

(2015) 10 KAR CK 0211
In the Karnataka High Court
Case No : W.A. Nos. 200299-300/2015 (LB-RES)

Sultan Ali and Others

APPELLANT

Vs

Shahajaha and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 243, 243(P)(e), 243-P(e)
Karnataka Municipal Corporations Act, 1976 — Section 7

Citation : (2015) 10 KAR CK 0211

Hon'ble Judges : B. Sreenivas Gowda, J; A.V. Chandrashekara, J

Bench : Division Bench

Advocate : Sachih M. Mahajan, for the Appellant; G.R. Gurumath and R.J. Bhusare, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J—These intra-court appeals are directed against the final orders passed by the learned single Judge in W.P. Nos. 201399/15 and 201754/15 (LB-RES) on 26.8.2015.

2. By virtue of the said final order dated 26.8.2015, the no-confidence motion adopted by the City Municipal Council of Basavakalyan, Bidar District, on 28.1.2015 expressing no-confidence motion against the 1st respondent, Smt. Shahjaha, President of the Council is set aside. It is clarified that as the no-confidence motion is void, the second proviso to sub-section (9) of Section 42 of the Karnataka Municipalities Act, 1964, (hereinafter referred to as the Act, for brevity) will not come in the way of elected councillors for moving a fresh motion of no-confidence motion against Smt. Shahjaha.

3. The facts leading to the filing of the writ petitions before the learned single Judge and consequently the writ appeals are as follows:

"a) The city of Basavakalyan in Bidar district has a population of not less than 50,000 and below 1,00,000. Therefore the number of councillors to be elected

from the different wards of the city, as per the table appended to Section 11 of the Act, is 31.

b) A Member of Legislative Assembly (MLA, for short) of Basavakalyan constituency and a Member of Parliament (MP, for short) of Bidr constituency are ex-officio councillors of the City Municipal Council, Basavakalyan.

c) The 1st respondent-Smt. Shahjaha was elected as President of the Council in the election held on 26.3.2014. Later on 8.2.2015, 12 members of the Council had brought a no-confidence motion against Smt. Shahjaha and since it satisfied all the legal requirements, the Commissioner of City Municipal Council, Basavakalyan convened a Special General Body Meeting on 28.1.2015 for carrying out no-confidence.

d) All the 33 councillors including the MLA and MP were present and participated in the no-confidence motion brought against Smt. Shahjaha. 22 members voted in favour of the no-confidence motion and 11 members voted against it. Since 22 members constituted 2/3rd majority of the members present and voted, Smt. Shahjaha was unseated from the post of President of City Municipal Council, Basavakalyan.

e) Being aggrieved by the acceptance of such no-confidence motion, Smt. Shahjaha and Sri Abdul Gaffar, Vice President, chose to file a writ petition under Article 226 of the Constitution of India in W.P. Nos. 201399/15 and 201754/15 before the learned single Judge of this court. According to them, the resolution was vitiated as the elected MLA and MP did not have a voting right in the meeting of no-confidence motion for removal of the president and that the two votes so cast by them are invalid and if two votes are ignored, the majority would fall short of 2/3rd and therefore, there was no valid acceptance of no-confidence motion. The MLA and MP who had participated in the no-confidence motion were also arrayed as respondent Nos. 6 and 7 respectively in the writ petitions.

f) Pursuant to the removal of Smt. Shahjaha as president, Smt. Zaibun Bi (2nd appellant herein) was duly elected as president on 13.2.2015. Of course the learned single Judge had permitted fresh election to go on subject to the final result of the writ petitions. Ultimately the learned single Judge has chosen to allow the writ petitions and has quashed the resolution of no-confidence motion passed by the City Municipal Council unseating Smt. Shahjaha from the post of President.

g) Being aggrieved by the said order dated 26.8.2015, these appeals have been filed. Several grounds have been urged in the appeal memo filed before this court under Section 4 of the Karnataka High Court Act."

4. The gist of the grounds urged by the petitioners therein before the learned single Judge are as follows:

"I) The Commissioner, City Municipal Council, Basavakalyan, had no right to issue

the notice of no-confidence motion to the elected MLA and MP calling upon them to attend the special general body meeting on 28.1.2015 since they have no voting right;

II) The MLA and MP are only nominated members in the City Municipal Council and have no right to vote in favour or against the no-confidence motion held on 28.1.2015; III) The Commissioner, City Municipal Council, did not consider properly the provisions of Section 2(6) of the Act which defines "councillor." Only elected councillors would be entitled to cast their vote.

IV) The Commissioner had not gone into the provisions of Sections 2(6), 42(9) and 11 of the Act which clearly mandate that in order to quantify the total number of councillors, it was only councillors who were eligible to vote."

5. Before the learned single Judge, Mr. G.R. Gurumath, learned counsel representing the petitioners had submitted that the elected members of Lok Sabha and Vidhan Sabha referred to in Section 11(1)(c) of the Act are not councillors and therefore, the votes cast by them should not have been taken into account and if that is excluded, there was no 2/3rd majority to unseat the president. He has relied on a decision of the Division Bench of this court in the case of Smt. Chandubi v. The Deputy Commissioner in W.P. No. 12320 of 1997 (DD 10.12.1997) and also another Division Bench decision of this Court in Smt. Savitri Vs. The State of Karnataka and Others, (2003) ILR (Kar) 4653 . According to him, elected MLAs or MPs are not councillors within the meaning of Section 2(6) read with Section 11 of the Act.

