
(1968) 03 BOM CK 0025

In the Bombay High Court

Case No : Special Civil Application No's. 102 and 103 of 1968

Namdeorao Madhavrao Thakre

APPELLANT

Vs

Dulaji Sitaram Patil

RESPONDENT

Date of Decision : 22-03-1968

Acts Referred:

Constitution of India, 1950 — Article 100, 61

Citation : (1968) 70 BOMLR 843 : (1969) MhLj 74

Hon'ble Judges : S.P. Kotval, C.J;Tulzapurkar, J;Mody, J

Bench : Full Bench

Judgement

S.P. Kotval, C.J.—The judgment in this special civil application shall also govern the disposal of the reference in special civil application No. 103 of 1968.

2. In both these special civil applications we are called upon to construe the expression "total number of Councillors" contained in Section 49, Sub-section (7) of the Maharashtra Zilla Parishads and Panchayat Samitis Act. The circumstances under which the point arises may be briefly stated as follows:

After the result of the general elections was announced in May 1967, the Nasik Zilla Parishad, which was constituted u/s 9 of the Act, met on August 12, 1967, to elect its President and Vice-President. The President elected is respondent No. 1 in special civil application No. 102 of 1968 and the Vice-President elected is respondent No. 1 in special civil application No. 103 of 1968. Less than three months after the election of the President and the Vice-President a requisition was sent by 34 Councillors of the Zilla Parishad calling for a special meeting to consider motions of no-confidence which they proposed to move against the President and the Vice-President under the provisions of Section 49. A special meeting of the Zilla Parishad was convened for January 2, 1968, to consider the two motions of no-confidence. At that meeting there were present in all 68 members. Since the motions of no-confidence were against both the President and the Vice-president according to the provisions of Section 49 (3) the meeting had to elect its own chairman, because the President or Vice-President against

whom the motions were directed, were incapable of presiding at such a meeting. Before the meeting could take up the election of the chairman for that meeting, an objection came to be raised that one member, Kothavade by name, who had been a Councillor of the Zilla Parishad u/s 9(1)(c) i.e. in his ex-officio capacity as chairman of the Panchayat Samiti, had resigned his chairmanship of the Panchayat Samiti and had therefore ceased to be a Councillor of the Nasik Zilla Parishad. It appears that at the meeting Kothavade denied his signature upon the letter of resignation which was produced and insisted on voting though asked to leave the room. Ultimately he sat behind the other members and voted but his vote was excluded. The meeting proceeded to elect a chairman, one Sudam Bhaguji Sangle, to preside over the meeting which was to consider the no-confidence motion.

3. When the motion of no-confidence against the President was put to vote, the position as to voting was as follows: If Kothavade's vote was counted in all 66 votes were cast, 34 for the motion and 31 against the motion. If Kothavade's vote was excluded then the result was that 65 votes in all had been cast and there were 33 for the motion and 31 against. The same was the result so far as the motion of no-confidence against the Vice-President. was concerned.

4. The chairman of the meeting ruled that both the motions were duly carried because they were supported by a clear majority of the "total number of Councillors" irrespective of the question whether Kothavade had validly voted or not.

5. Four days thereafter on January 6, 1968, which was a Saturday, both the President and the Vice-President applied to the Divisional Commissioner of Bombay u/s 267A to have the resolutions of no-confidence passed against them set aside and asked that the Zilla Parishad be prohibited from doing any act in furtherance of the resolutions of no-confidence or from giving effect to them. The Commissioner decided for certain reasons, which we shall presently state, in favour of the President and the Vice-President and prohibited any act in furtherance of the execution of the resolution of no-confidence. He declared both the President and the Vice-President as continuing in their offices. It is against those orders of the Commissioner that the two petitions with which we are concerned are directed.

6. Before we proceed to consider the relevant provisions of the Act relating to the two no-confidence motions against the President and the Vice-President, it is necessary at this stage to say a word about the composition and the constitution of the Maharashtra Zilla Parishads. So far as Zilla Parishads are concerned, Section 8 declares that every Zilla Parishad shall be a body corporate and be known by the name of the particular district of which it is a Zilla Parishad. It has been given the powers to contract, acquire and hold property and to sue and be sued in its corporate name. Thus it is a corporation for the purposes of the law. For the purposes of elections the entire State is divided into districts and the districts are sub-divided into blocks. By Section 4 every revenue district

constituted under the relevant land revenue code is formed into a district for the purposes of the Act. Section 5 gives the State Government the power by notification in the Official Gazette to constitute every district into such number of blocks as may be specified in the notification and each local area thus notified would be included in the block.

7. After these areas are demarcated for the purposes of the administration under the Zilla Parishad Act it is provided by Sub-section (1) of Section 6 that there shall be for every district a Zilla Parishad consisting of a President and Councillors and by Sub-section (2) that the Zilla Parishad shall have authority for the purposes of the Act over the area for which it is established. The Panchayat Samiti is by virtue of Section 7, Sub-section (1) one of the authorities charged with the carrying out of the provisions of the Act and is in point of authority next after the Zilla Parishad. The constitution, of the Zilla Parishad, is prescribed by Section 9 and for the purposes of these two petitions the constitution is of prime importance. Section 9(1) provides that the councillors who constitute the Zilla Parishad shall be of four categories as described in Clauses (a) to (d) of Sub-section (1) of Section 9. Section 9(1)(a) deals with the elected councillors and it provides that there shall not be more than 60 in number and not less than 40 as may be determined by the State Government by notification in the Official Gazette.

