

(2012) 01 GAU CK 0048

In the Gauhati High Court

Case No : W. P. (C) No's. 3974, 4574 and 4550 of 2011

Subal Rabha and etc.

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Constitution of India, 1950 — Article 243C, 243R, 243R(1), 243R(2), 243S

Citation : AIR 2012 Guw 62

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : P. Pathak, A.K. Sarma, H. Deka, Mrs. P. Gogoi, W.P. C No. 3974/11 A.M. Buzarbaruah, Dr. B. Ahmad, N. Haque, S.K. Deori, H.I. Choudhury and K. Uddin in W.P. C No. 4547/and 4550/11, for the Appellant; G.A. Assam, for Cavetor, N. Dutta, B.D. Goswami, T. Chutia, M.P. Parason, A.R. Sikdar, M. Ahmed, N. Ahmed, N.H. Talukdar and A. Hussain, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—These writ petitions are filed by the Chairman and the Vice Chairman of two Town Committees, namely, Lakhipur Town Committee and Sarthebari Town Committee, assailing the requisition notices given by the elected Commissioners and Ex-Officio Members of the Town Committees, who are the members of the Legislative Assembly of Assam and the consequent no confidence proceeding initiated against them, on the ground that the members of the Legislative Assembly of Assam, who are the Ex-Officio members of the Town Committees, have no right to issue the requisition and vote in a no confidence proceeding initiated against the Chairman and Vice Chairman of the Town Committees, they being not the elected Commissioners of such Town Committees. WP(C) No. 3974/2011 has been filed by the petitioner challenging the requisition notice dated 21.07.2011 to convene the special meeting to discuss the no confidence motion brought against him as the Chairman of the Lakhipur Town Committee. During pendency of the writ petition, the said special meeting, however, was convened and vide resolution dated 19.08.2011 the

motion expressing want of confidence on the petitioner was adopted on 19.08.2011, who is continuing to discharge the function as the Chairman by virtue of the interim order passed in the writ petition with the rider that he will not take any major decision and shall not spend the fund of the Municipality except for payment of salaries and wages to the employees and for incurring the day to day expenses for undertaking cleaning of the municipal area.

2. WP(C) Nos. 4547/2011 and 4550/2011 are filed by the Chairman and the Vice Chairman of the Sarthebari Town Committee, challenging the requisition notices dated 23.08.2011 and 24.08.2011, respectively, to convene the special meeting to discuss the motion expressing want of confidence on them. Interim orders have also been passed in these writ proceedings directing not to give effect to the resolution to be adopted in the special meeting until further order and also restraining them from taking any major decision and spending any municipal fund except for payment of salaries and wages to the employees and also for cleaning of the municipal area.

3. Since in all the writ petitions the issue involved is the same, i.e. whether the members of the Parliament (MP) and the Legislative Assembly (MLA), who are the Ex-Officio members of the Town Committees, are the Commissioners within the meaning of Assam Municipal Act, 1956 (in short the 1956 Act) and can requisition a meeting to discuss the motion expressing want of confidence and also have the right to vote in such special meeting, those are taken up together for hearing and disposal, as agreed to by the learned counsel for the parties.

4. I have heard Mr. P. Pathak, learned Sr. counsel and Mr. A.M. Buzarbaruah, learned counsel, appearing for the petitioners in the aforesaid writ petitions, the learned State counsel appearing for the State respondents and Mr. N. Dutta, learned Sr. counsel appearing for the private respondents in these writ petitions.

5. The learned counsel for the petitioners submit that Article 243R of the Constitution of India being the enabling provision to make law by the Legislature of a State, for the representation in a municipality, of persons having special knowledge or experience in Municipal Administration and the MPs and the MLAs representing constituencies, which comprise wholly or partly the municipal area, apart from others, those persons would not automatically constitute a Municipality or the Town Committee unless the State legislature makes law for their representation. Similarly the voting right to the MPs and MLAs of the State has to be specifically conferred by law to be made by the State Legislature, which voting right, however, cannot be conferred on the person appointed for having special knowledge and experience in Municipal Administration, in view of the proviso to sub-clause (2) of Article 243R of the Constitution and in the absence of any such law made by the State Legislature, the MPs and the MLAs cannot have the voting right in a no confidence proceeding brought against the Chairman or the Vice Chairman of the Municipality or the Town Committee.