6. The learned judge has held in paragraph 9 of the impugned order that persons referred to in Section 11(1)(c) and (d) are not recognized as councillors anywhere in the act and that if the intention of the Legislatures was to treat them as councillors, it would have made a provision to that effect in the very Act. Therefore, it is held that only elected councillors have the right to participate in the no-confidence motion against the president or vice president. It is further held in paragraph 11 that though the members of Lok Sabha and Vidhan Sabha and Rajya Sabha and Vidhan Parishat referred to above have a right to vote in general meetings of the Council, in view of the proviso to Section 11(1) of the Act, they have not been conferred the right to vote in a special general body meeting under Section 42(9) of the Act for removal of an elected president by way of no-confidence motion. It is further observed that their presence will unduly influence the elected councillors present at the meeting and their presence in the meeting will make the no-confidence motion illegal and void.

7. We have heard learned counsel, Mr. Sachin Mahajan representing the appellants, Sri G.R. Gurumath, learned counsel representing respondents 1 and 2, Mr. Vilaskumar, learned Govt. Advocate representing respondents 3 and 4, i.e. State of Karnataka and Deputy Commissioner, learned counsel representing City Municipal Council, Basavakalyan arrayed as respondent No. 5 and Mr. Ambekar, learned counsel representing respondents 6 and 7, elected MLA and MP, at

length. Learned counsel for the parties have referred to various decisions in support of their respective contentions.

8. The principal submissions made by Mr. Sachin Mahajan representing the appellants is that the order passed by the learned single Judge is contrary to law and that Section 11 of the Act makes it abundantly clear that only nominated members of the Council who are mentioned in clause (b) of Section 11(1) of the Act are ineligible for voting. According to him, on a conjoint reading of sub-section (6) of Section 2 and Sections 11 and 49 of the Act, it becomes clear about the right of MLAs and MPs in voting. It is his case that Article 243R of the Constitution of India has inhibited only the nominated members from having voting right, but ex-officio members being elected representatives of a larger constituency which includes the city of Basavakalyan, have a right to vote. He has vehemently argued that even the Constitution of India guarantees MLAs and MPs the right to vote, whether in a special or general meeting.

9. He has relied on a decision rendered in the case of CHANDU BI (supra) to contend that though the point formulated for consideration in the said decision was in regard to quorum, and in essence the Division Bench has indirectly accepted the voting right of MPs and MLAs. He has relied on a decision of the Hon"ble apex court in the case of Ramesh Mehta Vs. Sanwal Chand Singhvi and Others, AIR 2004 SC 2258 : (2004) 1 JT 275 Supp : (2004) 5 SCALE 27 : (2004) 5 SCC 409 : (2004) 1 SCR 418 Supp : (2004) 2 UJ 1307 : (2004) AIRSCW 2586 : (2004) 3 Supreme 712 to contend that the provisions of the Act will have to be read in the light of the revolutionary amendments brought out to the Constitution in the year 1994 to Article 243. He has further argued that even otherwise, the scheme of the Karnataka Municipalities Act and amendments carried out from time to time specifically demonstrate that MLAs and MPs do have a voting right in city municipal council meetings, whether general or special.

10. Mr. Vilaskumar, learned Govt. Advocate representing the State of Karnataka and Deputy Commissioner, has relied on the commentary by Dr. D.D. Basu Eighth Edition, Vol. 8. It is brought to the notice of this court the object and reasons for amending Article 243 of the Constitution by inserting sub-article R in the year 1994. The purpose, according to Mr. Vilaskumar, sought to be achieved is to give to the members of Legislatures and Parliament a right not only to participate, but also to exercise their vote in the council meetings and thereby strengthening the democracy.

11. He has relied on a decision of the Constitutional Bench in the case of Kuldeep Nair v. Union of India (AIR 2006 SC 3048). He has argued that in the case of RAMESH MEHTA (supra) decided by a Bench consisting of 3 Hon"ble Judges, the voting right of an elected MLA or MP has been taken note of while arriving at 2/3rd majority, in the event of no-confidence motion being moved.

12. Mr. Ambekar, learned counsel representing the elected MLA and MP, has relied on Sections 52(1), 42(9), 11 and 2(6) of the Act to contend that Section

52 of the Act provides voting rights to all councillors and that right is subject to the restrictions found in the other sections namely Section 11 and 42(9). It is argued that if the argument of Sri Gurumath were to be accepted that in the light of voting right not being specifically conferred on MLAs and MPs, even elected councillors do not have any specific voting right under the Act, it leads to absurdity. He has argued that the statute should be harmoniously interpreted which provides for achievement of the purpose of the Act. It is his case that such harmonious interpretation will have to be made in the light of amendments made to Article 243 of the Constitution. He has argued that Section 47-A of the Act had been introduced in the year 1984 providing an opportunity for the MLAs and MPs to participate in Municipality meetings, but without any voting right. This section was deleted while amending Section 11 of the Act in the year 1994 and therefore the earlier restriction imposed on the MLA in the matter of voting right being taken away, is given up and thus, they have been conferred with the right of voting.

13. The principal submissions made by Mr. Gurumath, learned counsel for respondents 1 and 2 are as follows:

"A) No voting right can be conferred without there being any positive provision under the statute and that is absent in the Karnataka Municipalities Act.

B) The judgment rendered by the Division Bench of Dharwad Bench of this court in the case of A.G. Kiran & Others v. State of Karnataka (W.A. 100469/14 dated 9.4.2015) is per incuriam since it has not referred to Chandu Bi's case or Ramesh Mehta's case."

