

(2013) 07 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 592 of 2013 (O and M)

Sanjeev Kumar Verma

APPELLANT

Vs

The Director, Urban Local Bodies and Others

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 172 PLR 540

Hon'ble Judges : Satish Kumar Mittal, J;Naresh Kumar Sanghi, J

Bench : Division Bench

Advocate : Amit Jhanji, for the Appellant; Rahul Sharma, Addl. A.G., Haryana State, Mr. Sanjiv Pandit and Mr. Anil Rathee, for the Respondent

Judgement

Satish Kumar Mittal, J.—The instant Letters Patent Appeal has been filed against the judgment dated 06.02.2013 passed by the learned

Single Judge, whereby the writ petition (C.W.P. No. 15125 of 2012) filed by the appellant, who was President of the Municipal Committee,

Naraingarh, for seeking quashing of the resolution of no confidence motion dated 03.08.2012 (Annexure P4) passed against him being illegal,

arbitrary and in violation of the provisions of Section 21 of the Haryana Municipal Act, 1973 (hereinafter referred to as the Act"), has been

dismissed. The Municipal Committee, Naraingarh consists of 13 elected members. The election of Municipal Committee, Naraingarh was held on

20.05.2010, wherein 13 persons from 13 territorial constituencies were elected. The appellant was elected as one of the members of the

Municipal Committee. On 21.6.2010, the appellant was also elected as President of Municipal Committee and accordingly his name was notified

as President in the official gazette of Haryana. In addition to 13 elected members, Kumari Selja, Member Parliament from Ambala, and Shri Ram

Kishan, Member Legislative Assembly, Naraingarh were nominated as members of Municipal Committee, Naraingarh u/s 9(3) of the Act.

2. In the year 2012, a requisition of no confidence motion was moved against the appellant by requisite members of the Committee u/s 21 of the

Act read with Rule 72-A of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as "the Rules") for his removal as President.

When the said requisition was put before the Deputy Commissioner, Ambala, he appointed the Additional Deputy Commissioner, Ambala to

convene the meeting of the members of the Municipal Committee for consideration of the motion moved against the appellant as per the manner

provided under the Rules. The said officer issued 15 days clear notice to all the 13 elected members of the Committee as well as above-said two

nominated members of the Committee.

3. On 03.08.2012 a meeting of the members of the Committee was held in the office of SDO (Civil), Naraingarh for consideration of motion of no

confidence moved against the appellant. Out of 15 members, to whom the notices were given, only 9 elected members came present in the meeting

and unanimously passed the no confidence motion against the appellant by way of secret ballot. Since the no confidence motion was passed by 9

out of 13 elected members of the Committee, it was declared to be carried out with the support of "not less than two-thirds of the elected

members of the Committee", and on passing the said resolution the appellant would deem to have vacated the office.

4. The appellant challenged the passing of said resolution of no confidence motion by filing the writ petition which has been dismissed by the

learned Single Judge vide impugned judgment. Hence this Letters Patent Appeal.

5. The learned counsel for the appellant argued that the learned Single Judge has erred in law while reaching to the conclusion that the resolution of

no confidence was passed/carried out against the appellant with the support of not less than two-thirds elected members of the Committee".

According to learned counsel, elected members include two nominated members (13 elected + 2 nominated), and 2/3rd of which comes to 10,

whereas the resolution was supported by only 9 members. The learned counsel argued that Section 9 of the Act provides for composition of

Municipalities. Under subsection (3) of Section 9, in addition to persons chosen

by direct election from the territorial constituencies (which is 13 herein), the State Government shall, by notification in the Official Gazette, nominate (i) two persons in case of Municipal Committee having special knowledge or experience in municipal administration; (ii) the members of the House of the People and the Legislative Assembly of State, representing constituencies which comprise wholly or partly, the municipal area; and (iii) members of the Council of States, registered as electors within the municipal area, as members of the Committee; and the first proviso to Section 9(3) specifically provides that only persons referred to in Section 9(3)(i) shall not have the right to vote in the meetings of the Municipalities, whereas the persons referred to in Clause (ii) shall have a right to vote in the special meeting convened for the purpose of considering the no confidence motion, but they shall have no right to contest the election of President or Vice-President. Therefore, the two nominated members, i.e., Smt. Kumari Selja, Member of Parliament, Ambala and Shri Ram Kishan, M.L.A., Naraingarh, are considered to be elected members of the Committee and they would also have to be included while calculating the two-thirds elected members of the Committee for carrying out the no confidence motion. The learned counsel further argued that these two nominated members of the Committee are to be taken as "elected members of the Committee" as has been held by a Full Bench of this Court in *Krishan Kumar Singla Vs. The State of Haryana and Others*, . In support of his contention, learned counsel referred to the following observations of the Full Bench:--