8. The principle on which the seats are to be allocated is also laid down in Section 9(1) (a). It is that there shall be one Councillor as far as is reasonably practicable for not more than every thirty-five thousand of the population. It will thus be seen that the total number of elected councillors under this clause would depend upon the population of the district. "Population" is defined in the Explanation as meaning the population as ascertained at the last preceding census of which the relevant figures have been published.

9. The next Clause (b) of Section 9(1) deals with co-opted councillors. The clause is intended to ensure that two women at least will be always councillors of the Zilla Parishad. Sub-clause (i) of Clause (b) therefore provides that if the elected councillors do not include a woman, then two women are to be co-opted subject to the condition that each woman must reside in a different block in the district and Sub-clause (ii) provides that if the elected councillors include one woman, then one more woman residing in a block in the district should be co-opted by the councillors elected under Clause (a). It is clear from these provisions that the number of women to be co-opted can never exceed two, but whether one or two or more should be elected will depend upon how many women are elected under Clause 9(1) (a).

10. Clause (c) of Section 9(1) deals with the class of ex-officio councillors of the Zilla Parishad. By this clause the chairmen of all the Panchayat Samities in the District ex-officio become councillors of the Zilla Parishad. In the present case it is not in dispute that there were 13 Panchayat Samitis and their 13 chairmen were members of the Nasik Zilla Parishad.

11. Clause (d) of Section 9(1) deals with "associate councillors" and they are the chairmen of the five federal co-operative societies which conduct business or activities in the district in relation to certain stated subjects which the State Government, may notify in the Official Gazette.

12. So far as these two special civil applications are concerned, we are not directly concerned with this category because of the definition of "associate councillor" in Section 2(1). By that clause "associate councillor or associate member" means

a Councillor or member who is entitled to attend and to take part in the deliberations of a Parishad, Samiti or Committee, but shall (unless expressly provided) have no right of vote, and shall not be eligible to hold the office of presiding authority of such Parishad, Samiti or Committee;

Therefore though associate councillors are entitled to sit and take part in the deliberations of the Zilla Parishad, they have no right to vote unless expressly provided. Such express provision has been made in several sections entitling associate councillors to vote. Two of these sections are 111(5) and (9).

13. Section 9, Sub-section (2), Clause (a) makes a provision as to when a Zilla Parishad is to be deemed duly constituted and it says that

the names of Councillors falling wider clause (a) of Sub-section (1)... shall be published by the Collector at such time, and in such manner as may be prescribed by the State Government ; and upon such publication the Zilla Parishad shall be deemed to be duly constituted.

In other words, as soon as the names of the elected councillors are published u/s 9(2) (a) the Zilla Parishad for the purposes of the Act is deemed to be duly constituted. Its constitution is not postponed until the names of councillors falling under Clauses (b), (c) and (d) of Sub-section (1) are published. Clause (b) of Sub-section (2) of Section 9 makes that clear. Moreover the constitution of the Zilla Parishad by the notification does not preclude the completion of the election in any electoral division nor does it affect the term of office of the councillors under the Act. This is provided by the proviso to Sub-section (2)(a) of Section 9.

14. These provisions have to be read in the light of the definition of "councillor" in Section 2, Sub-section (9) and the definition of "Zilla Parishad" in Section 2, Sub-section (55) of the Act. "Councillor" is defined in Section 2(9) to mean "a member of a Zilla Parishad constituted under this Act" and "Zilla Parishad" or "Parishad" as defined in Section 2(55) means "a Zilla Parishad constituted u/s 9". In contra-distinction the word "member" is defined in Section 2(18) to mean "a member of any Panchayat Samiti or Committee constituted under this Act." It will thus be seen that the Act distinguishes between "councillor" and "member". "Councillor" can only be used in the context of Zilla Parishad and indicates a member of a Zilla Parishad constituted under the Act and a "member" can only mean a member of a Panchayat Samiti or a Committee constituted under the Act.

15. Section 42 deals with the subject of election of the President and Vice-President of the Zilla Parishad, and it says that every Zilla Parishad shall be presided over by a President, who shall be elected by the Parishad from amongst its elected councillors. The Zilla Parishad shall also elect one of its elected councillors to be its Vice-President. No councillor is eligible for being elected as President or Vice-President if he has held any such office for two consecutive terms and the President or Vice-President cannot hold simultaneously the office of Chairman or Deputy Chairman of a Panchayat Samiti.

16. From the constitution of the Zilla Parishad and from what we have stated above it would appear that the Zilla Parishad consists of a number of councillors which is never certain. On the contrary it is a body with a fluctuating councillorship. Even before the election it would be difficult to say what is the "total number of councillors" of the Zilla Parishad or its total membership, for if the elected councillors do not include among them a woman then two women have to be co-opted by the elected councillors, but if two women are already elected, then there cannot be any woman co-opted. Similarly, the class of ex-officio councillors namely the chairmen of Panchayat Samitis in the District u/s 9(1)(c) may not be a definite number, for the election as chairman of Panchayat Samiti may be disputed or under provisions similar to the provisions with which we are concerned the chairman may go out upon the passing of a valid no-confidence motion against him. Changes may moreover take place by death, resignation, disqualification or removal of councillors as contemplated in Section 41 of the Act and so far as death, resignation and disqualification are concerned, they may lead to councillor of any class mentioned in Section 9(1) ceasing to be a councillor. Therefore, it is clear that the constitution of Zilla Parishad is peculiar in this that at no given moment of time can it be said that it is composed of a definite number of councillors. Moreover by the constitution there occurs an overlapping of seats where for instance one individual occupies two seats e.g. in the case of a woman elected as a councillor. Because she is elected, out of the two seats provided to be filled up by co-option of two women, one cannot be filled up. For these reasons the body is from time to time liable to fluctuate and its membership may be added to or subtracted from as occasion arises,

17. Section 49 deals with the entire subject of no-confidence resolutions against President or Vice-President, and Sub-sections (1) and (7) provide as follows:

49. (1) "The President shall, on the requisition of not less than one-fifth of the total number of Councillors (other than associate Councillors) call a special meeting to consider a motion of no-confidence in the President or Vice-President, ..