14. It is argued that the right to vote is neither a constitutional right or a right in common law, but only a statutory right. Therefore, the statute must specifically confer such voting right. It is argued that in the case of RAMESH MEHTA, the Legislature of Rajasthan has conferred specific voting rights on MLAs and MPs. It is argued that in the case of Chandu Bi, the Division Bench has specifically held that it is only the elected councillors who are entitled to vote and therefore, the law laid down in the said decision is deemed to have been accepted by the Hon"ble apex court in the case of RAMESH MEHTA. The participation of persons other than the elected Councillors/Corporators, according to him, in the functioning of the Municipality or the Corporation will militate against the concept of self governance as defined in Article 243(P)(e) of the Constitution of India which has come into effect on 01.06.1994 (74th Amendment), and therefore, participation of elected MLAs and MPs in the Municipalities will erode the concept of self-governance.

15. In reply to the submissions of other learned counsel, Mr. Gurumath submits that Section 52 of the Act does not control Section 42 since Section 42 has been specifically saved in Section 52. The observations made in paragraphs 19 and 22 in the case of RAMESH MEHTA cannot be read in isolation to arrive at a decision to hold that MLAs and MPs do have voting right, is another limb of his argument.

16. The law laid down in the case of RAMESH MEHTA is by necessary implication the law laid down under Article 141 of the Constitution to the effect that ex-officio members have been conferred with express voting rights and their presence cannot be taken to compute 2/3rd of the total members, is his argument.

17. After hearing the learned counsel for the parties and perusing records, the following points arise for consideration in these appeals:

"1) Whether MLAs and MPs do have a voting right in meetings, whether special or general, of the City Municipal Council as per the provisions of the Karnataka Municipalities Act, 1964, which has stood amended from time to time?

2) Whether any interference is called for, and if so, to what extent?"

REASONS

18. Point No. (1): It is argued before this court by Sri Gurumath representing the 1st respondent that the right to vote is neither a Constitutional right nor a right in common law, and it can be exercised only when the statute provides for the same. He has argued that there is no specific provision enabling MLAs and MPs to cast their vote in the meetings of the Town Municipality or City Municipal Council, under the provisions of the Karnataka Municipalities Act, 1964. He has relied on the relevant provisions found in Section 9 of the Rajasthan Municipalities Act, 1959. In paragraph 5 of the decision rendered in the case of RAMESH MEHTA (supra), the Hon'ble apex court has taken cognizance of the provisions of Section 9 of the Rajasthan Municipalities Act as it stood prior to the amendment carried out in the year 1994 and thereafter. The provisions of Section 9 is referred to in paragraph 5 at page 416 of the judgment which is reproduced below:

"5. Before advertng to the arguments advanced on both sides, we reproduce herein below the relevant provisions of the said Act (post 1994).....

"9 Composition of Boards (1)

.....

Subject to the provisions contained in the succeeding sub-sections, but save as provided in the following provisions of this sub-section, all seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies known as wards, the number of such seats, not being less than thirteen, being fixed by the State Government from time to time by notification in the Official Gazette.

(a) the following shall be represented on the Board, Council or Corporation, as the case may be, viz.--

(i) a member of the Rajasthan Legislative Assembly representing a constituency which comprises wholly or partly the area of a Municipality; and

(ii) three persons or ten percent of the number of elected members of the Municipality, whichever is less, having special knowledge or experience in municipal administration, to be nominated by the State Government by notification in the Official Gazette: Provided that-

(i) the provisions contained in Section 26 and Section 59 of this Act shall be applicable to the persons to be nominated or nominated under sub-clause (ii);

(ii) the State Government shall have power to withdraw a member nominated under sub-clause(ii) at any time;

(iii) the term of co-opted members, if any, who were co-opted and are continuing as such on the date of commencement of the Rajasthan Municipalities (Second Amendment) Act, 2000 (Act 22 of 2000) shall come to an end upon such commencement:

Provided further that a member referred to in sub-clause (ii) shall not have the right to vote in the meetings of a Board, Council or Corporation as the case may be;

(b) a member of the House of the People representing a constituency which comprises wholly or partly the area of a Municipality with a Municipal Council or as the case may be, a Municipal Corporation shall be represented on the Council or Corporation of such Municipality;

Provided that a member referred to in sub-clause (I) of clause (a) shall have a right to vote in the meetings of a Board, Council or Corporation and a member referred to in clause (b) shall have a right to vote in the meetings of a Council or Corporation.

It is argued that no analogous provision is found in the Karnataka Municipalities Act, 1964 or the City Corporations Act, 1976 and therefore, though MLAs or MPs are elected, they are not "councillors" within the definition of Section 2(6) of the Act to exercise the right of voting.

19. Further reliance is placed upon the observation made by the Hon"ble apex court in the case of RAMESH MEHTA in paragraph 22 of the judgment at page 425 which is reproduced below:

"A right to contest election although arises under a statute but having regard to the Constitution (Seventy-fourth) Amendment Act, the interpretation thereof must be made keeping in view the constitutional scheme. Democracy at the grass-root level was sought to be introduced by reason of the said amendment in the Constitution. Once the concept of a grass-root democracy is accepted, a pragmatic and purposive meaning to the provisions of the Act must be assigned."

In paragraph 10 of the same decision, i.e. Ramesh Mehta's case, it is specifically observed that the right to elect and right to be elected is a statutory right and the mode and manner of election to any post could be different from the scheme for the removal of a person from that post. It is clarified that in each case, the

statute in question has to be examined.

