
(1984) 06 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 689 and 690 of 1984

Mohammed Abdul Khader

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 26-06-1984

Acts Referred:

Andhra Pradesh Municipalities (Amendment) Act, 1983 — Section 1, 23(2)

Andhra Pradesh Municipalities Act, 1965 — Section 46, 5, 5(2)

Constitution of India, 1950 — Article 168, 200, 201, 246

Citation : (1984) 06 AP CK 0009

Hon'ble Judges : P.A. Choudary, J; Lakshmana Rao, J

Bench : Division Bench

Advocate : T. Dhanurbhanudu, for the Appellant; Govt. Pleader and P. Ramachandra Reddy, for the Respondent

Judgement

Lakshmanarao, J.—Both these writ appeals are directed against a common judgment dt. 28-3-1984 in W.P. Nos. 4169 and 5398 of 1984. Sri Mohmmad Abdul Khadar appellant in W.A. No. 689 of 1984 was elected as Chairman of Municipal Council, Warrangal on 25-8-1981. The Municipal Council consists of 44 elected councillors and six ex-officio councillors. 25 elected councillors gave a written notice on 13-2-1984 of intention to move a motion expressing want of confidence in the Chairman. On the very same day, notice was issued from the office of the Collector, Warrangal district signed by the Joint Collector, Warrangal to all the councillors informing them that a meeting of all the elected councillors including ex-officio councillors of Warrangal Municipality will be convened on 2-3-1984 at 11 a.m. at Municipal office, Warrangal to consider the notion. In the meeting held on 2-3-1984 the motion of no confidence was carried with the support of the requisite number of councillors as required under the provisions of S.46 of the Andhra Pradesh Municipalities Act, 1965 (hereinafter referred to as "the Act") and a per the provisions of the said section the Chairman shall be deemed to have been removed with immediate effect. Questioning the validity of the A.P. Municipalities (Amendment) Act No. 13 of 1983 and the notice in Rc. No.

B7/1570/84 dt. 13-2-1984 convening a meeting of the councillors to consider the motion of no confidence against the Chairman, W.P. No. 4169 of 1984 was filed by the then Chariman Sri Mohammed Abdul Khader. After the motion was carried with the support of the requisite majority of councillors, the Joint Collector, Warrangal issued the notice in Rc. No. B7/1570/84 dt. 6-3-84 convening a special meeting on 19-3-1984 at 11 A.M. of the Councillors at the Municipal office, Warrangal to conduct the election of the Chairman. Aggrieved by this notice, one of the elected councillors Sri Chennuboyina Satyanarayana filed W.P. No. 5398 of 1984. Both the Writ Petitions were heard and dismissed by the learned single Judge having found no substance in any one of the contentions raised on behalf of the petitioners in the two writ petitions.

2. In these Writ Appeals, three contentions are advanced. They are (1) the Andhra Pradesh Municipalities (Amendment) Act No. 13 of 1983 is ultra vires Arts. 200 and 201 of the Constitution. (2) under S.46 of the Act the ex-officio councillors have no right to participate in meeting convened to consider the motion of no confidence and to cast their vote and (3) as per the definition of the word "council" and the constitution of the Municipal council under S.5 of the act, the ex-officio councillors do not form part of the Municipal Council and have no right to vote.

3. Under S.46 of the Act, the councillors of a Municipality have the right to express no confidence in the chairman or vice-chairman and the section prescribes the procedure for giving a written notice of intention to move the motion, to convene a meeting for consideration of the said motion and confers right on the councillors, both elected and ex-officio to participate in such meeting and to cast vote. Under S.46 prior to its amendment by Act No. 13 of 1983, notice of the meeting convened to consider the motion of no confidence is required to be given only to the elected councillors. But by virtue of the Andhra Pradesh Municipalities (Amendment) Act, 1983, S.46 has been amended.

4. Act No. 13 of 1983 is as follows:

"1. This Act may be called the Andhra Pradesh municipalities, (Amendment) Act, 1983.