(7) If the motion is carried by a majority of the total number of Councillors (other than associate Councillors) the 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.

By Sub-section (9) the names of the councillors voting for and against a motion of no-confidence have to be read in the meeting and recorded in the minute book kept under Sub-section (13) of Section 111.

18. Now the expression used both in Sub-section (1) and Sub-section (7) of Section 49 is "total number of Councillors (other than associate Councillors)". One-fifth of that number have to sign a requisition calling a special meeting to consider a motion of no-confidence in the President or Vice-President and it is only if a motion is carried by a majority of the total number of Councillors (other than associate Councillors) that the President or Vice-President as the case may be ceases to hold office forthwith. The question raised in these petitions is what is the meaning of this expression "total number of Councillors (other than associate Councillors)." Does it mean the total number of Councillors according to the constitution of the Zilla Parishad as in Section 9(1), that is to say the maximum number theoretically possible upon the provisions of that section or, does it mean the total number of Councillors, entitled to vote under Clauses (a), (b) and (c) of Section 9(1) who actually constitute the Zilla Parishad immediately after the election of Councillors of the Zilla Parishad and after the whole procedure u/s 9 is gone through, These are the two alternatives which as we shall presently show are referred to in categories (a) and (b) of the several categories mentioned in the referring order of the Division Bench. The other constructions which were canvassed are that the expression "total number of Councillors (other than associate Councillors)" means all those councillors who are entitled to sit at the time of voting on the no-confidence motion plus the number of vacancy or vacancies then existing. This is the case contemplated in clause (c) of the referring order. Another construction canvassed is that it means the actual number of councillors other than associate councillors who are in fact entitled to sit at the time of the motion of no-confidence irrespective of whether they are present and lastly there is the possible construction that the expression means only the number of councillors actually present and voting at the meeting held to consider the motion of no-confidence.

19. Thus there are five different shades of meaning canvassed before us which may be stated as follows:

(a) the total number of Councillors other than associate Councillors who would compose the Zilla Parishad if there is no overlapping of the Councillors elected u/s 9(1)(a), the Councillors co-opted u/s 9(1)(b), and the Councillors who become ex-officio members u/s 9(1)(c);

(b) the total number of Councillors of the categories under Clauses (a), (b) and (c) of Section 9(1) who actually constituted the Zilla Parishad immediately after the general election of the Zilla Parishad and after the whole procedure u/s 9 is gone through;

(c) the total number of councillors, other than associate Councillors who are entitled to sit at the time of the vote of no-confidence plus the number of

vacancies then existing;

(d) the actual number of Councillors, other than associate Councillors, who are to sit at the time of the motion of no-confidence ;

(e) the actual number of Councillors present and voting at any meeting (the v(sic) negatived in Vishwarasaro Dajibarao Ghuge Vs. Vallabhdas Sheonarayan Sharam and Others,).

20. Now in the present case the Commissioner has in a somewhat summary manner passed an order as follows:

The strength of the Zilla Parishad Nasik consists of 69 Councillors excluding associate Councillors, It is seen from the proceedings of the meeting that only 64 Councillors were present. The resolution of no confidence motion against the President was passed by 38 against 81... It has been argued before me that the words "total number of Councillors of Zilla Parishad" has to be interpreted as total number of Councillors of the Zilla Parishad (other than associate Councillors) and not the total number of Councillors present at the meeting...Merely passing the motion of no-confidence on the basis of the majority of the Councillors present in the House on that day is not a sufficient compliance of the provision of clause 7 of Section 49 of the M. Z. P. & P. S. Act, 1961. I have, therefore, come to the conclusion that the motion of no-confidence has not been effectively and legally passed against the President of Zilla Parishad Nasik ; therefore he does not cease to hold office and that the office shall not be deemed to be vacant.

The Commissioner of course has not given any reasons why he has so held, though he referred to some cases of the Allahabad and Calcutta High Courts which are not relevant. It appears from this order which is difficult to understand that he adopted the view in category (a) namely that the words "total number of Councillors (other than associate Councillors)" in Section 49, Sub-section (7) mean the councillors who would compose the Zilla Parishad if elected u/s 9(1) (a), 9(1)(b) and 9(1)(c) and not taking into account the overlapping of seats. In other words he adopted the construction of those words which is supported before us by Mr. Sawant on behalf of respondent No. 1 in each of the two petitions. Undoubtedly the merit of this view lies in the fact that it tends to simplicity and to a certain measure of certainty as regards the construction of the phrase the "" total number of Councillors". But when analysed this construction presents considerable difficulty and also renders many of the other provisions of the Act almost nugatory.