20. The basic scheme of the Karnataka Municipalities Act as it stood prior to the 74th amendment to the Constitution by inserting sub-article (R) to Article 243 and thereafter will have to be looked into. The legislative intention is that the office of the president and vice president shall stand vacated on passing of no-confidence motion by the members of the Board who are entitled to vote. Prior to 1994, even members nominated to the Municipality by the Government had the right to vote and that is now taken away by virtue of the proviso found in sub-article (2) of Article 243R of the Constitution.

21. Article 243R of the Constitution speaks about composition of municipalities and is extracted below:

"243R. Constitution of Municipalities

1) Save as provided in clause (29), 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 the 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.

Thus the Government has right to appoint persons having special knowledge or experience in Municipal administration and they will also be councillors having right to participate and deliberate in the meetings. But the proviso found in the said provision inhibits them from exercising their vote in meetings of Municipality.

22. What is argued before this court by learned Govt. Advocate, Mr. Vilaskumar is that in the light of specific inhibition found in the proviso to sub-article (2) of Article 243R in respect of nominated members to exercise their vote in the meetings of the Municipality, a reasonable inference that could be drawn is, that

all other persons namely elected councillors and elected members of the State Assembly and of the House of People representing the whole or part of the municipality and the members of the council of states within the municipal area, have a specific right to vote. He has argued that without there being any legal or constitutional prohibition insofar as MLAs and MPs are concerned in the matter of exercising their right to vote in municipality meetings, the learned single Judge has misdirected himself in holding that it will not be permissible for them to attend the general body meeting.

23. He has relied on a Division Bench decision of a co-ordinate Bench of this court in the case of *Kiran Krishnarao Saynak & Others v. State of Karnataka and 3 Others* in W.A. 100469/14 (LB-ELE) disposed of on 9.4.2015 by the Dharwad Bench. There also it had been contended before the learned single Judge that MLAs cannot participate in the election of Mayor/Deputy Mayor as per the provisions of the Karnataka Municipal Corporations act, 1976. The said contention was not accepted by the learned single Judge and the writ petition came to be dismissed as against which a writ appeal was filed and the said appeal also came to be dismissed. What is held in the said Division Bench decision is that, earlier inhibition found insofar as it relates to MLAs in casting vote in the meetings of the Corporation or standing committee was removed by Act No. 36/94 which came into effect from 1.6.1994 and therefore, a reasonable inference is that elected MLAs have been conferred with the right to vote.

24. Putting Section 7 of the Karnataka Municipalities Act in juxtaposition with the earlier Section 9, the Division Bench has held as follows:

"11. Scanning of the omitted Section 9 and the existing Section 7, post omission of Section 9 in juxtaposition, shows that the legislature in its wisdom has defined the Corporation as a body consisting of persons defined therein including Members of the House of people and Members of the State Assembly. Section 10 of the Act extracted herein above mandates elections of the Mayor and the Deputy Mayor in the first meeting. The provision of Section 7(1) excludes only such class of persons falling under Section 7(1)(b) from voting in the meeting of the Corporation. Therefore, the contention urged on behalf of the appellant that participation of MLAs and MPs in the meeting is different from right to vote in a meeting is incongruous. The legislature has excluded only the persons mentioned in Section 7(1)(b) from voting in a meeting. The corollary of Section 7(1)(b), shall only mean that all persons who are bracketed in sub-clause (a), (c) and (d) of Section 7(1) of the Act shall have a right to vote in the meeting. Further, the mandated of Section 10 that the Mayor and the Deputy Mayor are required to be elected in the first meeting shall also mean without any scope for ambiguity that the election is required to be conducted in the first meeting and except those persons mentioned in Section 7(1)(b), all persons shall have a right to vote in the first meeting."

Further in paragraph 13 of the decision in the case of *Kiran Krishnarao*, it is held as under:

"13. It is now fairly well settled that the orthodox function of an explanation is to explain the meaning and effect of the main provision and to clear up any doubt or ambiguity in it. However, ultimately it is the intention of the legislature, which is paramount and mere use of a label cannot control or deflect such intention. It must be remembered that the legislature has different ways of expressing itself and in the last analysis the words used by the legislature alone are the true repository of the intent of the legislature and they must be construed having regard to the context and setting in which they occur. Therefore, even though the provision in question in the case on hand has been called an Explanation, we must construe it according to its plain language and not on any other considerations."

25. Thus the basic rules in regard to interpretation of statutes is that the amendment in the legislation must be decisive in regard to the intention of the Legislature as to whether it intended to alter any law. That right to elect and right to be elected is a statutory right and the mode and manner of election may be different from the scheme of removal of elected candidate.

26. In the light of the same, it is better to extract the relevant provisions of the Karnataka Municipalities Act. It is also better to have a look at Section 47-A of the Act which was introduced by Act No. 33/84 which came into effect from 26.6.1984. It is also better to note the objects and reasons of the amendment effected to the Act from time to time. Section 3 of the amended Act (Karnataka Act No. 33/84) under which Section 47-A was inserted, speaks about the participation by legislators in municipal council meetings. Section 47-A is as follows:

"47-A. Participation by legislators:

A member of the State Legislative Assembly representing a part or whole of a municipality and members of the State Legislative Council residing in the area shall be entitled to attend the meetings of the municipal council and the standing committees thereof and take part in the proceedings thereat, but shall not have the right to vote on any subject or to contest for any elected office in the municipal council or the standing committees."