6. Referring to the provision of Article 243C of the Constitution, which provides

for the similar provision relating to the representation of the MPs and the MLAs in the composition of Panchayats, it has been submitted that the Assam Panchayat Act, 1994 has been enacted, after the Constitution (73rd Amendment) Act, 1992 came into force, by empowering only directly elected members of the Anchalik Panchayat to participate and vote in the proceeding expressing want of confidence on the President and the Vice President of the Anchalik Panchayat u/s 43 of the 1956 Act, so that the character of the local self Government is not destroyed by conferring voting right on the MPs and the MLAs of the State, who will then have the power to remove the President or the Vice President of a local self Government with the help of one or two disgruntle members of the Panchayat. It has been submitted that the object of the 74th Amendment of the Constitution being to make urban local bodies able to perform effectively as a vibrant democratic unit of self Government, the Ex-Officio members of the Municipality and/or the Town Committee, i.e. the MPs and MLAs. cannot have the voting right for the purpose of removal of the Chairman and the Vice Chairman- which, therefore, has not been specifically conferred by the State Legislature in the law enacted by it and hence they cannot come within the definition of "Commissioners" for the purpose of the 1956 Act. The learned counsel submits that the object of having a vibrant democratic local self Government would be defeated if the definition of "Commissioner" u/s 3(5) of the 1956 Act is held to include not only the elected Commissioners but also the Ex-Officio members, namely, the MPs and MLAs, as in that case those Ex-Officio members with the help of one or two disgruntle elected Commissioners would be able to remove the Chairman and/or the Vice Chairman of the Municipality or the Town Committee.

7. The further submission of the learned counsel is that if the MPs and the MLAs are treated as the "Commissioner" within the meaning of Section 3(5) of the 1956 Act, it would lead to an anomalous situation, in as much as, while the MPs and the MLAs, by virtue of their office become the members of the Municipality or the Town Committee and continued to be so till they are the MPs and the MLAs, on the other hand the Government u/s 29 of the 1956 Act would have the power to remove such Commissioner and the vacancy so caused could then be filled up u/s 31 of the 1956 Act. It has, therefore, been submitted that for harmonious construction of the provisions of the 1956 Act and to avoid the absurdity, the term "Commissioner" as defined in Section 3(5) of the 1956 Act, cannot be interpreted to include the MPs and MLAs, who are the Ex-Officio members of the Municipality and/or the Town Committee.

8. Referring to a Single Bench judgment of this Court in WP(C) No. 7398/2004 (Rupjyoti Patangia & Anr. v. State of Assam & Ors.), decided on 23.12.2004, the learned counsel for the petitioners submit that the said decision requires reconsideration, in view of the submissions, as noticed above, and also as the decision was rendered mainly considering the provisions of Section 25 of the 1956 Act by holding that as under the said provision of law the Ex-Officio members are also required to take oath and become Commissioners of the

Board, they will have the voting right. The learned counsel submits that in the Act the word "Commissioner" would carry different meaning under different provisions of law and while for the purpose of Section 25 of the 1956 Act, which relates to taking of oath by the Commissioner, it includes the MPs and MLAs, for other provisions including Section 28 the definition of "Commissioner" would not include the MPs and MLAs. It has also been submitted that the cardinal rule of construction being that when in a Statute there are two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both and that a construction which renders either of them inoperative or useless should not be adopted except in the last resort. Rule of harmonious construction, according to the learned counsel, is that where there is a law generally dealing with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters comprised therein. It has, therefore, been submitted that though the definition of "Commissioner" in respect of Section 25 of the 1956 Act includes the MPs and MLAs, that would not include those Ex-Officio members in so far as the other provisions of the Act, and if, such an interpretation is given it would avoid any absurdity and ambiguity. The learned counsel in support of their contentions have placed reliance on the decision of the Apex Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, and in *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, .