21. The words used in the expression which we are called upon to construe are "Councillors (other than associate Councillors)" and the expressions "Councillors" and "Associate Councillors" are defined by the Act itself. Therefore these expressions must be understood in the light of the definitions. "Associate Councillor" means a Councillor or member who is entitled to attend and to take part in the deliberations of a Parishad, but who has no right of vote and is not

eligible to hold the office of presiding authority of the Parishad. By its very definition the expression means a councillor with certain disqualifications. Now "Councillors" according to Section 2(9) means "a member of a Zilla Parishad constituted under this Act." (Italics are ours). The name "Zilla Parishad" is defined in Section 2(35). It means "a Zilla Parishad constituted u/s 9". (Italics are ours). Therefore the very definitions refer to a position after the Zilla Parishad is constituted, that is to say after the elections have taken place u/s 9(1) (a) and the notification publishing their names under Sub-section 2(a) is published. The definitions do not contemplate a possible or theoretical number of Councillors but expressly refer to the actual position as it exists, in fact, after a Zilla Parishad is constituted. From these provisions it is clear that what is the law intended by the expression "total number of Councillors" in Sub-section (7) of Section 49 could never be the theoretical maximum number of members according to the constitution laid down in Section 9 irrespective of the result of the election. The very definitions, therefore, refer to a state of affairs where the actual membership of the Zilla Parishad has become determined and known, at least so far as the elected members u/s 9(1)(a) are concerned.

22. No doubt the definitions are subject to the overriding opening clause of Section 2 "unless the context requires otherwise", but there does not appear to be anything in the context of Section 49 to indicate otherwise.

23. There is moreover another obstacle to the acceptance of this construction. The construction contended for amounts to this that irrespective of who is elected at the election or irrespective of the number of Councillors which can only be ascertained after the elections are held, we must compute the councillors as if they were the same as the number of seats indicated in Section 9 and without contemplating any overlapping. In the present case, according to the contention of counsel, there were 54 elected Councillors plus two women under Clause (b) of Section 9(1) plus 13 chairmen of Panchayat Samitis in the District ex-officio, making a total of 69 Councillors therefore that should be the "total number of Councillors". It is clear that upon this computation what counsel is referring to is the number of seats indicated in Section 9 and not the number of actual councillors of the Zilla Parishad for it is not disputed that the actual number of Councillors in the present case was 66. This divergence between the factual and the theoretical figures itself shows that what is being referred to by counsel is the seats and not the Councillors as defined in the Act.

24. We cannot accept such an interpretation. In several provisions of the Act, the word "seat" is expressly used in central-distinction to "councillor". Two such provisions are to be found in Section 12(2) and (5) and in Section 15A of the Act. Section 12(1) deals with the subject of division of a District into electoral divisions and Sub-section (2) says that where the State Government, having regard to the population of the Scheduled Castes or Scheduled Tribes in the District, is of opinion that reservation of seats in any electoral division for the representation of such Castes or Tribes is necessary, the State Government may

reserve a seat or seats for such Castes or Tribes. Sub-section (3) puts a limitation upon that power by saying that

Notwithstanding anything contained in Sub-section (2), the reservation of seats for the Scheduled Castes or Scheduled Tribes made under that sub-section shall cease to have effect when the reservation of seats for those Castes or Tribes in the Legislative Assembly of the State ceases to have effect under the Constitution of India;

The section appears in the Chapter dealing with the election of Councillors, that is to say election to the Zilla Parishad and is thus directly relevant. The proviso to Sub-section (3) of Section 12 is in this respect important, for it says:

Provided that, nothing in this sub-section shall render any person elected to any of such reserved seats ineligible to continue as a Councillor during the term of the office for which he was validly elected, by reason only of the fact that the reservation of seats has so ceased to have effect.

Therefore, the proviso contemplates a case where although the seat is abolished the councillor can continue for a certain time as an elected councillor. The proviso, therefore, makes a clear-cut distinction between a councillor and the seat which he occupies.

25. Section 15A similarly provides:

If a person is elected to more than one seat in a Zilla Parishad, then, unless within the prescribed time he resigns all but one of the seats by writing under his hand addressed to the Collector or any officer authorised by him in this behalf, all the seats shall become vacant.

Here again the distinction is drawn between the person who is elected and the seat which he occupies and a case is contemplated where there may be only one person but two seats which he occupies in which case he has to elect in writing which of the two seats he resigns from and upon failure to elect the provision is that all the seats shall become vacant. A councillor or a person elected, therefore, is quite different from the seat or the seats to which he is elected and it is possible for one and the same person to be elected to more than one seat. Therefore it seems to us that the word "Councillor" in the expression we are called upon to construe cannot possibly be equated with the seat or seats which he is occupying and the construction contended for on behalf of respondent No. 1 must necessarily lead to that conclusion.

26. In the course of the arguments, a contention was urged in support of each view that that view was best conducive to the purpose and object of the Act and that the other or rival view would lead to some difficulty or render some provision of the Act nugatory. So far as the view which we have just considered is concerned, it was pointed that giving effect to this construction would lead to great difficulty in the implementation of the Act and would also be opposed to its avowed object namely "promoting the development of democratic institutions

and securing a greater measure of participation by the people in... governmental affairs." The effect of accepting a view like this would in our opinion lead to a very anomalous position. If the total number of councillors were to be equated with the total number of seats theoretically possible then in the present case having regard to the constitution of the Zilla Parishad under Section 9 the "total number" would be 69, but if by death, resignation, disqualification or removal of councillors, the actual number of councillors were to go below, say 35, then at no stage in future till the number remains below 35 could a no-confidence resolution ever be passed and the provisions of Section 49 would be rendered completely nugatory. The "total number" being 69 and the section requiring that the resolution of no-confidence must be passed by a majority, a minimum of 35 votes would always be required to pass a no-confidence motion, but since the membership has fallen below that number, no no-confidence motion would ever be possible, and the section would be rendered inapplicable. We do not think that an interpretation which results in so anomalous a position should be accepted, apart from the fact that upon the provisions of the law itself such a construction can never be given to these words. We are, therefore, unable to accept construction placed upon those words in the first category referred to above.