26.(f) Before amendment of Section 21(3) it used the expression "not less than 2/3rd of the members" who could carry the no confidence motion of a Committee. This Section was amended to incorporate the words not less than 2/3rd of the elected members." The elected members naturally would include the members who become members of the Committee by virtue of their having been elected as member of the House of People, Legislative Assembly or council as the case may be, for the constituency of which the Municipal Committee is a segment. The expression "elected members" must be given its proper connotation and meaning which would help to further the object of the legislation rather than to oust the people who were otherwise granted a protected right by necessary implication of the

constitutional provisions. These elected members would obviously have a better understanding of the controversies, and the implication of a particular decision taken by the Committee and the manner in which such decision could be effectively implemented at different levels of the State Administration. Thus, they effectively participate and help the administration of the Committee at the grass root level, being elected members from a much larger constituency, than that of the Municipal Committee. Thus, in our view, they would be covered by the expression "elected members" used in Section 21(3) of the Act.

(Emphasis supplied)

6. The learned counsel argued that the Single Judge while dismissing the writ petition has totally ignored the provisions of Sections 9, 21 of the Act,

Rule 72-A of the Rules, the provisions of Article 243R of the Constitution and the law laid down by the Full Bench of this Court in Raj Pal

Chhabra Vs. State of Haryana and Others, and Krishan Kumar Singh's case (supra), wherein it was held that no confidence motion against the

President of the Municipality has to be carried out by not less than two-thirds members of the Committee, i.e., elected members as well as the

members specified under sub-clause (ii) and (iii) of Section 9(3) of the Act. The learned counsel argued that in view of the law laid down by the

Full Bench of this Court in Krishan Kumar Singla's case (supra), the nominated members falling u/s 9(3)(ii) of the Act would deem to be elected

members of the Committee for all intents and purposes of Section 21(3) of the Act. Not only they have right to vote in the special meeting

convened for passing no confidence motion but their numbers are also to be counted for the purpose of calculation of two-thirds members of the

elected members of the Committee for carrying out no confidence motion against the President or the Vice-President. The learned counsel further

argued that the amendment made in Section 9(3) of the Act subsequent to the decision of Krishan Kumar Singla's case (supra) would not have

any bearing on the interpretation given by the Full Bench to the words "elected members of the Committee" contained in Section 21(3) of the Act.

It is contended that the learned Single Judge while relying upon the decision of the Supreme Court in Ramesh Mehta Vs. Sanwal Chand Singhvi

and Others, , has wrongly come to the conclusion that the members of the

Legislative Assembly and Member "of Parliament, being nominated members of the Committee though having the right of vote in the meeting of the Committee, cannot be considered to be "elected members of the Committee" and their numbers are not to be taken into consideration for calculating two-thirds elected members of the Committee. According to the learned counsel, the decision of the Supreme Court in Ramesh Mehta's case (supra) is not applicable in the present case, which pertains to the nominated members (persons having special knowledge or experience in municipal administration) and not the members of the House of the People and the Legislative Assembly, who are nominated as members of the Committee under similar clause (ii) of Section 9(3) of the Act. Thus, the appellant cannot be deemed to have been removed from the office of President by passing the resolution of no confidence motion by nine elected members of the Committee as the same having not been passed by "two-thirds elected members of the Committee", which should have been 10 out of 15 members.

7. On the other hand, learned counsel for the respondents submitted that Section 21(3) of the Act clearly provides that a motion of no confidence could only be carried out against the President or Vice-President if supported by ""not less than two-thirds of the elected members of the Committee". He argued that the "elected members of the Committee" could be only those members of the Committee who have been chosen by direct election from the territorial constituency of the Municipal Committee as provided under sub-section (2) of Section 9, and not the nominated members under clause (ii) of Section 9(3) of the Act by virtue of their being members of the House of the People and the Legislative Assembly.

The learned counsel argued that though they being members of the Committee by virtue of their nomination, have right to vote in the meeting of the Committee, but they cannot be considered and deemed to be "the elected members of the Committee" for the purpose of removal of President or Vice-President u/s 21(3). The learned counsel argued that while replacing the words not less than two-thirds of the members" of the Committee with "not less than two-thirds of the elected members" of the Committee vide Haryana Act No. 18 of 1996 in Section 21(3), the intention of the Legislature was clear that as far as passing of the motion of no confidence