2. In the Andhra Pradesh Municipalities Act, 1965, in S.46.....

i) in sub-secs. (2) ,(3) and (5) for the words "elected councillor" wherever they occur, the words "councillor including ex-officio councillors" shall be substituted:

ii) after sub-sec. (2), the following explanation shall be added, namely.....

Explanation: for the removal of doubts, it is hereby declared that for the purpose of this section the expression "sanctioned strength of the Council" shall mean the total number of councillors including the ex-officio councillors.

iii) in sub-sec. (12).....

a) for the words "with the support of the two thirds of strength of the elected

councillors", the words "with the support of majority of the strength of the councillors including ex-officio councillors" shall be substituted.

b) the explanation shall be omitted."

5. This amending Act received the assent of the Governor on 14th Sept, 1983 and was published in the Andhra Pradesh Gazette on 24th Sept, 1983. There is no dispute that in this case written notice of intention to move the motion expressing want of confidence in the chairman of Warrangal Municipality was issued on 13-2-1984 by 25 elected councillors, long after S.46 was amended by Act No. 13 of 1983. The principal Act of 1965 was reserved by the Governor for the consideration and assent of the President and it received the assent of the President on 17-2-1965. The amending Act No. 13 of 1983 was not reserved for the consideration and assent of the President and the Governor himself accorded his assent. Relying upon the provisions of Arts. 200 and 201 of the Constitution, it is contended by the learned counsel for the appellants that when the parent Act received the assent of the president, the Bill passed by both the Houses of the State legislature and intended to bring about substantial change in S.46 in the matter of expressing want of confidence in the Chairman should have been reserved by the Governor for the consideration and assent of the President and failure to do so invalidates the amending Act. In considering this argument it will be apposite to refer to Arts. 200 and 201 of the Constitution which read as follows:

"200. Assent to Bills:

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a legislative Council, has been passed by both Houses of the legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible, after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses to reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom;

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the president, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. Bills reserved for consideration:

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom.

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of legislature of the State together with such a message as is mentioned in the first proviso to Art. 200 and, when a Bill is so returned, the House or houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the president for his consideration."

6. Under the first limb of Art. 200 it is left to the discretion of the Governor either to assent to the Bill or to withhold assent therefrom or to reserve the Bill for the consideration of the President. The only exception to the exercise of his discretion is that where any Bill which in the opinion of the Governor would, if it became law, derogates from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill, in such a case it is mandatory on the part of the Governor to reserve such a Bill for the Consideration of the President.

7. Article 201 deals with the power of the President to assent or withhold assent therefrom the any Bill when it is reserved for his consideration and assent. The Legislature of a State consists of the Governor and in the States where there are two Houses both the Houses and in the other States where there is only one House, that House, as is provided in Art. 168 of the Constitution.

8. Under Art. 246(3) "Subject to Cls. (1) and (2), the Legislature of any State has exclusive power to make laws for such States or any part thereof with respect to any of the matters enumerated in List II in the Seventh Sch". Item 5 of the State List reads as follows.

"Local government, that is to say, the constitution and powers of municipal corporation, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self government of village administration."

9. A conjoint reading of Arts. 168 and 246 together with item 5 in List II gives no scope for doubt that the legislature of the State of Andhra Pradesh is competent to make law in respect of matters enumerated in item 5 of State List which includes the constitution and powers of the Municipal Corporations. Thus it is within the legislative competence of the Andhra Pradesh Legislature to enact Act No. 13 of 1983. When the Bill was passed by both the Houses of the State legislature and the same was presented to the Governor he accorded his assent to the bill and thereby Act No. 13 of 1983 became law. No provision in the Constitution is brought to our notice to countenance the argument that once the

principal Act received the assent of the President, every Bill seeking amendment of the parent Act should be reserved by the Governor for consideration and assent of the President. But the learned counsel has placed reliance upon some judgments of the Supreme Court in support of his contention.