9. Mr. Dutta, learned Sr. counsel appearing for the private respondent, on the other hand, submits that Section 11 of the 1956 Act has undergone a change, by way of amendment made by the Assam Act XXI of 1995, making it in conformity with the provisions of Article 243R of the Constitution, relating to the Constitution of the Municipal Board or the Town Committee, thereby making the MPs and MLAs as the Ex-Officio members of the Board/Town Committee having right to vote, which has been specifically taken away in respect of the persons appointed for having special knowledge or experience in Municipal Administration. Referring to the provisions contained in Section 25 of the 1956 Act, it has also been submitted that it is made clear that the Ex-Officio members would also become the Commissioners, as they are required to take oath along with elected members of the Board or the elected Commissioners, though in respect of the persons appointed u/s 11(2) of the 1956 Act, who are deemed to be the Commissioners for the purpose of the Act, such oath, because of having no right to vote, is not required to be taken. The learned Sr. counsel referring to the provisions contained in Section 29 of the 1956 Act submits that even the Ex-Officio members can be removed as Commissioners by the State Government in any of the eventualities as mentioned in sub-section (2) of Section 29 of the 1956 Act, which vacancy, however, cannot be filled in as provided in Section 31 of the 1956 Act. The learned counsel, therefore, submits that if the word

"Commissioner" includes the Ex-Officio members, it would not lead to an anomalous situation and absurdity.

10. Relating to the submission of the learned counsel for the petitioners that the right to vote has to be specifically conferred on the Ex-Officio members by enacting law by the State Legislature in that respect, it has been submitted that the appointment of the MPs and the MLAs as Commissioners are legislative appointment by virtue of their office, as held by a Single Bench of this Court in *Rupjyoti Patangia* (supra) and as the right to vote has not been specifically taken away, as has been done in respect of the persons appointed u/s 11(2) of the 1956 Act, the Ex-Officio members would have the right to vote and they would come within the definition of "Commissioner" u/s 3(5) of the 1956 Act. Referring to the provision of sub-section (3) of Section 336 of the 1956 Act, which provides that the Town Committee constitute for an area u/s 336 shall deem to be a Municipal Board under the Act and the notified area to be a Municipality and the member to be a Commissioner, it has been submitted that there being no difference between the Ex-Officio members and the elected members, both are the Commissioners within the meaning of Section 3(5) of the 1956 Act having right to vote and as such the Ex-Officio members will also have the right to issue the requisition for holding the special meeting to discuss the no confidence motion brought against the Chairman and the Vice Chairman of the Town Committee. The learned Sr. counsel further submits that the MPs and the MLAs being the elected representative of the people of the area concerned, the character of the local self Government would not be destroyed, if they come within the definition of "Commissioner" u/s 3(5) of the 1956 Act having right to vote in a special meeting convened for the purpose of discussing the motion expressing want of confidence.

11. The learned Sr. counsel referring to the Single Bench decision of this Court in *Rupjyoti Patangia* (supra), has also submitted that the issue involved in the present writ petitions, has in fact been answered by holding that the Ex-Officio members inducted in the Board in terms of Section 11(3)(a) of the 1956 Act are a Commissioners for all intent and purpose and the harmonious construction of Sections 3(5), 11, 25 and 29 of the 1956 Act not only affirms this view but also advances the legislative intention founded on the constitutional amendment and hence they have the right to issue the notice expressing want of confidence and also the right to vote in a special meeting convened for the purpose of discussing, the motion expressing want of confidence, against the Chairman or the Vice Chairman of the Board, which decision according to the learned Sr. counsel does not require any reconsideration, as the same was rendered, by taking into account all the relevant provisions of the Act and also the 74th Amendment of the Constitution. It has also been submitted that in any case the said decision having been followed since the year 2004 attains its finality and should not be disturbed on the ground that another view is permissible, as contended by the petitioners. The learned counsel referring to the decision of the Apex Court in *Shanker Raju Vs. Union of India (UOI)*, , submits that a judgment

which has held the field for a long time, should not be unsettled so as to maintain consistency and avoid uncertainty.