against the President or Vice-President is concerned, it must be supported by not less than two-thirds "elected members of the Committee" and the elected members are not intended to include the nominated members of the Committee, who have been nominated under clause (ii) of Section 9(3) of the Act. The learned counsel argued that though in Krishan Kumar Singh's case (supra), it has been interpreted by the learned Full Bench that the expression elected members of the Committee" used in Section 21(3) includes the nominated members who become members of the Committee by virtue of their having been elected as members of the House of the People and the Legislative Assembly, as the case may be, but the learned Full Bench while giving the said interpretation has completely overlooked Section 13B of the Act which was inserted vide Haryana Act No. 13 of 1997. This Section provides that a person cannot be simultaneously elected as member of the Municipal Committee and the Legislative Assembly or Parliament, as the case may be; and if an elected member of the Committee is elected as Member of Legislative Assembly or Parliament, as the case may be, he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament. Learned counsel argued that in view of the provisions of this Section a nominated member under clause (ii) of Section 9(3), cannot be deemed to be an "elected member of the Committee". Therefore, according to the learned counsel, Smt. Kumari Selja, Member of Parliament, Ambala and Shri Ram Kishan, M.L.A., Naraingarh, who have been nominated as members of the Committee by virtue of their having been elected as members of the House of People and the Legislative Assembly, cannot be treated and taken as elected members of the Committee". The learned counsel argued that Section 21(3) of the act mandatorily provides in negative that the motion of no confidence cannot be carried out against the President or the Vice-President if the same is not supported by "not less than two-thirds elected members of the Committee". The learned counsel argued that the procedure to elect a person may be different with the procedure provided to remove such person. According to the learned counsel, the nominated members under clause (ii) of Section 9(3) of the Act may vote in the election for the post of President or Vice-President, but they cannot participate in carrying out

the no confidence motion against the President or Vice-President u/s 21(3), which could only be carried out by the "elected members of the Committee", who, according to the learned counsel, have become members of the Committee by direct election u/s 9(2) of the Act. The learned counsel argued that the learned Single Judge has rightly dismissed the writ petition filed by the appellant as the vires of the amended provisions of Sections 9(3), 13B and 21(3) of the Act were not challenged by the appellant, and as per these provisions, only elected members are entitled to pass the no confidence motion by requisite majority against the President or Vice-President and only their numbers would be counted for the calculation of two-thirds members of the elected members of the Committee.

8. After hearing the arguments of the learned counsel for the parties and going through the judgment of the learned Single Judge, we are of the opinion that the learned Single Judge has not dealt with the issue involved in this case in right perspective. In our view, the issue involved in this case is not covered by the decision of the Supreme Court in Ramesh Mehta's case (supra) as held by the learned Single Judge. In our view, the following questions of law are involved in the present appeal:--

- (i) Whether in counting/calculating "not less than two-thirds of the elected members of the Committee" for successful carrying out the no confidence motion against the President or Vice-President, as provided u/s 21(3) of the Act, the nominated members who have been nominated under clauses (ii) and (iii) of Section 9(3) by virtue of their being members of the House of People and the Legislative Assembly, or members of the Council of States, have to be taken into consideration?
- (ii) Whether the members of the State Legislative Assembly, the House of the People or the members of the Council of States, who have been nominated as members of the Committee under clauses (ii) and (iii) of Section 9(3) by virtue of their being members of the House of People and the Legislative Assembly, or the Council of States, can be deemed to be the "elected members of the Committee" merely because they are elected members of the House of People and the Legislative Assembly, or the Council of State, particularly in view of Section 13B of the Act?
- (iii) Whether a member of the House of the People and Legislative Assembly can remain as elected member of the Municipal Committee or

Council, as the case may be, in view of the bar created u/s 13B of the Act?

9. Before the aforesaid questions are dealt with, it is necessary to go into the history and various amendments made from time to time in Section 9,

the insertion of Section 13B and the amendment made in Section 21 of the Act.

10. After 74th Amendment in the Constitution, various amendments were made in "the Act" in light of Article 243P to 243ZG of Part IX-A of the

Constitution. Article 243R brought about a drastic change in the manner of composition of Municipalities. It lays down guide-lines with regard to

the constitution, composition, election and rights of the members of the Municipalities. It reads as under:--

243R. Composition of Municipalities.--(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct

election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial

constituencies to be known as wards.

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

(a) for the representation in a Municipality of-

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

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise

wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

This Article clearly provides three things-

(a) All the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area except

provided in clause (2)

(b) The Legislature of the State may, by law provide for the representation in the Municipality of persons mentioned in clauses (i), (ii) and (iii).

However, the persons referred in clause (i) shall not have right to vote. With regard to clauses (ii) and (iii), discretion has been given to the

Legislature of the State to provide such right to them or not.

(c) The Legislature of the State, by law, may provide the manner of election of the Chairman of the Municipality.

In this Article no specific manner either to elect the President/Vice-President or to remove them has been provided. Everything in this regard has

been left with the Legislature of the State.