27. For these very reasons the learned Government Pleader steered a middle course. He urged that the expression "total number of Councillors" means the total number of councillors necessary to fill the house at any given time. According to him one must count not merely the actual number of councillors for the time being but add to that the number of seats-which are unfilled or vacant for the time being. Thus in the present case since the total number of councillors was 66, if at any given time 4 or 5 ex-officio councillors such as chairmen of Panchayat Samitis were to cease to be the councillors for any reason, then the seats vacated by them must nevertheless be taken into account along with the number of councillors who are actually councillors at that time. He urged that since a Zilla Parishad is necessarily a fluctuating body, the actual number of councillors will fluctuate but in computing the "total number of councillors" at any given time the vacancies must be taken into account along with the actual number of councillors at that time. It would be noticed that while the first view which we have discussed above only has regard to the number of seats and not the number of councillors, this view canvassed by the learned Government Pleader has regard not merely to the actual number of councillors for the time being but also adds to it the number of seats which are vacant for the time being. It is the view contemplated by category (c) above.

28. The difficulties in the way of accepting this construction are the same though in a lesser degree as exist in the acceptance of the construction under category (a). We have already shown that having regard to the definitions of the word "councillor" in Section 2(9) and "Zilla Parishad" in Section 2(35) the law itself contemplates a situation where the election has taken place and the actual number of councillors can be ascertained. We have also shown that there is a sharp and clear-cut distinction drawn in the law itself (vide Sections 12(2) and

(3) and Section 15-A) between the seats as indicated in Section 9 and the councillors who fill those seats, but in so far as this construction requires us to take into account the vacancies the same provisions of law are against the acceptance of such a construction, for if vacant seats cannot be taken into account under law then this construction must fail. If "Councillor" is distinct from "seat of a councillor" then no part of the "total number of Councillors" can be a seat or seats.

29. Moreover, this is a view which would render the provisions of the proviso to Section 4.1 nugatory. Section 41 deals with the filling up of casual vacancies and lays down how they are to be filled in. It says that in the event of a vacancy occurring on account of death, resignation, disqualification or removal of a Councillor or through a Councillor becoming incapable of acting previous to the expiry of his term of office or otherwise, the President shall forthwith communicate the occurrence to the Collector and the vacancy shall be filled as soon as conveniently may be, by the election, or as the case may be, co-option of a person, thereto, who shall hold office so long only as the Councillor in whose place he is elected or co-opted would have held it, if the vacancy had not occurred. The proviso, however, says

Provided that, notwithstanding anything contained in section 0, if the vacancy occurs within six months preceding the date on which the term of office of the Councilor expires, the vacancy shall not be filled.

Now upon the construction with which we are dealing a vacant seat must be counted along with the actual number of councillors in arriving at "the total number of councillors", but the proviso to Section 41 in express terms says that in a certain contingency the vacancy shall not be filled and that "notwithstanding anything contained in Section 9". Therefore, the language of that proviso would clearly negative the construction canvassed. The proviso shows that if a vacancy occurs within six months preceding the date on which the term of office of the outgoing councillor expires, the vacancy shall not be filled and yet upon the contention advanced we are asked (of course only nationally) to take into account that vacancy. In our opinion, the proviso to Section 41 clearly shows that this construction cannot harmonize the provisions of Section 49(7) with the provisions of Section 41. For these reasons we are unable to accept the view canvassed in category (c).

30. So far as category (b) is concerned, the possible construction of the section there canvassed is that the expression "total number of councillors" means the total number of councillors under Clauses (a), (b) and (c) of Section 9(1) who became councillors and who actually constituted the Zilla Parishad immediately after the first constitution of the Zilla Parishad and after the whole procedure u/s 9 had been gone through. This construction, however, was not canvassed by any of the counsel before us, but since it has been referred to in the order of the Division Bench we may say something about it. The construction in the first place seeks to fix once and for all the total number of councillors as On the date on

which the Zilla Parishad is first constituted. In doing so, it necessarily gives a go-by to all subsequent changes that may take place in the constitution of the Zilla Parishad, and consequent fluctuation in the total number whereas we have shown that by Section 41 there is a direct provision made for filling in the casual vacancies and how they are to be filled in. The construction would suggest that the total number of councillors is fixed at the very first moment of time when the Zilla Parishad was constituted, but a position may arise in the course of the life of the Zilla Parishad when more than half of its original councillors go out on account of various causes such as we have already referred to and yet the total number would remain constant. For example in the present case after the election, the total number of councillors (excluding Kothavade) was 64 but if in the course of a year or two 32 members go out for any of the several causes specified still according to the contention the total number will be 64. That would make it impossible for the remaining 32 members ever to pass a resolution of no-confidence because they can never have a majority of the total number of councillors i.e. 64. The contention therefore leads to absurd results. Such a construction should, therefore, be avoided. Similarly by the provisions of Section 41 new councillors would have to fill up casual vacancies, and if there were overlapping seats, the total would increase if some of the seats ceased to overlap but according to the contention it is only the total number as it existed on the date of its first constitution that must be looked at and not the number of councillors of which the Zilla Parishad may be composed at any subsequent time. By the operation of Section 41 that number can change and yet the changes brought about by filling up those casual vacancies must necessarily be disregarded. That would make the provisions of Section 49(7) ineffectual. We do not think that such a construction which militates against another provision of the statute itself can be accepted and fortunately it is also not supported by any of the counsel appearing before us. The construction referred to in category (b) also, therefore, cannot be accepted.