12. The learned State counsel adopting the arguments advanced by the learned Sr. counsel appearing for the private respondents and referring to the affidavit-in-opposition filed in WP(C) No. 3974/2011, submits that since the definition of "Commissioner" u/s 3(5) includes the Ex-Officio members i.e. the MPs and MLAs, they will have the right to vote, which right is not required to be specifically conferred by the State Legislature by making law in that respect, after the 74th Amendment of the Constitution. It has also been submitted that paragraphs 4 and 6 of the 2nd Schedule to the 1956 Act also makes the said position clear as the MPs and the MLAs can take part in the voting of the Chairman of the Municipal Board and the Town Committee, which Schedule automatically applies in case of a Town Committee by virtue of clause (d) of sub-section (1) of Section 336 of the 1956 Act.

13. Replying the arguments advanced by the learned Sr. counsel for the private respondents as well as the learned State counsel, it has been submitted by the learned counsel for the petitioners that the doctrine of stare decisis is not applicable in the case in hand as the judgment passed by a Single Bench of this Court in Rupjyoti Patangia (supra) is not followed for a considerable long period of time and the decision in the said judgment was not arrived at on a question, which arise or was argued. It has also been submitted that if the interpretation sought to be given by the learned Sr. counsel for the private respondents is accepted, it would give rise to a conflicting situation, which, as per the rules of interpretation of Statute requires to be avoided. The learned counsel further submit that the judgment passed by a Single Bench of this Court in Rupjyoti Patangia (supra) is per incurium as the relevant provisions of law were not taken into consideration. The learned counsel in that respect has placed reliance on the decision of the Apex Court in Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, and Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, .

14.I have considered the submissions of the learned counsel for the parties and also perused the pleadings.

15. Chapter-IXA in the Constitution of India has been inserted by the Constitution (74th Amendment) Act, 1992, which came into effect from 01.06.1993. Such amendment was brought in to make the urban local bodies a vibrant democratic unit of self Government so that they can perform effectively. Article 243R(1) provides that all seats in a municipality shall be filled by a person chosen by direct election from the territorial constituencies in the municipal area, save as provided in clause (2). Clause (2) of Article 243R enables the Legislature of a State to make law providing for representation in a municipality of (i) persons having special knowledge or experience in Municipal Administration; (ii) the members of the House of people and the members of the Legislative Assembly of the State representing constituencies, which comprised wholly or

partly the municipal area; (iii) the members of the Council of States and the members of the Legislative Council of the State Legislature as Elector within the municipal area; and (iv) the Chairperson of the Committee constituted under clause (5) of Article 243S. It also provides that the persons having special knowledge or experience in Municipal Administration would, however, have no right to vote in the meeting of the Municipality. Clause (2) also empowers the State Legislature to make law providing the manner of election of a Chairperson of a Municipality.

16. Clause (2) of Article 243R being an enabling provision to make law, the State Legislatures have to make law providing for the aforesaid representation in a Municipality and unless the same is done, the representation, as provided in Article 243R(2), of persons named in clause (2)(a) would not constitute a Municipality.