11. In view of the aforesaid amendment in the Constitution, Section 9 of the principal Act was substituted in the year 1994, vide Haryana Act No.

3 of 1994 (notified on 5.4.1994) by the following Section:--

9. Composition of Municipalities.--(1) The municipalities constituted u/s 2A shall consist of such number of elected members not less than eleven

as may be prescribed by rules.

(2) Save as provided in sub-section (3), all the seats in the municipality shall be filled in by persons chosen by direct election from the territorial

constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards.

(3) In addition to persons chosen by direct election from the territorial constituencies, the State Government shall, by notification in the Official

Gazette, nominate the following categories of persons as members of a municipality:--

(i) not more than three persons having special knowledge or experience in municipal administration;

(ii) members of the House of the People and the Legislative Assembly of State, representing constituencies which comprise wholly or partly, the

municipal area; and

(iii) members of the Council of States, registered as electors within the municipal area:

Provided that the persons referred to in clause (i) above shall not have the right to vote in the meetings of the municipality:

Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of a Municipal Committee, shall have

the right to attend all the meetings of the municipality and to take part in discussion but shall not have the right to vote therein.

Further, the State Legislature made certain amendments in Section 18 which provide for election of the President and Vice-President, and in

Section 21 of the Act, which provides for removal of President or Vice-President by passing no confidence motion.

12. Section 18 of the principal Act, which provides for the election of President and Vice-president, was substituted with the following:--

18. Election of President and Vice-president.--(1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its

members to be president for such period as may be prescribed, and the member so elected shall become president of the Municipal Committee or

Municipal Council:

Provided that the office of the president in Municipal Committee and Municipal Councils shall be reserved for Scheduled Castes and women in

accordance with the provisions made in section 10:

Provided further that if the office of president is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election

for the remainder of the period shall be held from the same category.

(2) Every Municipal Committee or Municipal Council shall also, from time to time, elect one vice-president:

Provided that if the office of the vice-president is vacated during his tenure on account of death, resignation or no confidence motion, a fresh

election for the remainder of the period shall be held.

(3) The term of the office of vice-president shall be one year.

13. In Section 21, no amendment was made, except in sub-section (4) of Section 21, the words "'or appointment'" were omitted. Sub-section (3)

of Section 21 at that time reads as under:--

(3) If the motion is carried with the support of not less than two-thirds of the members of the Committee, the president or vice-president, as the

case may be, shall be deemed to have vacated the office.

14. The Haryana Municipal Election Rules, 1978 were also amended in the year 1995 vide notification dated 13.9.1995 and Rules 72-A and 72-

B were inserted in the Rules. These rules are reproduced below for ready reference:--

72-A. No confidence motion against president or vice president.--(1) A motion of

no confidence against the president or vice-president of a

committee may be made through a requisition given in writing addressed to the Deputy Commissioner, signed by not less than one third of the total

number of the members of committee:

Provided that the members who have made such a motion may withdraw the same before the meeting is convened for the purpose.

Explanation.--Any fraction under this rule shall be taken as a whole.

(2) The Deputy Commissioner or such other officer not below the rank of Extra Assistant Commissioner, as the Deputy Commissioner may

authorise, shall circulate to each member a copy of the requisition for the use of the members.

(3) The Deputy Commissioner or such other officer not below the rank of Extra Assistant Commissioner, as the Deputy Commissioner may

authorise, shall convene a special meeting by giving a notice of not less than fifteen days for the consideration of the motion referred to in sub-rule

(1), and shall preside over at such meetings:

Provided that no such meeting for the purpose shall be convened unless a period of six months has elapsed since the date of last meeting convened

for this purpose.

(4) If the motion is carried out with the support of not less than two-third of the members of the committee, the President or vice-president, as the

case may be, shall be deemed to have vacated his office.

72-B Fresh election.--If the office of the president or vice president is vacated during his tenure on account of no confidence motion, a fresh

election for the remainder of the period shall be held in accordance with the provisions contained in this Part.

Provided that if the office of President is vacated during his tenure on account of no confidence motion, a fresh election shall be held from the same

category.