On a plain reading of the above said provision, members of the State Legislative Assembly representing a part or whole of the municipality or members of the State Legislative Council residing in the area were only entitled to attend meetings of the municipality and standing committee and take part in the proceedings, but they did not have the right to vote in any meeting, either special or general body meeting or even to contest for any elected office in the council or standing committee. Earlier MLAs or MLCs were specifically inhibited from casting their vote in the municipality council meeting or standing committee meeting. Section 2(6) of the Municipalities Act defines "councillors" and the same is as follows:

"2(6) "Councillor" means any person who is legally a member of a Municipal

council;"

27. Section 11 of the Act speaks about constitution of municipal council. Section 11(1)(a) to (d) is reproduced below:

"11. Constitution of municipal councils-

.....

1) The municipal council shall consist of:--

a) such number of directly elected councillors specified in column (3) of the table below in respect of the municipal areas specified in the corresponding entries in column (2) thereof namely:--

b) not more than five persons nominated by the Government from amongst the residents of the municipal area and who are-

(i) persons having special knowledge and experience in municipal administration or matters relating to health town planning or education; or

(ii) social workers;

c) the members of the House of the people and the members of the State Legislative Assembly, representing a part or whole of the municipal area whose constituencies lie within the municipal area

d) the members of the Council of States and members of the State Legislative Council registered as electors within the municipal area:

Provided that the persons referred to in clause (b) shall not have the right to vote in the meetings of the municipal council."

Thus the proviso to Section 11(1) specifically prohibits members nominated by the Government from casting their vote in the meetings of the municipal council which is analogous to Section 7 of the KMC Act, 1976, which stood amended in the year 1994. On a plain reading of Section 11(1), it is clear that no specific right is conferred either on an elected MLA or elected MP or on a member of Rajya Sabha in the matter of exercising their right to vote in the meetings, whether general or special.

28. Section 52 of the Municipalities Act speaks about the method of deciding questions and also incidentally speaks about the majority of votes of members present and voting. Section 52 is reproduced below:

"52. Method of deciding questions-

.....

1) Save as otherwise provided in this Act, all matters required to be decided by the municipal council shall be decided by the majority of the votes of the members present and voting.

2) The voting shall be by show of hands, but the municipal council may, subject to such rules as may be made under clause (a) of Sub-section (2) of Section 323 resolve that any question or class of questions shall be decided by ballot.

3) At any meeting, unless voting be demanded by at least four members, a declaration by presiding officer at such meeting that a resolution has been carried or lost, and an entry to that effect in the minutes of the proceedings shall, for the purposes of this Act, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

4) If voting as aforesaid is demanded, the votes of all the members present who desire to vote shall be taken under the direction of the presiding officer at the meeting and the result of the voting shall be deemed to be resolution of the municipal council at such meeting."

On a plain reading of the provision, it is seen that the right of members of the council with regard to voting is subject to restrictions found in other cognate sections in the same statute. Thus even members nominated by the Government under clause (d) of sub-section (1) of Section 11 of the Act are also "councillors," but they have only the right to participate in the deliberations but without any voting right.

29. Section 42(9) of the Act is also an important provision found in the Municipalities Act relating to the election of the president and vice president of a town municipality or city municipality. The said provision deals with no-confidence motion relating to removal of president and vice president. It reads as follows:

"42. President and Vice-president

.....

(9) Every president and every vice-president of a municipal council shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of not less than two-thirds of the total number of councillors at a special general meeting convened for the purpose."

Section 47-A which was introduced by virtue of Act No. 33/84 has been removed from the statute book with effect from 1.6.1994 by virtue of Act No. 36/94. What is argued by the learned counsel for the 1st respondent, Mr. Gurumath is that, president shall be the ex-officio member of all standing committees of the city municipality, but he does not have the power to vote on any question. Therefore he has relied on Section 43(4) of the Act to impress upon the court that a clear mechanism is provided about the manner of election of president and vice president, removal of president and vice president and power of the president to participate in standing committee meetings without voting right.

30. Mr. Gurumath has relied on another decision rendered in the case of SAVITRI

(supra) wherein in paragraph 16, it is held as follows:

"In view of the division bench decision of this court in the case of Chandubi (supra)..... it is clear that for the purpose of Section 42(9) of the Act, in order to quantify the total number of councillors, it is only the councillors who are eligible and entitled for voting whose number has to be considered and the term "councillor" referred to Section 2(6) would only mean "legally elected member and not otherwise."

Relying on this observation found in paragraph 16 rendered in the case of CHANDUBI, Mr. Gurumath has argued that it is only elected councillors who have the right to vote and not MLAs or MPs. Hence he has relied on another earlier decision rendered by a Division Bench of this court on 10.12.1997 in W.P. 12320/97. It is useful to refer to the factual background of the case in CHANDUBI. Of course the said decision is not reported in any law journal.

31. The Town Panchayat, Hosadurga, in the state of Karnataka had been constituted under the relevant provisions of the Karnataka Municipalities Act and it consisted of 24 members out of whom 18 were elected from different wards, 5 were nominated members and one was a member of the House of People representing the whole of municipal area. The president and vice president had been duly elected in the meeting held on 18.7.1997. By notice dated 21.4.1997, the Chief Officer of the Panchayat had convened a meeting to be held on 29.4.1997 for considering no-confidence meeting against the president. After hearing arguments, the learned single Judge framed the following points for consideration and referred it to the then Chief Justice to be decided by a larger Bench, by virtue of the order dated 14.8.1997. The said points are found at page 7 of the order in W.P. 12320/97 and it is reproduced below:

"1) In order to quantify the 2/3rd of the total number of councillors, is it necessary to take the total number of members including the nominated members under Sec. 11(1)(b) of the Act, who have no right to vote on the meeting and ex-officio members who are in the Municipal Council under Section 11(1)(c) of the Act who are entitled to vote on the meeting along with the elected members?