17. The Assam Municipal (Amendment) Act, 1994 (Assam Act No. XIX of 1994) was enacted to make the existing law relating to the constitution of the Municipality in Assam in consonance with the 74th Amendment of the Constitution. While the definitions of the "Commissioner" and "Municipal Board" under the 1956 Act were not amended, Section 11 of the 1956 Act has undergone a change. Under the un-amended provision of Section 11 the Municipal Board is to be constituted with the directly elected Commissioners, number of which shall be such as may by notification determine, which however, shall not be more than 30 and less than 10. It also provides for appointment of Government servants as expert advisors, who are deemed to be the Commissioners for the purpose of the Act, without, however, having the right to vote. Thus there were two types of Commissioners constituting a Municipal Board. By 1994 amendment of the 1956 Act the constitution of the Municipal Board has been changed. The Municipal Board is to be constituted with the directly elected members; the person having special knowledge or experience in Municipal Administration and the MPs and the MLAs of the State of Assam representing the constituencies which comprised wholly or partly of the municipal area, who shall be the Ex-Officio members of the Board; members of the Council of States registered as Elector within the Municipal area as well as the Chairman of the ward Committee constituted u/s 48 of the 1956 Act. Sub-section (2) of Section 11 of the 1956 Act specifically provides that the persons having special knowledge and experience in Municipal Administration. who are appointed as the Commissioners of the Municipal Board, would have no right to vote. In respect of the MPs and the MLAs of the State, who constitute the Municipal Board, it has, however, not been specifically provided that they will have no right to vote.

18. For better appreciation Section 11 as stands after the 1994 amendment, is quoted below in its entirety:

11. Number of Commissioners:

(1) The number of Commissioners of each Municipal Board shall be such as the

State Government may by notification determine in this behalf:

Provided that the number of Commissioners shall in no case be more than thirty and less than 10.

(2) The State Government may appoint persons having special knowledge or experience in Municipal Administration as members who shall have the right to attend and speak at all meetings of the Board but shall have no right to vote. Such persons shall not be deemed to be Commissioners for the purpose of this Act.

(3) (a) The Member of the House of the People and the Legislative Assembly of the State of Assam representing the Constituencies which comprise fully or partly of the Municipal Area, shall be the Ex-Official Members of the Board.

(b) The members of the Council of States registered as Elector within the Municipal area shall be the Ex-Official Members of the Board.

(c) Chairman of the Ward Committee constituted u/s 48.

(d) Reservation of seats in every Municipality for the Scheduled Castes and the Scheduled Tribes and the member of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or the Scheduled Tribes in the Municipal area bears to the total population of that area as per the latest census figures and such seats may be allotted by rotation to different Constituencies in a Municipality.

Provided that not less than one third of the total number of seats reserved under this sub-section shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes:

Provided further that not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in any Municipality shall be reserved for women and such seats may be allotted by rotation to different Constituencies in a Municipality:

Provided further that reservation of seats for the Scheduled Castes and Scheduled Tribes in the Municipalities and Scheduled Tribes in the Municipalities and Town Committees shall continue for so long as special representation for the Scheduled Castes and the Scheduled Tribes continue to be provided for in the Constitution of India.

(4) The Scheduled Castes and Scheduled Tribes specified under Articles 341 and 342 of the Constitution of India and the social and educationally Backward Classes as notified from time to time by the State Government shall be deemed to be the Scheduled Castes, Scheduled Tribes and the socially and educationally Backward Classes respectively within the meaning of this Act.