15. In the year 1995, vide Haryana Act No. 3 of 1995 (notified on 17.4.1995) after first proviso to sub-section (3) of Section 9 of the Act, the

following proviso was inserted, namely:--

Provided further that the persons referred to in clauses (ii) and (iii) above shall neither have right to contest nor right to vote in the election or

removal of president or vice-president of Municipal Committee or Municipal Council, as the case may be:

16. The validity of this amendment came up for consideration before the Full Bench in Raj Pal Chhabra's case (supra). In that case the issue

before the Court was as to which of the members of the Committee would be entitled to vote in no confidence motion, whether only the elected

members of the Committee, or, even the nominated members of the Committee, nominated under clause (ii) of Section 9(3) of the Act. At that

time, Section 21(3) only provides that the no confidence motion could be carried out against the President or Vice-president with the support of

not less than two-thirds "members of the Committee". It was held by the Full Bench that the Members of the Legislative Assembly of State and

Members of Parliament, who have been nominated as members of the Committee under clause (ii) of Section 9(3) of the Act, being members of

the Committee would have the right to vote while considering no confidence motion against the President or Vice-President. Such person, who has

been nominated as member of the Committee, could not be excluded from right to vote in the no confidence motion. The amendment made by Act

No. 3 of 1995, whereby the second proviso was added to Section 9(3), debarring the persons referred to in clauses (ii) and (iii) neither having

right to contest nor right to vote in the election of the President or Vice-president of the Committee, was declared to be ultra vires Article 243R of

the Constitution.

17. When the matter was pending before the Full Bench, Section 9(3) of the Act was again amended by Haryana Act No. 18 of 1996 vide

notification dated 16.12.1996. In sub-section (3) of Section 9, clause (i) was omitted which pertains to nomination of the persons having special

knowledge or experience in municipal administration. The first proviso which provides that the persons referred to in clause (i) shall not have the

right to vote in the meeting of the Committee, was also omitted. The second proviso, which was added by amendment vide Haryana Act No. 3 of

1995, was substituted with the following proviso, which reads as under:--

Provided that the persons referred to in clauses (ii) and (iii) above shall neither have right to contest for the election of president or vice-president

nor right to vote in the meetings for the election of president and vice-president

and in special meetings for consideration of motion of no-confidence against the president or vice-president of the committee, as the case may be.

In Section 18 of the principal Act, in sub-section (1) for words "one of its members", the words "one of its elected members" were substituted. By the said amendment, sub-section (3) of Section 21 of the Act was also amended, and for words "not less than two-thirds of the members", the words "not less than two-thirds of the elected members" were substituted.

18. These drastic amendments in the Act were also brought to the notice of the Hon'ble Full Bench in Raj Pal Chhabra's case (supra), but the same were not taken into consideration on the ground that those amendments were not applicable in that case as the resolution of no confidence motion was passed on 13.7.1995 and the amendments came into force on 8.12.1996, therefore, those amendments could not be made applicable retrospectively.

19. In the year 1997, the issue with regard to participating of the nominated members in the election and passing of no confidence motion against the President or Vice-president again came up for consideration in case of Krishan Kumar Singla's case (supra) where the learned Single Judge of this Court in light of the amendment made in Sections 9, 18 and 21(3) of the Act doubted the correctness of Full Bench in Raj Pal Chhabra's case (supra). The issue was again considered by the Full Bench of this Court and it was held that as far as the amendments made in Section 9 of the Act vide Haryana Act No. 18 of 1996 were concerned, the same are unconstitutional on the same reasoning as given in Raj Pal Chhabra's case (supra). In this regard, the following observation was made:--

24. In fact what were the arguments before the Full bench in Raj Pal Chhabra's case have been incorporated by way of legislative amendment.

The amended proviso to that extent suffers from the vice of same unconstitutionally vide which the earlier provisions of Section 9 were held to be bad. We adopt the same reasoning as given in Raj Pal Chhabra's case as that is fully applicable to the facts of the present case in coming to the same conclusion. Further more it is strange that the amendment proposes to divest the members of the House of People and Legislative Assemblies or Councils of State, as the case may be, from the right of voting.

The learned counsel for the parties could hardly advance any justification for debarring these two members from the right of voting in special meetings or when a motion of no confidence is being considered in relation to President or Vice President of the Committee by the House. It appears to be totally arbitrary that these members would have right to vote in day-to-day affairs of the Committee, but would be deprived of the right to vote in the above stated meetings only.

25. Arbitrariness per se may not be a ground for adjudging the validity or otherwise of a legislative provision but when such arbitrariness coupled with the fact that the very object sought to be achieved by the Act is defeated, would have its cumulative effect on the validity of amendment of such provisions. But we have already held that exclusion or debarment of right of these elected members to a much larger constituency of which constituency of the Municipal Committee is a small part, is unconstitutional and is ultra vires of the protection given under Article 243R of the Constitution of India.

20. As far as amendment made in Section 21(3) is concerned, where the expression "not less than two-thirds members" has been replaced with the expression "not less than two-thirds of the elected members", it has been observed that the elected members would include the members who become members of the Committee by virtue of their having been elected as members of the House of People and Legislative Assembly, as the case may be, for the constituency of which the Municipal Committee is a segment. The expression "elected members" must be given its proper connotation and meaning which would help to further the object of the legislation and it was held that the nominated members who have been nominated under clause (ii) of Section 9(3) would deem to be the elected members of the Committee.