10. In *Syed Ahmed Aga and Others Vs. The State of Mysore and Others*, Mysore Silkworm Seed and Cocoon (Regulation of production, supply and Distribution) Act 5 of 1960 which is the principal Act received the assent of the President. Under the parent Act, certain restrictions were imposed on the freedom of inter-State trade, commerce and intercourse and as such under the proviso to Art. 304(b) no Bill or amendment for the purpose of cl. (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President. Accordingly the principal Act was reserved for the consideration and assent of the President and the President accorded his assent. Subsequently, the State Legislature passed the Mysore Silkworm seed and Cocoon (Regulation of production, Supply and Distribution) (Amendment) Act, 1969. The amending Act was not reserved for the consideration and assent of the President. On the ground that under the Amendment Act additional restrictions were imposed on the freedom of trade, commerce and intercourse without having secured the presidential sanction as required under the proviso to Art. 304(b) of the Constitution, the validity of the said amending Act was questioned. Considering the said question, the learned Judges of the Supreme Court have held as follows (at P. 1452):

"..... the amendments did not, in our opinion, go beyond a regulation which was fully authorised by the language of the provisions of the Principal Act. Even any additional licensing involved did not go beyond the purview of the provisions of the principal Act and the rules framed thereunder. The mere change in form, from statutory rules to statutory provisions, could hardly constitute even additional "regulation". It is only an additional "restriction" from the special point of view of Art. 304(b) which requires Presidential sanction."

11. In our opinion this decision has no relevance so far as the facts of the present case are concerned. In that case an argument was advanced on the basis of the proviso to Art. 304(b) of the Constitution which specifically lays down that no Bill or amendment for the purpose of imposing reasonable restrictions on the freedom of trade, commerce and intercourse with or within the State in the public interest shall be introduced or moved in the Legislature of the State without the previous sanction of the President. No such presidential sanction is required in the case of a Bill or amendment introduced in respect of constitution and powers of Municipal Corporations and other matters covered by Item 5 of State List.

12. In *Ananda Kumar Chakraborty and Another Vs. State of West Bengal and Others*, a Special Bench of the Calcutta High Court considered the validity of the West Bengal Estates Acquisition (Amendment) Act 9 of 1967. The Principal Act namely the West Bengal Estates Acquisition Act, 1963, (Act 1 of 1964) provided

for acquisition of property. The principal Act was reserved for the consideration of the President and received his assent as required under the then existing Art. 31(3) of the Constitution. But the amending Act 9 of 1967 passed by the State Legislature was not reserved for the consideration of the President. The Amending Act enlarged the period of time within which the empowered officer could suo motu take steps for revision of the record of rights. The learned Judges held that the amending Act 9 of 1967 was inextricably linked up with the scheme of acquisition and as such it fell within the purview of Cl. (2) of Art. 31 of the Constitution and consequently Art. 31(3) was attracted. Under those circumstances it was held that the amending Act 9 of 1967 is unenforceable for want of presidential assent as required under Art. 31(3). This decision also has no bearing so far as the facts of the present case are concerned. In view of the express provision contained in Art. 31(3) of the Constitution it was held by the Special Bench of the Calcutta High Court that the presidential assent was a condition precedent for the enforceability of the Act and as the mandatory requirement was not fulfilled the amending Act was not enforceable. No such provision requiring either previous sanction as under the proviso to Art. 304(b) or the assent of the president as contemplated under Art. 31(3), in respect of any law made by the State Legislature relating to any matter specified in item 5 of State list, is incorporated in the Constitution and as such the amending Act no. 13 of 1983 cannot be held to be unconstitutional.

13. Prior to amendment of S.46 by amending Act No. 13 of 1983, the District Collector or the Revenue Divisional Officer as the case may be is required to give notice of the meeting to consider the motion of no confidence only to the elected councillors and the ex-officio councillors are not entitled to participate in such a meeting. But by Act No. 13 of 1983 in place of "Elected councillor" the words "councillor including ex-officio councillor" are substituted. After sub-sec. (2) the following explanation is added:

Explanation: For the removal of doubts, it is hereby declared that for the purpose of this section the expression "sanctioned strength of the Council" shall mean the total number of councillors including the ex-officio councillors."