19. As noticed above, by 1994 amendment of 1956 Act, no change has been brought in to the definition of "Commissioner" u/s 3(5) of the 1956 Act or the "Municipal Board", as defined in Section 3(27) of the 1956 Act. No change has also been brought in to Section 29 of the 1956 Act, which confers power on the State Government to remove any elected Commissioner or any Commissioner, subject to fulfillment of the conditions stipulated therein. By 1994 amendment the power of the State Government to remove a Chairman appointed by it at any time, as provided in sub-section (1) of Section 28, has, however, been taken away. The existing sub-sections (2) and (3) of Section 28 have, however, not been amended. Sub-section (2) of Section 28 provides for removal of the elected Chairman or Vice Chairman from his office by a resolution of the Board adopted at a meeting specially convened for that purpose by not less than half of the whole number of Commissioners giving their votes in favour of such resolution. Section 24 of the 1956 Act, which empowered the State Government to appoint Commissioners in newly created municipalities, until the general election is held, has also been deleted by the 1994 amendment. Consequent to the amendment of Section 11 of the 1956 Act by the 1994 amendment. Section 25 of the 1956 Act relating to taking of oath, has also been amended, providing for taking oath by the Ex-Officio members of the Board i.e. MPs and the MLAs, who become the Commissioners of the Board by virtue of their office. Section 43 of the 1956 Act, which deals with the ordinary or the special meeting of the Board, including the "special meeting called on a requisition signed by not less than three of the Commissioners, has also not been amended by 1994 amendment. Section 335 of the 1956 Act provides for constitution of the Town Committee for each of the area notified u/s 334(1). Section 336(1)(d) of the 1956 Act stipulates, which of the provisions of the Act would automatically apply to the notified areas i.e. the Town Committees. By virtue of the said provision, the entire Section 3, sub-sections (2) and (3) of Section 11, Section 28 and Section 43 apart from others are automatically made applicable to the Town Committees. Sub-section (3) of Section 336 also provides that for the purpose of any provisions of the Act which may be extended to a notified area or which are automatically applicable to the notified areas, the Town Committees constituted for such an area u/s 335 shall be deemed to be a Municipal Board under the Act, the notified area to be a Municipality and the member to be a Commissioner.

20. The question which requires determination in the present writ proceedings, in view of the 1994 amendment of the 1956 Act brought in to make it in consonance with the provisions of Article 243R of the Constitution, as noticed above, is whether the MPs and the MLAs of the State, who become the Ex-Officio members of the Municipality/ Town Committee by virtue of sub-section (3)(a) of Section 11 of the 1956 Act, would be the Commissioners of the Municipality/ Town Committee, having right to vote and consequently the right to give requisition to convene the special meeting to discuss the no confidence motion brought against the Chairman or the Vice Chairman of a Municipality/Town Committee.

21. It is a settled position of law that the right to elect i.e. the right to vote and the right to be elected is a statutory right. It is neither a common law nor fundamental right. There is also no dispute to the proposition of law that the mode and manner of election to any post could be different from the scheme of removal of a person from that post. However, whether a person has been conferred with the right to vote, right to be elected and how an elected person can be removed from the post, are to be examined on the basis of the provisions of the relevant Act.

22. The settled principles of interpretation of Statute are that the Court must proceed on the assumption that the legislature did not make any mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. The Court, however, would not go to correct or make up deficiency if there is any defect or omission in the words used by the legislature. The Court also cannot add words to a Statute or read words into it. which are not there, especially when the literal reading produces an intelligible result. The Court also cannot add the legislature's defective present of an Act, or add and mend and. by construction make up deficiencies which are there. [Dadi Jagannadham Vs. Jammulu Ramulu and Others, . It is also the well settled principle of rule of harmonious construction that effect should be given to all the provisions and such construction that reduces one of the provisions to a dead letter should not be given.

23. As discussed above, Article 243R of the Constitution brought about a change in the manner of composition in the municipal board or town committee and it also lays down the guidelines with regard to the constitution, composition, election and rights of the members of the municipality. Such amendment to the Constitution has been brought in to make the urban local bodies a vibrant democratic unit of self Government, which was found to be not able to perform effectively. Changes in the 1956 Act were accordingly brought in by 1994 Amendment Act to make the provisions of the said Act in consonance with the 74th Amendment of the Constitution.

24. Section 3(5) of the Act. which defines "Commissioner" as the persons for the time being appointed or elected to conduct the affairs of any Municipality under the Act as well as Section 3(27), which defines the "Municipal Board" as the body of persons for the time being elected or appointed to conduct the affairs of the Municipality under the Act, which have not undergone any change after 1994 amendment, are to be read in the context of the provisions of the Act, as stood after the 1994 amendment. Prior to 1994 amendment the State Government had the power to appoint the Commissioners in newly created Municipalities after passing of the Act until the general election is held, u/s 24 of the 1956 Act. Similarly, the State Government u/s 33(1) of the 1956 Act had the power to appoint the Chairman of the Board of every Municipality. Those powers, however, were taken away by 1994 Amendment Act and thus the power to appoint the

Commissioner as well as the Chairman, which earlier vested on the State Government have been done away with. The State Government, however, can appoint Commissioner under sub-section (2) of Section 11, i.e. the persons having special knowledge and experience in Municipal Administration, who will not have the right to vote.