21. When the matter was pending before the Full Bench, Section 13B was inserted vide amendment by Haryana Act No. 13 of 1997, which reads as under:--

13-B. Restriction on simultaneous or double Membership.--(1) No person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously.

(2) If an elected member of the Committee is elected to the Legislative Assembly

or Parliament, as the case may be, he shall cease to continue as an elected member of the committee from the date he is declared as elected to the Legislative Assembly or Parliament, as the case may be.

22. It appears that the aforesaid amendment was not brought to the notice of the Full Bench.

23. Subsequently in the year 2000 again Section 9 was amended vide Haryana Act No. 14 of 2000 and for first proviso to sub-section (3) of

Section 9 of the Act, the following proviso was substituted, namely:--

Provided that the persons referred to in clauses (ii) and (iii) above shall not have any right to contest for the election of the president or vice-president.

24. In 2005, again Section 9(3) was amended vide Haryana Act No. 10 of 2005. Clause (i) of Section 9(3) which was omitted vide Haryana Act

No. 18 of 1996, was again inserted, and existing proviso to Section 9(3) was substituted by the following:--

Provided that the persons referred to in clause (i) above shall not have right to vote in the meetings of the municipalities and the persons referred to

in clauses (ii) and (iii) shall not have any right to contest for the election of president or vice-president.

25. In 2006, vide Haryana Act No. 26 of 2006, w.e.f. 3.10.2006, clause 14-A was inserted in Section 2 of the Act, which reads as under:--

(14-A) ""Member"" means a member of the municipality duly elected or nominated by the State Government.

26. In light of the aforesaid amendments made from time to time, the questions of law posed by us are to be considered and examined. Whether

the Members of the House of the People and the Legislative Assembly of State or the Council of States, who have been nominated as members of

the Committee under clauses (ii) and (iii) of Section 9(3) of the Act by virtue of their being members of the House of the People, Legislative

Assembly or the Council of States, can be deemed to be the elected members of the Committee? In our opinion, this aspect of law was not

properly considered by the Full Bench in Krishan Kumar Singh's case (supra) as the provision of Section 13B inserted vide Haryana Act No. 13

of 1997 appears to have been not brought to the notice of the Full Bench.

27. Section 9 of the Act deals with composition of Municipalities. Sub-section (1)

provides that the municipalities constituted u/s 2A shall consist of such number of elected members not less than eleven as may be prescribed by rules. So, the first composition of municipalities will be elected members of the Committee, the numbers of which are prescribed by rules. The sub-section (2) further provides that all the seats in the municipality, save as provided in sub-section (3), shall be filled in by persons chosen by direct election from the territorial constituencies in the municipal area. It means that except the persons nominated in sub-section (3), all the members will be chosen by direct election from the territorial constituencies of the municipal area. Subsection (3) provides that in addition to the persons chosen by direct election from the territorial constituencies, the State Government shall nominate three types of persons as members of a Committee, namely:--

- (i) the persons having special knowledge or experience in municipal administration;
- (ii) the members of the House of the People and the Legislative Assembly of State, whose constituencies fall within the municipal area; and
- (iii) members of the Council of States, registered as electors within the municipal area.

28. From time to time, the amendments were made in Section 9(3) of the Act to clear the status of these members and their right to participate in

the election of the President or Vice-president and in the special meeting convened for the purpose of considering no confidence motion against the

President or Vice-president. As far as the elected members of the Committee, who have been chosen by direct election from the territorial

constituencies in the municipal area are concerned, there is no doubt with regard to their right to participate in the election of the President or Vice-

president and to participate in the special meeting convened for the purpose of considering no confidence motion against the President or Vice-

president. The dispute remained with regard to the nominated members of the Committee. After 74th amendment in the Constitution, whereby the

Chapter of Municipality was added. Section 9 of the principal Act was substituted vide Haryana Act No. 3 of 1994. With regard to persons

nominated under clause (i), it specifically states that these persons have no right to vote in the meetings of the municipality either in conducting the