2) What is 2/3rd of the members as per Sec. 42(9) of the Act? Is the 2/3rd of total number of councillors of the Municipal Council as provided under Sec. 11 of the Act, or the persons who are present in the special meeting in view of the word "at" used before the words "a special general meeting" in the said section?"

The matter was taken up by a Division Bench and Sections 2(6), 2(14), 2(28), 11 and 42(9) of the Karnataka Municipalities Act were dealt with in detail. In the meeting held on 29.4.1997, 12 councillors voted in favour of the no-confidence meeting. It was contended before the Division Bench that the total number of councillors was 24 and 2/3rd of it would be 16 and not 12 and therefore, there was no valid no-confidence meeting.

32. According to the learned counsel representing the president who was unseated, the number of nominated members also had to be taken into consideration while calculating the total number. Ultimately it was held that 5 nominated members have no right to vote in view of the specific bar created under proviso to Section 11(1) of the Act and therefore, it cannot be held that nominated members are also to be counted in the total number of members. The insertion of sub-article (R) to Article 243 of the Constitution by virtue of the 74th Amendment which has come into effect from 1994 has also been taken into account. What is ultimately held is that mentioning of the word "at" in Section 42(9) of the Act signifies that it has to be read as present at the time of special general body meeting. Otherwise if the intention of the Legislature was to include all the councillors whether present or not, the word "at" would not have been in the section, to represent 2/3rd majority. Admittedly 17 members were present at the time of no-confidence meeting out of whom 12 had supported the no-confidence meeting and 5 had opposed the no-confidence meeting. The facts of the case do not disclose as to whether the elected member of Lok Sabha had participated in the said meeting. In paragraph 9 of the decision, the Division Bench of this court, answering the points of reference, has held as follows:

"(i) in order to quantify the two-third of the total number of councillors, it is only the councillors who are eligible and entitled for voting which has to be considered and as the nominated members under section 11(1)(b) of the Act have no right to vote their number has to be excluded and

(ii) the two-third of the members for the purpose of "No confidence Motion" is to be form and out of total number of councillors present at the meeting and not the general total number."

33. In the case of CHANDUBI, the matter was limited to the question as to whether nominated members have to be taken into account while calculating 2/3rd majority of the councillors in the no-confidence meeting. In fact the main question involved in the said case was not about the right of MLAs/MPs to vote in a no-confidence meeting moved in the municipal council, but the facts of the case would clearly disclose that while deciding that case, the Division Bench has impliedly observed that MLAs/MPs have voting right and only nominated members are excluded while counting 2/3rd majority.

34. What is argued before this court by Sri Sachin Mahajan, Mr. D.P. Ambekar and Mr. Vilaskumar is that a legally elected member" must therefore be taken into account irrespective of whether he is directly or indirectly elected.

35. In the case of Savitri (supra), there were 18 members inclusive of 13 elected councillors, 3 nominated by the Government, one elected MLA and one MP. A requisition was sent by 10 councillors to move no-confidence meeting against the president and the chief officer did not issue notices to the ex-officio members, i.e. MLA and MP. Notices were issued to councillors. In the meeting presided over by the vice president, no-confidence meeting against the president was passed

by 10 councillors who voted in favour of the no-confidence meeting held on 23.6.2003. Only eleven (11) councillors were present and out of them, ten (10) had cast their vote in favour of the no-confidence meeting and one against it. No notice had been issued to MLA or MP. Relying on the decision in the case of Chandubi, it is observed in the case of Savitri that councillors would only mean "duly elected councillors." There also the question was not about the voting right of MLAs/MPs. Even otherwise, the number of councillors who had exercised their vote in favour of no-confidence meeting exceeded 2/3rd of the members present and therefore, no-confidence meeting was upheld by the Division Bench. It was further held that nominated members have no right to vote. The only point that was required to be considered, as observed in paragraph 9 of Savitri's case was, whether no-confidence meeting by 10 out of 11 members on 23.6.2003 could be construed as a valid resolution. The 11 councillors who were present were elected councillors and 10 of them who voted in favour of the no-confidence meeting definitely exceeded 2/3rd majority and therefore it was a valid motion. Hence the said decision is also not applicable to the facts of the present case and is not helpful to the 1st respondent as it is clearly distinguishable on facts.

36. What is further held in the case of Savitri is that even if MLAs/MPs had participated in the meeting and had cast their vote against no-confidence meeting, it would not have materially altered the no-confidence meeting passed against the president and therefore there was no merit in the writ appeal.

37. In the case of Ramesh Mehta (supra), the question that was involved was as follows:

"Whether nominated members in a Municipal Board are to be counted for calculating the majority required for carrying a no-confidence motion against a Chairman/Vice Chairman of the Board?"

Taking into consideration the mandate of Article 243R of the Constitution of India, the Hon'ble apex court held that in spite of the earlier rule 3(9) being not amended in tune with Article 243R of the Constitution, nominated members will have to be excluded for deciding the whole number of members of the council in a meeting for no-confidence.