25. As noticed above, the provisions of 1956 Act was amended by Assam Act No. XIX of 1994 in so far as the constitution of the Municipal Boards is concerned, in consonance with the 74th Constitutional amendment. Prior to 1994 amendment of the 1956 Act, the MPs and MLAs do not constitute the Municipal Board. After the said amendment sub-section (3) inserted in Section 11 of 1956 Act providing that the MPs and MLAs shall be the Ex-Officio members of the Board. The terra "Ex-Officio", as defined in Webster Law, Dictionary (7th Edition) means - by virtue or because of an office; by virtue of the authority implied by office. The MPs and MLAs representing the constituencies which comprise fully or partly the municipal area, therefore, become the members of the Board by virtue of they being the MPs or MLAs, which is automatic. No further order is required to be made by the State Government appointing them as members of the Municipal Board, as they automatically become the members of the Municipal Board by operation of sub-section (3)(a) of Section 11 of the 1956 Act. Section 11(3)(a) is not the enabling provision for the State Government to appoint the MPs and MLAs as members of the Municipal Board and they become the members by operation of law and as soon as they are elected as MPs or MLAs and they take the oath of office. The contention of the learned counsel for the writ petitioners that unless the MPs and MLAs are appointed by the State Government, by virtue of the power conferred u/s 11(3)(a) of the Act, they do not automatically become the Commissioners of the Municipal Board/Town Committee, therefore, cannot be accepted and hence rejected.

26. Section 11 of the 1956 Act, as stood after 1994 amendment, as discussed above, create three types of Commissioners constituting the Municipality/Town Committee, namely, the elected Commissioners, the appointed Commissioners and the Ex-Officio Commissioners. While sub-section (2) of Section 11 of the 1956 Act, in consonance with the proviso to clause (2) of Article 243R of the Constitution, has specifically taken away the right to vote by a Commissioner appointed having special knowledge in Municipal Administration, neither sub-section (1) nor sub-section (3) of Section 11 of the Act either specifically conferred on or taken away the right to vote from the elected Commissioner or the MPs and the MLAs, who automatically become the members of the Board by virtue of their office. That does not mean that the elected Commissioners would have no right to vote unless specifically conferred by the Act. The object of 74th Amendment of the Constitution being to make urban local bodies able to perform effectively as a vibrant democratic unit of self Government, and the legislature having thought it fit to make the MPs and MLAs the Commissioners of the Municipality, who are the elected representatives of the area, they cannot be deprived from the right to vote in the Municipal Board and/or the Town

Committee, whose right to vote has not been specifically taken away as has been done in case of the Commissioner appointed under sub-section (2) of Section 11 of the 1956 Act.

27. Such interpretation has also the support from the provisions contained in Section 25 of the 1956 Act which differentiate the elected Commissioner and the Ex-Officio Commissioner u/s 11(1) and 11(3), respectively, on one hand and the Commissioner appointed u/s 11(2) on the other hand. Sub-section (1) of Section 25 requires the elected Commissioners and the MPs and MLAs, who become the Commissioners by virtue of office to take oath or affirmation. Such oath or affirmation is not required to be made in respect of the Commissioners appointed u/s 11(2) of the Act. The scheme of the 1956 Act, as stood after 1994 amendment, does not make any differentiation between the elected Commissioner and the Ex-Officio Commissioner.