business of the Committee or in the election or removal of the President or Vice-president. As far as the nominated members falling in clauses (ii) and (iii) are concerned, nothing was stated in the said amendment. In view of the fact that the members of the House of the People and the Legislative Assembly of State have been nominated as members of the Committee and being members of the Committee they were held to be entitled to participate in all the meetings of the Committee. Thus, it was held by the Full Bench in Raj Pal Chhahbra's case (supra) that the nominated members of the Committee under clause (ii) of Section 9(3) are entitled to participate in the special meeting for considering no confidence motion against the President or Vice-President being members of the Committee, and thus for removal of the President or Vice-President no confidence motion is to be carried out by not less than two-thirds members of the Committee, i.e., the elected members and the nominated members under clauses (ii) and (iii) of Section 9(3) of the Act. The newly inserted second proviso (vide Act No. 3 of 1995) to sub-section (3) of Section 9 in so far as it debars the nominated members failing in category (ii) and (iii) from exercising the right to vote, was declared ultra vires being repugnant and contrary to the provisions, spirit and basic structure contained in Article 243R and scheme of Chapter IX-A of the Constitution of India. Though during the pendency of the matter before the Full Bench the drastic amendments were made in Sections 9, 18 and 21(3) of the Act vide Haryana Act No. 18 of 1996, but the same though were brought to the notice of the Full Bench, were not considered on the ground that those amendments cannot be made applicable in that case retrospectively. Thus, it is clear that the effect of those drastic amendments in various provisions of the Act was not considered by the Full Bench in Raj Pal Chhahbra's case (supra).

29. In the year 1997, the issue with regard to participation of nominated members in the election and passing of no confidence motion against the President or Vice-president again came up for consideration in case of Krishan Kumar Singla's case (supra). The matter was again referred to Full Bench. The learned Full Bench had taken into consideration the amendments made in Section 9 as well as in Section 21(3) of the Act. The proviso, which was inserted in place of second proviso to sub-section (3) of Section 9 vide Haryana Act No. 18 of 1996 [earlier declared as ultra

vires in Raj Pal Chhabra's case (supra)],- provided that "the persons referred to in clauses (ii) and (iii) above shall neither have right to contest for

the election of president or vice-president nor right to vote in the meetings for the election of president and vice-president and in special meetings

for consideration of motion of no-confidence against the president or vice-president of the committee, as the case may be", was again held to be

ultra vires to Article 243R of the Constitution on the same reasoning. It was held that by making such amendment the nominated members of the

Committee under clause (ii) cannot be debarred from the right of voting in the special meeting convened for the purpose of considering no

confidence motion against the President or Vice-president. As far as the amendment made in sub-section (3) of Section 21 is concerned, where

the expression "not less than two-thirds of the members" of the Committee has been substituted with the expression "not less than two-thirds of the

elected members" of the Committee, it has been observed that the elected members of the Committee naturally would include the members who

have been nominated by the State Government under clauses (ii) and (iii) of Section 9(3) by virtue of their having been elected as member of the

House of the People, Legislative Assembly of State or Council of States. Finally it was held that such nominated members would be covered by

the expression "elected members" used in Section 21(3) of the Act There is nothing in Article 243R which provides that the persons nominated as

members of the Municipality under clauses (ii) and (iii) of Article 243R(2) of the Constitution, shall be considered as elected members of the

Municipality. Rather sub-Article (1) clearly provides that "Save as provided in clause (2), all seats in a Municipality shall be filled by persons

chosen by direct election from the territorial constituencies of the Municipality". Thus in Article 243R there is no intention that nominated members

of the Committee will deem to be elected members of the Committee.

30. While giving the said construction, interpretation and meaning to sub-section (3) of Section 21, the amendment made in Section 18 of the

principal Act vide Haryana Act No. 18 of 1996, whereby in sub-section (1) the words "one of its elected members" were substituted, and the

provision of Section 13B, which was inserted vide Haryana Act No. 13 of 1997, were not considered by the Full Bench. If the nominated member

is deemed to be "elected member of the Committee", can he contest the election of the President or Vice-president and simultaneously can

maintain his position as member of the House of the People and the Legislative Assembly of State? The answer would obviously be in the negative

because the amendment made in Section 18(1) provides that every Municipal Committee can elect one of its elected members to be President of

the Committee. The nominated member cannot be elected as President or Vice-president of the Committee. It has not been considered in the Full

Bench whether the nominated member under clause (ii) of Section 9(3) of the Act can also be chosen as President or Vice-president of the

Committee.

31. This position has been further clarified by the amendment made in 2005 vide Haryana Act No. 10 of 2005, whereby in place of first proviso,

the new proviso was substituted, namely, ""Provided that the persons referred to in clause (i) above shall not have right to vote in the meetings of

the municipalities and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of president or vice-

president.