31. Then we come to the construction suggested on behalf of the petitioners by Mr. Rane and referred to in category (d) mentioned in the referring order. The construction canvassed is that the words "total number of councillors" can only mean the actual number of councillors other than associate councillors who are in fact entitled to sit and vote at any given time. We may say first of all that this construction is in consonance with the two definitions of "Councillor" and "Zilla Parishad" in Section 2(9) and Section 2(35). As we have pointed out the definition of "councillor" refers to the state of facts as they exist after the Zilla Parishad is constituted and so does the definition of "Zilla Parishad" in Section 2(35) which defines "Zilla Parishad" to mean a Zilla Parishad constituted u/s 9. It was clearly the intention by each definition to indicate that one must have regard to the actual state of facts as they exist i.e. have regard to the number of councillors as they exist at any given time, excluding of course the associate councillors who have no right to vote. This construction is also in consonance with the object and purpose of the Act and its spirit. Section 49(7) says that a no-

confidence motion shall be carried by a majority of the total number of councillors other than associate councillors. Since the Zilla Parishad is a democratic body and brought into existence with a view to promoting the development of democratic institutions normally also it would be the majority of a body consisting of its then members that would be entitled to vote upon any resolution and in our opinion, Sub-section (7) of Section 49 was enacted to indicate no more and no less than that. In other words, it was enacted to indicate that the resolution must be passed by a majority of the councillors who are on the date of the no-confidence motion entitled to sit in the Zilla Parishad and vote on the no-confidence motion. Any other construction would be doing violence not merely to the object and purpose of the Act but also as we have shown to one or more of the legal provisions. This is, therefore, a construction which commends itself to us as the construction most in consonance with the provisions of the Act and with the purpose and object of the Act.

32. But there were several legal difficulties pointed out in the way of this construction said to be arising from the provisions of Section 94, Sub-section (3) and Section 111, Sub-section (3) read along with Section 111, Sub-section (7). It was urged that if the construction of the words "total number of Councillors (other than associate Councillors) " is that it implies the total number of councillors entitled to sit and vote in a Zilla Parishad, then it is no more than saying that it is the number of councillors entitled to sit and vote for the time being or the existing councillors for the time being and yet in other provisions of the Act where that concept is sought to be indicated it has been so expressly indicated.

33. One such provision is Section 94(3). The section provides for the appointment of the Chief Executive Officer of the Zilla Parishad, and Sub-section (3) thereof provides virtually for his removal though the language used is for his "withdrawal." It says

If at a special meeting of the Zilla Parishad not less than two-thirds of the total number of Councillors (other than associate Councillors) constituting the Parishad for the time being vote in favour of a resolution requiring the State Government to withdraw the Chief Executive Officer from Office, the State Government shall withdraw such officer from service under the Parishad.

(Italics are ours.)

It was urged upon the provisions of this sub-section that wherever the legislative draftsman intended to refer to "councillors constituting the Parishad for the time being" he has done so in express language. Therefore, we cannot place a construction upon the words of Sub-section (7) of Section 49 "total number of councillors" as also meaning the total number of councillors for the time being which is ultimately the construction which is canvassed in category (d).

34. Now in the first place the two parts of the statute are not in pan materia. So far as Section 49(7) is concerned, it deals with the question of a no-confidence

motion against the President or as the case may be, against the Vice-President, who are both the elected officers of the Zilla Parishad. They are democratically elected whereas the Chief Executive Officer is an Officer who is appointed by the State Government and is liable to be transferred by the State Government and whose removal does not depend upon the wishes of the Zilla Parishad, though they may have a voice as provided by Sub-section (3) of Section 94. Thus in making provision for the "" withdrawal "of the Chief Executive Officer under Sub-section (3) of Section 94, the legislative draftsman has also not used the same language as contained in Section 49(7). Though no doubt the expression has been used "two-thirds of the total number of Councillors (other than associate Councillors)," the legislative draftsman added after those words "constituting the Parishad". Now we have not been able to understand why after having used the same expression as in Section 49(7) and Section 49(1) and in several other sections viz. "total number of councillors", the legislative draftsman in this case added the words "constituting the Parishad". We do not think that adding those words makes any difference in fact, but having added those words, it seems to us clear that the legislative draftsman thought that since he referred to the councillors "constituting the Parishad" he may imply thereby either the theoretical number of members (the argument under category (a)) or the number of members at the time when the Parishad was first constituted (the argument under category (b)) and so on. Therefore in order to make it clear that he intended to mean the Parishad as it was constituted for the time being he also used the expression "for the time being". It was used because the additional words "constituting the Parishad" were used in Section 94. We do not think that he need have added either the expression "constituting the Parishad" or the expression "for the time being" to make the sense any the clearer, but unfortunately having used the words "constituting the Parishad" it is clear that the draftsman found it necessary to use the words "for the time being" to make the sense clear. We do not, therefore, think that the use of the words "for the time being" in Sub-section (3) of Section 94 in the particular context in which they are used must necessarily imply that the bare words in Sub-section (7) of Section 49 "total number of councillors" would not imply the total number of councillors for the time being.

