be treated to be edible oil for the purposes of taxation. In the broad and general sense and in common parlance, the oil produced by the assessee-company, if used as a major constituent of vegetable Ghee, can be treated to be within the realm and ambit of edible oil Therefore, maize (corn) oil produced by the assessee-company is to be treated as edible oil.

(17) The question, reproduced in the first paragraph of this order, is answered in the affirmative, i.e. in favour of the assessee and against the Revenue.

S.C.K.

Before H.S. Brar, K.S. Kumaran & Swatanter Kumar, JJ

RAJ PAL CHABRA,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

CWP 10116 of 1995

5th August, 1998

Constitution of India, 1950 (74th Constitution amendment)—Arts. 226, 243-P, 243-R, 243-ZG & 251—Haryana Municipal Act, 1973 (as amended by Act 3 of 1995)—Ss. 9 & 21—Haryana Municipal Rules, 1978-Rl. 72-A—Motion of no confidence—Resolution passed prior to coming into force the amended Act on 15th July, 1995—Amended provisions are not retrospective and existing rights not taken away & will not effect the validity or otherwise of resolution of no confidence passed earlier—Delegated legislation—Art. 243-R providing for representation in municipalities of persons falling in sub-clauses (i) to (iv) of clause 2-A—Members nominated under clause (i) have no right to vote, however, the elected representatives of the House of people to Parliament and State Assembly as members of the Committee cannot be denied right to vote—The expression "2/3rd members of the Committee" to include those elected as well as nominated by the State Government—Haryana amendment Act taking away right to vote 2nd proviso to S.9(3) of the Haryana Act is ultra vires the Constitution and its basic structure—Doctrine of severality

applied—Distinction drawn between words "members of the committee" and "total numbers of the members of the committee" used in the Act.

Held, that we are in respectful agreement with the view taken by the Full Bench of this Court in *Kaka* v. *Hassan Bano and another,* 1998 (1) AIJ 50 and Division Bench in *Dr. Harbhajan Singh* v. *The State of Punjab & others,* 1995 PLJ 24 and *Gian Chand Kalra* v. *State of Haryana and others,* 1996 PLJ 670. We hold that these provisions do not have retrospective effect in the sense that it could effect the validity or otherwise of the resolution passed, prior to the amendments.

(Para 16)

Further held, that the State legislation in this regard could safely be equated to subordinate legislation and any specified legislation must be in conformity with the provisions of a statute empowering the State legislation.

(Para 22)

Further held, that the expression members of the Committee keeping in mind the language, spirit and substance underlying the provisions of the Act would indicate and include the members, who have right to effectively participate in the business of the Committee and materially affect its decision making process in regard to matters of vital importance. To include the persons who are merely to advise the committee and whose effective participation in the decision making process and right to vote have been specially barred by statute, in our view, cannot legitimately form part of strength of the members of the Committee, who would decide the fate of no confidence motion presented under Section 21 of the Act. The persons nominated as members of the Committee under Clause (i) of sub-section (3) of Section 9 are the persons who are so nominated because of their special knowledge or experience in the municipality's administration. They would have no right to vote under the first proviso of the same sub-section. Vote of no confidence cannot be termed as mere administrative function of the Committee. In fact it is a question going to the very root of the Constitution and functions of elected body and its consequences cannot be equated to normal and routine work or administrative decisions of the committee.

(Para 30)

Further held, that the amended provisions of the Haryana Municipal Act would not have any retrospective operation to the

extent that such amendments would not extinguish or invalidate the existing rights of the members, or actions or decisions taken by the Committee prior to the amendment, prejudicially, such provisions would be effective prospectively from the date of the amendment. We are of the considered view that the extinguishment of rights and invalidation of actions by giving retrospective effect to these provisions is not even remotely indicated by the legislature in the amended provisions. To that limited extent, we would affirm the view expression by the Division Bench of this Court in the cases of Dr. Harbhajan Singh and Gian Chand Kalra.

(Para 33)

Held, that the provisions of this Article are para-materia to Section 9 of the Act. Clause (2) of Art. 243-R of the Constitution is indicative of the extent and scope of delegated legislation by the State. The Parliament in its wisdom defined the limits of the State legislation by expressing of its intention in unambiguous terminology. It is reflected by the use of expression (i) State may by law provide for representation in municipalities of the persons falling in sub clause (i) to (iv) of clause 2A. This limited power to legislate revolves only on the two aspects aforementioned. This delegated legislation does not grant power to the State to legislate beyond the specified limit. There is also nothing in the article which could be construed to be of general nature giving wider ambit to the power of legislation by the State in this regard. Apparently there is no saving clause in it. One of the important feature which needs to be noticed is that right of the persons specified under clause (i) to (iv) of clause 2-A of Article 243-R of the Constitution cannot be said to be controlled only by language of the proviso to this Article and section 9 could be enacted only in conformity therewith.