The explanation under sub-sec. (12) of S.46 is omitted. So far as the motion of no confidence is concerned, S.46 as amended by Act No. 13 of 1983 is a self contained Code and it lays down all material particulars as to the method and manner of serving a written notice of intention to move the motion of no confidence in the chairman or the vice-chairman, the procedure to be followed by the District Collector or the Revenue Divisional officer as the case may be in convening a meeting for consideration of the motion of no confidence by giving the requisite notice to the councillors both elected and ex-officio and the requirements to be complied with in concluding the meeting by putting the motion to vote after the debate. By virtue of amending Act No. 13 of 1983 the sanctioned strength of the council shall mean the total number of councillors including the ex-officio councillors. In this case, after the amending Act came into

force on 24-9-1983 notice of intention to move the motion of no confidence in the chairman was given by 25 elected councillors on 13-2-1984 and on the very same date the Joint Collector, Warrangal issued notice to all the elected and ex-officio councillors of the municipality informing them that the meeting of Warrangal Municipality will be convened on 2-3-1984 at 11-00 A.M. at Municipal Officer, Warrangal to consider the motion of no confidence. The procedure followed by the Joint Collector is strictly in accordance with the provisions of the amended sub-sec. (3) of S.46. the Joint Collector convened the meeting on 2-3-1984 and after following the procedure laid down under sub-secs. (7) (8) and (9) the motion was put to vote and it was carried with the support of the majority of the councillors as required under sub-sec. (12). We find no force in the contention of the learned counsel for the appellants that the ex-officio councillors have no right to participate in the meeting convened to consider the motion of no confidence and vote at such meeting. The language of S.46 as amended by Act 13 of 1983 is so clear and unambiguous that no doubt can be entertained regarding the right of the ex-officio councillors to participate in the meeting convened for consideration of the motion of no confidence and to vote at such meeting. When S.46 is amended by the legislature having the necessary legislative competence, conferring the right on the ex-officio councillors to participate in the meeting convened for the consideration of the motion of no confidence and vote at such meeting, we are unable to accept the contention of the learned counsel that the ex-officio councillors have no right to vote at such a meeting. Under S.23 (2) the ex-officio councillors are entitled to participate in the meeting convened for the election of the chairman. When they have a right to participate in the meeting for the election of the chairman it is but natural and proper that they should have the right to express one way or the other when a motion of no confidence is moved against the chairman. In a case like this where the legislature has conferred right upon the ex-officio councillors to participate in the meeting convened f ollector is under a legal obligation to give notice to all the ex-officio councillors along with the elected councillors of the meeting convened for the consideration of the motion of no confidence. On the conclusion of the debate, the motion shall be put to vote as required under sub-sec. (9). Under sub-sec. (10) the District Collector or the Revenue Divisional officer as the case may be shall not speak on the merits of the motion and he shall not be entitled to vote thereon. These provisions do not give scope to any manner of doubt that the ex-officio councillors are entitled to participate in a meeting convened for the consideration of no confidence motion and to vote at such meeting. It is further contended that reduction of the two thirds of the strength to simple majority in carrying out the motion of no confidence is arbitrary and unreasonable and that in almost all the southern States where similar enactments are made containing provision for moving a motion of no confidence, it is uniformly laid down that a motion of no confidence should be carried on with the support of two thirds of the strength of councillors. It is for the State legislature to prescribe the strength by which the motion should be carried on. When the Legislature fixed simple majority, it cannot be said that the fixation of

such simple majority is either arbitrary or unreasonable. Even otherwise, when the Legislature has laid down by law that a motion of no confidence can be carried on with the support of majority of the strength of the councillors, it cannot be the subject matter of adjudication as the legislative wisdom cannot be questioned in a Court of law. Instead of two thirds of the strength of the elected councillors, the Legislature has now stipulated that the no confidence motion can be carried on with the support of the majority of the councillors including the ex-officio councillors. We are unable to accept the contention of the learned counsel.