38. As per the facts of the said case, elections were held to the Municipal Board of Sanchar, Jalore District on 1.9.1980 and the appellant-RAMESH Mehta had been elected as chairperson. Two members were nominated subsequently and on 6.10.2001, the total members of the Municipal Board consisted of 23 councillors inclusive of 20 elected members, 2 nominated members and one ex-officio member, i.e. MLA. On 6.10.2001, no-confidence meeting was moved against the chairperson against which 15 persons voted in favour of the no-confidence meeting and as the whole number of members excluding nominated members was 21. Hence 2/3rd majority was 14. It was contended before the learned single Judge that 2/3rd of 23 was 15.33 and voting by 15 was below 15.33 and therefore, there was no valid no-confidence meeting. According to the learned

counsel for Ramesh Mehta, while calculating whole numbers, nominated members will have to be included. The said contention was accepted as against which a writ appeal was filed before the Division Bench which held that Section 3(9) of the Rajasthan Municipalities (Motion of No-confidence against Chairman or Vice-Chairman) Rules of 1974 has to be read with Sections 3(36) and 9 of the Rajasthan Municipalities Act, 1959 and if so read, it would exclude nominated members. Consequently the appeal was allowed and the order of the Sub Divisional Officer was affirmed.

39. What is argued by Mr. Gurumath is, that the observation made by the Hon"ble apex court in paragraph 41 of Ramesh Mehta's case will have to be read along with the observations made in paragraphs 19 and 22 of the said decision and it cannot be read in isolation to arrive at a conclusion that MLAs have the right to vote. He has argued that by necessary implication, a declaration of law is made under Article 141 of the Constitution that ex-officio members, even though clothed with expressing voting rights, will not be taken to reckon 2/3rd of the total majority. He has argued that the total number means total number of elected councillors.

40. In the case of Ramesh Mehta, though the question was in regard to consideration of nominated members for the purpose of reckoning total number of members, the Hon"ble apex court has taken into consideration the right of elected MLAs/MPs having right to vote in council meetings. But in the case of Ramesh Mehta also, elected MLA had participated in the no-confidence meeting and had voted in favour of the no-confidence meeting.

41. Mr. Gurumath has vehemently argued that participation of persons other than elected members/corporators in the functioning of the Corporation will militate against the concept of self governance as defined in Article 243-P(e) of the Constitution of India which has come into effect on 01.06.1994 (74th Amendment). He has further argued that consideration by the Hon"ble Supreme Court in Ramesh Mehtha's case was keeping out the MLAs and MPs for computing the 2/3rd majority required to remove a President in spite of a positive voting right being granted to them under the provisions of The Rajasthan Municipalities Act. This court is unable to accept the said contention since a specific voting right is granted to an elected MLA under the Rajasthan Municipalities Act to participate in meetings of the municipality and also to exercise vote in any meeting, whether special or general.

42. The question that was actually involved in the case of Ramesh Mehta is found in paragraph 8 of the decision. It is true that no specific voting right is conferred on MLAs/MPs to participate in any meeting of the municipal council, as per the provisions of the Karnataka Municipalities Act. But as held in paragraph 10, one has to examine the provisions of the Act in question to ascertain the existence of such voting right. In paragraph 22 of the decision in the case of Ramesh Mehta, it is held as under:

"22. A right to contest election although arises under a statute but having regard to the Constitution (Seventy-fourth) Amendment Act, interpretation thereof must be made keeping in view the constitutional scheme. Democracy at the grass-root level was sought to be introduced by reason of the said amendment in the Constitution. Once the concept of a grass-root democracy is accepted, a pragmatic and purposive meaning to the provisions of the Act must be assigned."

43. Section 52(1) confers express statutory right on all members of the municipality council irrespective of whether they are elected or nominated, to vote on any matter. But such right can be taken away by any express provision. Exclusion of the right to vote cannot be readily inferred, as it is a statutory right and any bar in respect of that right will have to be express and cannot be inferred. Section 11 of the Municipalities Act provides for three modes: (i) councillors being directly elected; (ii) being nominated by the Government; and (iii) ex-officio members, i.e. MLAs/MPs.

44. The Constitution itself has specifically prohibited nominated members from exercising their right. Such bar, according to us, is unambiguous and only against a class of persons. There is no scope to add any other class and hence purposive construction will have to be made. It is in this regard the objects and reasons of the amendment carried out to the Municipalities Act from time to time will have to be read.

45. Once a person becomes a member of the municipal council, he is a "councillor" as per Section 2(6) of the Act. Of course the mode of appointment, term of office, or rights of each of the three classes of councillors may be different, but the same cannot give rise to an inference that only persons elected directly as councillors alone would have voting right and the others are excluded. The artificial distinction can be made between councillors inter se. Being MLAs and MPs, they are ex-officio councillors and hold the office as long as they hold the office of MLAs and MPs, as the case may be.

46. For the first time, who is an "ex-officio" member is referred to in the case of Ramesh Mehta. The learned single Judge has held that ex-officio members have a right to vote in general meetings, but not in meetings convened to express no-confidence motion. No such distinction is found in the statute regarding the right to vote in general meetings vis-?-vis right to vote in a special general body meeting. In the meeting convened to express no-confidence motion, there will be only one agenda relating to no-confidence and no other subjects will be slated for discussion. Such a meeting does not cover the usual day-to-day affairs and subjects of the Municipality.

47. Insofar as the submission made by the learned counsel for the 1st respondent, Mr. Gurumath that participation of persons other than elected councillors in the municipality will militate against the concept of self-governance as found in Article 243-P(e) of the Constitution will not hold good in the present appeals. The constitutionality of Article 243R was not questioned in the writ

petition filed before the learned single Judge and such argument is advanced for the first time before this court. Even in the case of Ramesh Mehta, the Hon''ble apex court has dealt with the background of the introduction of Article 243R in the 74th Amendment.