35. We may also reiterate here that the Act is not a very bright example of legislative draftsmanship. We have found in various provisions different expressions used at different times in the same context and upon the same subject and despite the assistance of several counsel and the learned Government Pleader it was difficult to find any reason or logic behind the use of those expressions. For instance, in one and the same Section 111, we find the following different expressions used, though why they were used it is difficult to see: "one-fifth of the Councillors" (s. 111(3)); "Councillors present and voting" (Section 111(6)) ; "total number of Councillors" (s. 111(7)); "majority of votes" (Section 111(9)); "majority of Councillors present" (s. 111(10))"; "one-half of the number of Councillors present" (s. 111(11)). The following different

expressions are also used in various other sections of the Act: "Councillors" (s. 111(3)); "number of Councillors" (s. 111(11)); "Councillors present and voting" (s. 39) and the unfortunate expression with which we are concerned "total number of Councillors" (ss. 49(1), 49(7), 111(1), 72(1) and 72(7)). The same expression is also used in Section 94(3), but as we have said with the words "" constituting the Parishad for the time being. "" All these different expressions were not necessary and with a little care could have been eliminated without affecting the intention of the Act. These expressions have given rise to considerable litigation and are calculated to encourage the finding of technical flaws in the elections to the various bodies under the Act and in the working of the Act and of the Parishads and Samitis constituted under the Act. Elimination of some of these various expressions would not only make for a better understanding of the law and so for the better administration of these bodies but would help to do away with the tendency to litigate rather than work these bodies smoothly-which is so manifest in the large amount of litigation that comes to this Court under this Act.

36. The next objection to the view canvassed on behalf of the petitioners is based upon the provisions of Section 111(5) read with the provisions of Sub-section (7) thereof. Section 111 makes a general provision for the conduct of business at the meetings of Zilla Parishads and Sub-section (3) provides that the President shall fix the dates for meetings, and may whenever he thinks fit, and shall, upon the written request of not less than one-fifth of the Councillors, and within seven days from the receipt of such request, issue notice calling a special meeting. The expression here used is "not less than one-fifth of the Councillors" and it was urged that the expression used is not "total number of councillors", and therefore, if we are to construe that expression to mean councillors of the Zilla Parishad for the time being, then Sub-section (3) also means the same thing and yet uses the simple expression "the councillors". Therefore, it was urged that the expression "total number of councillors" in Section 49(7), which is a different expression, cannot have the same meaning.

37. The expression used in Section 111(3) is "Councillors" and it is not used in the context of voting rights. The sub-section states inter alia the condition under which the President is bound to call a meeting of the Zilla Parishad. The condition is "upon the written request of not less than one-fifth of the Councillors". The request does not entail voting. It is in that context that the expression "the Councillors" is used. Since the sub-section is not dealing with the subject of votes or voting rights, in our opinion, the word "Councillors" would in this context include associate Councillors also. That is clear upon a consideration of the definitions in Sections 2(1) and 2(9) of Associate Councillor and Councillor. Section 49(7) on the other hand in terms deals with the subject of voting on a no-confidence resolution. It is thus clear that the subject-matter of the two Sections 49(7) and 111(3) is different. It seems to us that where (as in Section 49(7)) the subject of voting rights is dealt with, in that context the expression is used "total number of Councillors" but where, the subject of voting or voting rights is

not being dealt with (as in Section 111(3)), the expression used is "the Councillors" which includes associate Councillors, though in both sections it is intended to refer to the Councillors constituting the Zilla Parishad for the time being.

38. In answer to this interpretation, a further contention is advanced on the basis of Section 111(7) of the Act. In Sub-section (7) of Section 111 again when laying down provision as to the quorum for the meetings of the Zilla Parishad, the provision made is

If less than one-third of the total number of Councillors be present at a meeting at any time from the beginning to the end thereof, the presiding authority shall adjourn the meeting to such hour on the following or some other future date as he may reasonably fix.

In the subsequent portion of the sub-section "one-third of the total number of councillors" is referred to as the quorum. It is urged that here in the context of a quorum the expression is used "total number of Councillors". The subject of a quorum is really connected with voting rights and, therefore, it is not surprising to find the draftsman use the expression "total number of Councillors". Nothing thus turns upon a consideration of the provisions of Sections 111(3) and 111(7). It is really not necessary for our purpose in these applications to construe these provisions, but it is sufficient to say that we do not think that they would affect the construction of Section 49(7), for the provisions of Section 111(3) are not upon the same subject as is dealt with in Section 49 itself.

39. Turning next to category (e), which we have referred to as a possible construction, namely that the words "total number of councillors" could refer to the number of councillors actually present and voting, The question was dealt with in a decision of this Court in Vishwasrao v. Vallabhdas. In that case the Division Bench was not concerned with the provisions of Section 49, but with similar provisions of Section 72(7) of the Act. In that case the facts were as follows: The total membership of the Panchayat Samiti was 14 excluding the two associate members not entitled to vote. Three members of the Samiti were respondents Nos. 11, 12 and 13 and they were members of the Samiti because they were elected as sarpanch as by three gram panchayats. Their election was in dispute and it was therefore urged that there were only 11 members of the Panchayat Samiti. At the meeting held to consider the no-confidence motion six votes were cast for the resolution and the resolution was declared not legally passed.