14. The next submission of the learned counsel for the appellants is that the Municipal council constituted under S.5 of the Act consists only of the elected councillors and the ex-officio councillors do not form part of the body of councillors and they are not entitled to vote. Section 5 of the Act reads as follows:

5. Constitution of municipal council:

(1) There shall be constituted for each municipality a body of councillors to be called the municipal council having authority over the municipality and consisting of such number of councillors as may be notified in the Andhra Pradesh Gazette by the Government in accordance with the following table, excluding the ex-officio councillors specified in sub-sec. (2) and the elder men elected under S.9:

(2) (a) Every Member of the Legislative Assembly of the State representing a constituency of which a municipality or a portion thereof forms part, shall be ex-officio councillor of the municipality:

Provided that a Member of the Legislative Assembly representing a constituency which comprises more than one municipality including a part of any municipality, shall be ex-officio councillor of one such municipality which he chooses; and he shall also have the right to speak in and otherwise to take part in the proceedings of any meeting of the other councils comprised within the constituency, but shall not be entitled to vote at any such meeting.

(b) Every member of the Legislative council of the State whose name is entered in the electoral roll of a municipality shall be ex-officio councillor of that municipality.

(c) Every Member of the House of the people representing a constituency of which a municipality or a portion thereof forms part, shall be an ex-officio councillor of that municipality:

Provided that Member of the House of the People representing a constituency which comprises more than one municipality including a part of any municipality, shall be the ex-officio councillor of one such municipality which he chooses; and he shall also have the right to speak in and otherwise to take part in the proceedings of any meeting of the other councils comprised with the constituency, but shall not be entitled to vote at any such meeting."

(3) All the councillors of every municipality, other than the ex-officio councillors,

specified in sub-sec. (2) and the chairman elected under S.23 shall be elected in the prescribed manner.

15. As per this section, every member of the Legislative Assembly of the State representing a constituency of which a Municipality or a portion thereof forms part, every member of the Legislative council of the State whose name is entered in the electoral roll of a municipality and every Member of the House of the People representing a constituency of which a municipality or a portion thereof forms part shall be ex-officio councillors of that Municipality. So it can be seen that once ex-officio councillors become councillors of a Municipality, they form part of the body of the councillors constituted under S.5. Unless it is expressly provided otherwise in the Act, an ex-officio councillor in his capacity as the councillor of the Municipality will have the same rights, powers and privileges as the elected councillor including the right to vote.

16. It is stated that only the elected councillors are conferred right to vote but not the ex-officio councillors. Nowhere in the Act is there a provision specifying that the elected councillors alone have the right to vote. On the other hand in S.5 it is specifically mentioned that a Member of the Legislative Assembly, or a Member of the House of the People representing the constituency which comprises more than one Municipality shall be ex-officio councillor of one such municipality which he chooses and he shall also have the right to speak in and otherwise to take part in the proceedings of any meeting of the other councils comprised within the constituency, but shall not be entitled to vote at any such meeting. The words "shall not be entitled to vote at any such meeting" clearly indicate that a Member of the Legislative Assembly or of the House of the People is entitled to vote at a meeting of the municipality of which he chooses to be a councillor. If the ex-officio councillor did not have the right to vote, the legislature would not have incorporated the words "shall not be entitled to vote at any such meeting" in S.5. Apart from that when it is categorically mentioned in S.5 itself that the member of the legislative Assembly, members of the House of People and the member of the legislative Council are ex-officio councillors of the Municipality, it cannot be argued on any reasonable basis that they do not have a right to vote. Where the legislature intended to restrict the right of the ex-officio councillors to participate in certain meetings of the municipal council, they made express provision to that effect in the Act itself. Under unamended sub-sec. (3) of S.23 the ex-officio councillors are denied the right to participate in the meeting convened for the election of the chairman or the vice-chairman. But later on S.23 was amended by amending Act No. 5 of 1982 where under sub- sec. (2) was incorporated in S.23 which confers a right on the ex-officio councillors to participate in the meeting convened for the election of the chairman. These provisions expressly indicate that the ex-officio councillors have the same rights as the elected councillors including the right to vote except in cases where it is otherwise provided by the legislature in the Act itself. The essence of the contention of the learned counsel is that rights cannot be conferred by implication from the language used in a statute and there must be

express provision conferring such rights. Citing the judgment in *Crawford v. Spooner* (1846) 6 Moo. P.C. 1 the learned counsel has asserted that the Court "cannot aid the Legislature's defective phrasing of an Act" and that the Court "cannot add and mend, and, by construction, make up deficiencies which are left there".