48. The role of nominated members is one of advisory in nature. Prior to the amendment, members were at par with the elected members. After the 1994 amendment, only elected members and MLAs have the right to voter as per Section 9(1) of the Rajasthan Municipalities Act. Elected MLAs and MPs represent a larger area and the area of municipal council comes within that larger area.

49. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, (2004) 1 ACC 1 : (2004) ACJ 1 : AIR 2004 SC 1531 : (2004) 118 CompCas 396 : (2004) 1 JT 109 : (2004) 136 PLR 510 : (2004) 1 SCALE 180 : (2004) 3 SCC 297 : (2004) 1 SCR 180 : (2004) AIRSCW 663 : (2004) 1 Supreme 243 , it is held that that it is desirable to look into the legislative history of the provisions of the Act for their interpretation. In the case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, (2004) 1 ACC 728 : AIR 2004 SC 2107 : (2004) 120 CompCas 292 : (2004) 4 JT 83 : (2004) 137 PLR 271 : (2004) 3 SCALE 546 : (2004) 5 SCC 385 : (2004) 3 SCR 213 : (2004) 2 UJ 1100 : (2004) AIRSCW 1864 : (2004) 3 Supreme 602 , the Hon''ble apex court has laid emphasis on the object underlying the statute which has to be given effect to by applying the principles of purposive construction. What is further held in the said decision is as follows:

"It is now well settled that for the purpose of interpretation of statute, the same is to be read in its entirety. The purport and object of the Act must be given its full effect. The object underlying the statute is required to be given effect to by applying the principles of purposive construction."

50. In paragraph 41 of the said decision, the Hon''ble apex court has held that decisions are pointers to the fact that only elected members and those who are to be treated at par were entitled to participate in a proceeding for removal of the chairman of the Municipality. In the present case, the Karnataka Municipalities Act, 1964, was amended by virtue of Act No. 23/03. The objects and reasons of the said amending act specifically speaks about participation of MLAs and MPs in the deliberations of the municipalities and their voting right in the meetings. This particular provision had not been incorporated in respect of town panchayats and therefore, the amendment was proposed.

51. The Amendment Act No. 23/03 is as follows:

"Amending Act 23 of 2003- It is considered necessary to amend the Karnataka Municipalities Act, 1964 to provide for Minimum representation of the persons belonging to the Scheduled Castes and Scheduled Tribes in the Municipal Councils and Town Panchayats.

The 74th constitutional Amendment provides that in every Urban Local Bodies

the members of House of the People as well as members of the State Legislative Assembly be represented in the concerned Municipalities. When the Acts were amended in 1994, the provisions of section 11 were amended to ensure that the members of the House of the people and Member of State Legislative Assembly and Members of the Council be permitted to participate in the deliberations of the Municipalities and also to vote in the Council. This particular provision was not incorporated in respect of Town Panchayats. It is therefore proposed to amend section 352 for the purpose.

Hence the Bill."

On a plain reading of the provision, it is clear that voting right had been conferred by necessary implication on the elected MLAs representing the whole or portion of the municipal area. Such provision had not been incorporated insofar as town panchayats and hence that was included. It is in this regard a pragmatic and purposive meaning to the Act must be assigned. In fact, Amendment Act No. 24/98 published in the Official Gazette on 15.5.1998 has dispensed with requirement that members of the House of People and Legislative Assembly should be registered as elected members within the municipal area or city, as the case may be, so as to bring them in conformity with Article 243R of the Constitution. The said amendment act is also relevant to indicate the unequivocal intention of the Legislature in giving greater role to MLAs and MPs not only in the deliberations of municipal council, but also conferring specific voting right to them in any meeting.

52. This court is unable to accept the contention of Sri Gurumath that the consideration by the Hon"ble apex court in the case of Ramesh Mehta of keeping out MLAs for computing 2/3rd majority required to remove a President in spite of a positive voting right being granted to them under the provisions of The Rajasthan Municipalities Act, is relevant, while interpreting the provisions of the Karnataka Municipalities Act, 1964. On the other hand, the apex court has taken cognizance of the voting right of elected MLAs in no-confidence motion and if that was not the intention of the Legislature, the vote exercised by MLAs would not have been taken into consideration while computing the total number of members present and voting.

53. It is also evident that the earlier restriction imposed on MLAs and MPs in the matter of voting, under Section 47-A of the Act was taken away and these MLAs and MPs have been conferred with the right to vote vide Amendment Act No. 36/94 with effect from 3.10.1994. If the intention of the Legislature was to continue the restriction found in Section 47-A on the voting right of MLAs/MPs, Section 47-A of the Act would have been allowed to continue in the statute book.

54. Viewed from any angle, it is evident that MLAs and MPs have the right to vote in town municipal council meetings, whether special or general as per the Karnataka Municipalities Act, 1964, which has stood amended from time to time. Accordingly point No. (1) is answered in the affirmative.

55. Point No. (2): In view of the affirmative finding on point No. (1), the appeals will have to be allowed and the order of the learned single Judge will have to be set aside, holding that no-confidence motion moved and adopted against the 1st respondent-Smt. Shahjaha is valid and legal.

56. In the result, the following order is passed:

ORDER

"The appeals are allowed in entirety. The impugned order passed by the learned single Judge in W.P. Nos. 201399/2015 and 201754/2015 is set aside. The no-confidence motion adopted on 28.1.2015 in the City Municipal Council of Basavakalyan against the 1st respondent-Smt. Shahjaha is held to be valid and proper."