40. In Vishwasrao's case the Panchayat Samiti consisted of 14 members. Eleven members were actually present and voted when the motion of no-confidence came to be considered and there were six votes cast in favour of the motion. Those six persons constituted the majority of the members actually present and voting and the contention was that when the section (s. 72(7)) speaks of the total number of members it means "the number of members actually present and

voting." That was the only question which fell to be determined upon the peculiar facts of that case. In fact in that case no other interpretations were canvassed but it was assumed by both the parties incorrectly in our opinion that if the words used did not mean "members actually present and voting"" then it meant the total possible membership of the Samiti. The Division Bench correctly negated the contention that it meant the total number of members actually present and voting and, therefore, necessarily had to hold that it meant the total possible membership. However upon the view that we have taken in the present case it is clear that the expression "total possible membership" used as the meaning of the "total number of members" was incorrect. The expression was used ex concession is and can hardly amount to a decision that the expression "total number of members" means "the total possible membership of the Samiti". None of the other views which we have discussed above were canvassed in the arguments in that case.

41. In the course of the arguments before us reference was made to several other provisions of law, particularly to Section 36(d), 36(f) and the proviso to Section 36(1) of the Bombay Municipal Corporation Act where the expression used is "whole number of councillors." In Section 54(2) of the same Act the expression used is "five-eighths of the whole number of councillors" and in Section 60A(1)(c) "one half of the total number of councillors". Unfortunately we do not find that there are any decisions upon the construction of these expressions in that Act and, therefore, the difficulty which we have envisaged in the interpretation of the relevant clause in Section 49(7) in this case is not solved. We do not think that we are called upon to construe the provisions of another Act in order to understand the construction of the Zilla Parishad Act before us. We do not think, therefore, that we need enter into a scrutiny or construction of the sections in that Act.

42. Similarly references were made to some cases decided under other Acts. In *Shyamapada Ganguly Vs. Abani Mohan Mukherjee*, the question was of construction of the Bengal Municipal Act (XV) of 1932, Section 61(2). Section 61(2) dealt with the question of the removal of the chairman and vice-chairman and the provisions as to the requisite majority for the resolution was "not less than two-thirds of the whole number of the commissioners." It was held that the expression "whole number of commissioners" meant the total number of elected seats in the Municipality and the fact that a seat is declared vacant by Government does not matter. In that case, however, there was a special provision made in Section 13(d) of the Act as follows; "Number of commissioners of the Municipality shall be deemed to be the total number of elected seats on the Municipality. ... ". In view of that express provision we do not think that much light can be thrown by that decision upon the question before us. We may add here that a similar provision in the present statute would have put an end to the controversy in the present cases. In *Sukhdeo Narayan and Others Vs. Municipal Commissioners of Arrah, Municipality and Others*, the provision which fell to be construed was Section 34 of the Bihar and Orissa Municipal Act (7 of

1922) where the expression used was "the whole number of Commissioners". In that case the same contention came to be advanced and was examined as in Vishwashrao's case namely that the expression meant Commissioners present and voting. It was held that two-thirds of the whole number of Commissioners could not mean commissioners present and voting at the meeting had given their votes in favour of the resolution and that was what that law required. That contention was negatived. The Patna case cannot throw any greater light upon the "question which we are called upon to answer. No discussion is to be found in the decision which would advance the case under categories (a), (b), (c) or (d) in the present case. In both the cases discussed above the expression was not exactly the same as the expression before us. The word "whole" may carry a different meaning from the word "total" in the particular context in which it is used in that Act.

43. Reference was next made to some provisions of the Constitution particularly to Article 61, Sub-article (2) and to Article 100(1). Article 61 which deals with the procedure for impeachment of the President provides in Sub-article (2) as follows:

(2) No such charge shall be preferred unless-

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one - fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-third of the total membership of the House.

(Italics are ours).

Article 100(1) which deals with the general conduct of the business of Parliament provides that save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. Thus the difference between the expressions used in Article 61(2) "total number of members of the House" in Sub-clause (a) and "total membership of the House" in Sub-clause (b) is emphasized in contra-distinction with the words in Article 100(7) "members present and voting." These provisions by themselves do not assist in the construction of the words of the statute with which we are concerned viz. "total number of Councillors". In the first place, we do not think that we can safely take guidance from a constitutional document of such importance as the Constitution itself in order to construe an Act dealing with local bodies entrusted with local self-government but in any case having regard to the provisions of Article 61(2), two different expressions have been used "total number of members" in Sub-clause (a) and "total membership of the house" in Sub-clause (b) which may or may not carry different meanings. We do not think we should construe these provisions of

the Constitution in order to interpret the provisions of the Zilla Parishads Act. If the provisions had given clear indication we may have considered them but that is not the case. There is no doubt, however, that there is a distinction drawn in the Constitution between "the total number of members", or "the total membership of the House" and the "members present and voting."

44. The question referred by the Division Bench is "What is the meaning of the expression "the total number of Councillors (other than associate Councillors) which occurs in Sub-section (7) of Section 49 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961?" and upon the view which we have taken we answer the question by holding that the expression "the total number of Councillors (other than associate Councillors)" which occurs in Sub-section (7) of Section 49 of the Act, means the actual number of Councillors other than associate councillors who are for the time being entitled to sit and vote at the time of the motion of no-confidence. The papers will be returned to the Division Bench for further orders. Costs shall abide the result.