17. The learned counsel made copious references to the passages in "Craies on Statute Law".

Our attention is drawn to a Judgment of the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, wherein it is stated that (at P.470):

"If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the legislature. The intention of the legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature....."

18. It is further submitted that when the words used in S.5 do not expressly confer a right on the ex-officio councillors to vote no such right can be inferred by implication by a reading of the provisions of amended S.46. In this context the learned counsel relied upon a judgment of the Supreme Court in *Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh*, wherein it was held that:

"If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute."

19. In our view the language of S. 5 is clear enough to come to the conclusion that the ex-officio councillors of the Municipality are conferred right to vote and this is evident from the language used by the legislature itself. Apart from that, in this case we are mainly concerned with the right of the ex-officio councillors to participate in the meeting convened to consider the motion of no confidence and vote at such meeting. In this regard the express and unambiguous provisions incorporated in S.46 by the amending Act 13 of 1983 leave no doubt in our mind that they are conferred right to vote at such a meeting, while construing the provisions of either S.5 or S.46 we are not adding any words which are not found therein to evolve some sense. In our considered opinion, the provisions of Ss. 5 and 46 are clear and unequivocal on a plain reading of which we hold that the ex-officio councillors have the right to participate and vote at the meeting convened for the consideration of the motion of no confidence.

In this context we may refer to the judgment of the Supreme Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, wherein His Lordship Justice

Sarkar referred to the Judgment in Seaford Court Estates Ltd. Asher, (1949) 2 All ER 155 wherein it was laid down as follows:

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written word so as to give "force and life" to the intention of the legislature.....A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

20. In the instant case question of supplementing a written word so as to give force and life to the intention of the legislature does not arise and we are not supplying any words which are not found in the statute. On a plain reading and reasonable construction of the provisions of S.5 we have no hesitation to hold that the ex-officio councillors form part and parcel of the Municipal council and they have got the right to vote except in cases where the legislature expressly provided to the contra.

21. It is strenuously contended by the learned counsel for the appellants that the sanctioned strength of the council consists only of the elected councillors as contemplated under S.5 read with the definition of the word "council" under S.2 (11) and the amending Act 13 of 1983 specifying that the sanctioned strength of the council shall mean the total number of councillors including the ex-officio councillors is in consistent with and contrary to the provisions of S.5 read with the definition of the word "Council".

22. The judgment in Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, has no application to the facts of this case. As stated above S.46 is a self contained Code so far as the motion of no-confidence is concerned and that section confers in express and unequivocal terms a right on the ex-officio councillors to participate in the meeting convened for the consideration of the motion of no confidence and to vote at such meeting. We do not see any substance in the argument of the learned counsel. In amending Act 13 of 1983 it is specifically provided that sanctioned strength of the council shall mean the total number of councillors including the ex-officio councillors. Apart from that we have held that even under S.5 the ex-officio councillors form part of the Municipal council and they are councillors of the municipality. Neither the provisions of S.46 nor S.5 are ambiguous and equivocal as to give scope for two interpretations.

23. So far as this case is concerned it is sufficient to construe the provisions of S.46 and see whether the ex-officio councillors have got the right under that section to participate in the meeting convened for the consideration of the motion of no-confidence and vote at such meeting. The total strength of the Warangal Municipality consists of 44 elected councillors and 6 ex-officio

councillors. Out of them 25 elected councillors gave notice of intention to move the motion of no-confidence. The motion was carried by the majority of councillors.

24. For the reasons stated above, we do not see any ground to interfere in these writ appeals. The judgment under appeal is confirmed and both the Writ Appeals are dismissed with costs. Advocate's fee Rs.250/- each.

25. The learned Council wants a Certificate to appeal to the Supreme Court without mentioning any provision of law or any Article of the Constitution. We do not think that it is a fit case to give a Certificate. Accordingly the leave to appeal to the Supreme Court is refused.

26. Appeal dismissed.