32. Sub-section (1) of Section 13B, which has not been taken into consideration by the Full Bench, clearly provides that no person shall be an

elected member of the Committee, member of Legislative Assembly of the State or member of Parliament simultaneously. The aforesaid

interpretation given by the Full Bench is contrary to these provisions because the nominated member, who is the elected member of the Legislative

Assembly of the State or the member of Parliament, cannot be held to be elected member of the Municipal Committee simultaneously. Sub-section

(2) further makes the issue clear. According to this sub-section, if an elected member of the Committee is elected to the Legislative Assembly or

Parliament, as the case may be, he shall cease to continue as elected member of the Committee from the date he is declared as elected to the

Legislative Assembly or Parliament, as the case may be. These provisions clearly mandate that one person cannot remain the elected member of

the Committee and the elected member of the Legislative Assembly or Parliament. He has to resign from the membership of the Legislative

Assembly or Parliament, otherwise on his election to the member of Legislative

Assembly or Parliament, he ceases to be an elected member of the Committee. Therefore, one person cannot simultaneously be elected member of the Committee and the elected member of the Legislative Assembly or Parliament. This aspect has not been considered by the Full Bench.

33. Further, in our opinion, a nominated member of the Committee under clauses (ii) and (iii) of sub-section (3) of Section 9, who has been nominated as member of the Committee by virtue of his office, can be considered to be member of the Committee, but in our view in light of the aforesaid provisions in Sections 18(1), 13B and 9(2), he cannot be considered and held as elected member of the Committee". Being a nominated member, even he may cast vote at the time of election of President or Vice-president, but in view of the bar created vide proviso added vide Haryana Act No. 10 of 2005 he shall not have any right to contest the election of the President or Vice-president as he is not the elected member of the Committee, and as per Section 18(1) of the Act only the elected member of the Committee can be elected as President or Vice-president.

Merely because he has a right to cast the vote in the election of President or Vice-president being nominated member, he cannot be deemed to have a right to participate and vote in the proceedings of no-confidence motion. The right to elect and the right to be elected is a statutory right, and not a common law right. It can only be conferred by statute. Further the mode and the manner of election to a post can be different from the scheme of removal of such person from that post. A member nominated under clause (ii) of Section 9(3) may have a right to participate in the process of election of the President/Vice-president, but he can be debarred by statute to participate in the process of removal of that President or Vice-president. It cannot be taken that such member cannot be debarred from taking part in the process of removal. Further in view of Section 13B of the Act a nominated member cannot be taken as an elected member of the Committee for the purpose of participating in the special meeting convened u/s 21(3) of the Act for consideration of no confidence motion against the President and Vice-president. There may be nominated members of the Committee having the right to participate in the conduct of business of the Committee, right to vote in the election of the President or Vice-president being nominated members, but such members have

no right to cast vote in the special meeting convened for the purpose of consideration of no confidence motion for removal of the President or Vice-president, as the case may be, because as per Section 21(3) of the Act a motion of no confidence can only be carried out against the President or Vice-President with the support of not less than two-thirds of the "elected members of the Committee".

34. Further, vide Haryana Act No. 26 of 2006 clause 14-A has been inserted in Section 2 of the Act which provides definition of various terms

and phrases used in "the Act". This amendment further clarify that there is a clear difference between elected members and nominated members.

Clause 14-A reads, "member" means a member of the municipality duly elected or nominated by the State Government." This clause provides

that both the elected members as well as nominated members are the members of Municipality. These two category of members, though members

of the Municipality, are different. Elected members are those persons who have been directly chosen by direct election from the territorial

constituencies in the municipal area. The members of the House of People and the Legislative Assembly, who have been elected from legislative

constituencies and nominated as members of the Committee by virtue of their nomination under clause (ii) of Section 9(3), cannot be termed as

elected members of the Committee. They are nominated members of the Committee. There is a difference between elected member of the

Committee and nominated member of the Committee as recognised in clause 14-A of Section 2 of the Act.

35. In our considered opinion, the view taken by the Full Bench with regard to the issue that the members of the House of the People and the

Legislative Assembly of State, who have been nominated as members of the Committee under clause (ii) of Section 9(3) of the Act, shall be

deemed to be "elected members" of the Committee for the purpose of participating in the special meeting convened u/s 21(3) of the Act for

consideration of no confidence motion against the President and Vice president, requires re-consideration by a larger Bench because the effect of

Sections 13B and 18(1) of the Act was not considered by the Full Bench as the same were not brought to its notice. We are conscious that

normally the decision of the larger Bench could not be questioned by a smaller

Bench as it violates the golden principles of judicial discipline, restraint and respect of the judgment of the larger Bench or Benches, but while delivering the judgment, some times the provisions of law are not brought to the attention of the Bench and the decision was given in ignorance or absence of such provisions, as such, the correctness of the larger Bench can be doubted and a request for considering the matter by a larger Bench can be made. In view of the above, let the matter be placed before Hon"ble the Chief Justice for constitution of a larger Bench at the earliest as the issue raised in the appeal is to effect a large number of cases.