even quorum. But even if such a situation arises, the administration cannot be made to suffer and a provision has been made in Section 313 of the Act where under the State Government is empowered to appoint an Administrator to look after the affairs of a Council. The bogie of un workability of the Act on the construction which we are putting is unreal and does not deter us from putting construction in the manner we are doing a that seems to us to be the most rational and reasonable construction.

20. We were also referred to Sub-section 940 of Section 87 of the Act on the basis of which it was contended that the Council continues as a Council irrespective of any vacancy i it and the continuing Councillors can act as if no vacancy had occurred. It is contended, therefore, that at a given time the Council consists of only so many Councillors who are actually in existence irrespective of the seats and it is the total number of such existing Councillors which has to be taken into consideration. This provision deals with the validity of proceedings of a Council and since the day to day work of the Council has to be carried on, a provision to this effect had to be made as there are bound to be some casual vacancies at one time or the other and a deeming provision to meet such a situation had to be made. That does not however, mean that the total strength of the Council has been depleted. It remains the same as it was originally fixed and the vacancies are meant to be filled in at some time or the other during terms of the Council. In fact, Mr. Phadke wants to derive support for his contention from this provision and contends that even though there may be any vacancies in the total number of Councillors by virtue of this provision, it is to be deemed that there is no vacancy and, therefore, the phrase "total number of Councilors "must be taken to be the strength fixed by the Director at the beginning and the initial total number has to be taken into consideration for the purpose of finding out the majority for removing the President or the Vice-President from their offices.

21. We are, therefore, of the opinion that the phrase "total number of Councilors "in Section 55(1) of the Act means the total number of seats in a particular Council as determined under the provisions of Section 9 of the Act and not the strength of the Councillors entitled to sit and vote only. For the purposes of removing the President the majority that is required is of the total number of Councillors, excluding the co-opted Councillors. In the Municipal Council before us, the total number of Councillors including the co-opted Councillors is 24 and excluding the co-opted Councillors is 22. At the relevant time there was one seat of an elected Councillor vacant on account of the death of Fattuji Meshram and

thus the elected Councillors were only 21. However, for the purposes of Section 55(1) of the Act in the matter of the removal of the President the total number has to be taken as 22 and thus the majority would be of 12 members. In this case the resolution for the removal of the President, that is, the petitioner No. 1, has been passed by 11 members only which falls short by one for the majority. The resolution, therefore, has not the effect of removing the petitioner No. 1 from the office of the President. We, therefore, hold and declare that the petitioner No. 1 Bhaskar Narayan Hardikar does not cease to be the President of the Municipal Council. Bhandara, by virtue of the resolution dated 1-2-1969 of the Council. The resolution dated 1-2-1969 is, therefore, quashed and declared to be ineffective and the respondents are restrained from giving effect to the resolution dated 1-2-1969 and are further prohibited from in any way interfering with the continuing of holding of the office of the President by the petitioner No. 1 on the basis of the resolution dated 1-2-1969.

22. The petition, therefore, succeeds and is allowed with costs against the respondents 1 and 2 in one set and against the respondents 4 to 9, 10, 11, 12, 14 and 15 in one set.

23. Petition allowed.