28. The contention of the learned counsel for the petitioners that if the MPs and the MLAs are allowed to be a signatory to the notice requisitioning a special meeting to discuss the no confidence motion against the Chairman and the Vice Chairman and to participate in such proceeding, it would defeat the very purpose of empowering the local self Government to manage its own affairs by the elected members, cannot be accepted, in view of the object of the 74th Amendment of the Constitution of making the urban local bodies a vibrant democratic unit of self Government, providing for the participation of the elected MPs and MLAs in their respective urban local bodies, who are also elected in a process wherein the electors, who elected the Commissioners of the Municipality/ Town Committee, have also participated.

29. The other contention of the learned counsel for the petitioners that if the Ex-Officio Commissioners i.e. the MPs and the MLAs are treated as Commissioners within the meaning of Section 3(5) of the 1956 Act, it would lead to an anomalous situation, in view of the fact that though they cannot be removed as Ex-Officio Commissioners for being the Commissioners of the Municipality because of the office held by them, the State Government would have the power under sub-section (2) of Section 29 to remove them as Commissioners, also cannot be accepted as the State Government in any case in exercise of the power conferred by subsection (2) of Section 29 can remove any Commissioner, which includes the elected Commissioner as well as the Ex-Officio Commissioner on any of the eventualities mentioned in clauses (a) to (g). In that eventuality, there is, however, no question of fill up the vacancy caused due to removal of the Ex-Officio Commissioner u/s 31 of the 1956 Act.

30. The Apex Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, has opined that the rule harmonious construction requires that when there are in a Statute two provisions which are in conflict with each other such that both of them cannot stand. they should, if possible, be so interpreted that effect can be given to both and that a construction which renders either of them inoperative or useless should not be adopted except in the last resort. As

discussed above, if the term "Commissioner" as defined in Section 3(5) is interpreted to have included the Ex-Officio members, there would not be any conflict in different provisions of the 1956 Act and it would also not make any provision of the said Act inoperative or useless. The Apex Court in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, and *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, , on which the learned counsel for the writ petitioners placed reliance, has opined that as per the rule of construction the general provisions always yield to the special provisions. In the instant case, as discussed above, the provisions contained in Section 25 of the 1956 Act which requires making the oath or affirmation by both the elected Commissioner and the Ex-Officio Commissioner cannot be treated as the special provisions for the purpose of taking oath only by the Commissioners. There would not be any conflict between any provisions of the 1956 Act if the word "Commissioner" is interpreted to include the Ex-Officio Commissioners i.e. MPs and MLAs also.

31. Having regard to the rule of statutory interpretation and what has been discussed above, I am of the view that the MPs and the MLAs who become the Commissioners of the Municipal Board and/or the Town Committee, by virtue of their office, are the Commissioners within the meaning of Section 3(5) of the Act. Any interpretation contrary to that would not advance the legislative intention of the 1994 amendment of 1956 Act made in consonance with the 74th Constitutional amendment.

32. A Single Bench of this Court in *Rupjyoti Patangia* (supra) while dealing with the question as to whether the "Commissioner" as defined in Section 3(5) of the 1956 Act includes the Ex-Officio members, has held that the MPs and the MLAs of the State of Assam as comprehended in Section 11(3)(a) of the 1956 Act, are Commissioners by legislative appointment by virtue of their office. Taking note of the definition of "Commissioner" u/s 3(5) as well as the provision of Sections 11, 25 and 29 apart from the provisions of Section 43(2) of the 1956 Act, it has been held that the Ex-Officio Commissioners, namely, the MPs and the MLAs can issue a notice to convene a special meeting to discuss the no confidence motion against the Chairman or the Vice Chairman of the Municipality and can participate and vote in the proceeding for removal of the Chairman or the Vice Chairman under sub-section (2) of Section 28 of the said Act, which view, I fully agree for the reasons recorded above. In view of the aforesaid discussion the decision cited by the learned counsel for the parties on the doctrine of stare decisis and per incurium, are not discussed being not required. For the aforesaid discussion, I do not find any merit in the present writ proceedings and hence those are dismissed. No costs.