(Para 34)

Further held, that the State Legislature can neither add to the kind of representation nor can it subtract what has been specified in Article 243-R. The specified persons who have been prohibited from exercising the right to vote cannot be granted such a right by the State and the persons who have not been debarred from exercising such a right cannot be prohibited from doing so by the State legislature.

(Para 36)

Further held, that while the persons specified under clause (ii) and (iii) are already the elected persons to the much larger

elected bodies i.e. House of People, Legislative Assemblies or Councils of the State, these specified persons have not been denied the right of voting by the framers of the Constitution. Thus, it must be by necessary implication, follow that the persons specified under (ii) and (iii) of clause 2-A of Article 243-R have a right to vote in the meeting of Committee. The nomination of such persons to the elected body is a direct consequence of their being elected members of the House of People, Legislative Assemblies, and Councils of the State.

(Para 36)

Further held, that it is clear that the Parliament did not and never intended to abdicate its legislative powers in favour of the State legislature.

(Para 37)

Further held, that under Section 9 person specified have a right to vote. Once a person is a member of a committee his right to vote would be necessary corollary thereto unless such right is intentionally taken away by the Legislature either by use of specific language or if such interpretation becomes necessary on the principle of necessary implication. We are unable to see as to on what premises can the persons (members of the Committee) under (ii) to (v) of Article 243(R) (2) A can be denied the right to vote. The right to vote must be by very nature of thing stand by their membership of the Committee, unless such right is specifically excluded by a valid piece of legislation. In other words the expression "2/3rd members of the Committee" would only include the members who have a right to participate and vote as on 31st July, 1995.

(Para 39)

Further held, that we are not in a position to accept the contention raised on behalf of the State that persons specified under clause (ii) and (iii) of Section 9(3) of the Act will not have a right to vote. The proviso to that limited extend would be *ultra vires* of the constitutional provisions and the basic structure thereof. It infringes the very basic spirit of the constitutional provisions contained in Article 243-R of the Constitution. The right to vote is an indispensable right of the above members of the Committee. Thus, it would be inevitable interpretation of such electorallars founded on any accepted norms of interpretation and keeping in

mind the principle governing the democratic system of functioning in such elected bodies.

(Para 42)

Further held, that right to vote is an integral part of any democratic system and the persons under clause (ii) and (iii) are obviously elected persons who have to play their role for the benefit of the much larger constituencies and at higher pedestrain are expected to further the cause of municipality and its welfare activities by their contribution in affairs of the municipality. One is unable to see any valid reasoning for the proviso so far it limits and takes away the right of these persons to vote. To that extent this part of the 2nd proviso to section 9(3) of the Act being severable from rest of the proviso has to be held *ultra vires* of the constitutional provisions.

(Para 43)

Further held, that 2nd proviso to Section 9 of the Act limited to the extent where it debars the specified members in clause (ii) and (iii) of sub-section 3 of Section 9 of the Act is *ultra vires* and cannot be sustained in law. In regard to remaining part of the proviso we refrain from commenting and in any case, the remaining portion of the proviso can safely be protected on the principle of doctrine of severality.

(Para 44)

Further held, that the complete picture that emerges from the aforestated discussion on legal principles is that the expression "members of the committee" used in Section 21 of the Act must take colour and be read in conjunction with the provisions of Section 9(3) of the Act. Both these provisions obviously must be interpreted and construed in complete respect to the constitutional provisions contained in Article 243(R) of the Constitution."

(Para 47)

Further held, that the words "members of the Committee" have to be given different connotation and meaning than the words "total numbers of the members of the Committee.

(Para 48)

Rajesh Gumber , Advocate, for the Petitioner

P.K. Mutneja, Addl. A.G. Haryana, for respondent Nos. 1 to 3.

R.C. Setia, Senior Adovate with Sidharth Sarup Advocate, for respondent No. 4

J.S. Virk, Advocate, for respondent Nos. 5 to 13.

JUDGMENT

Swatanter Kumar, J.

(1) Should, pervasive legislative powers vested in the State legislature by virtue of delegated legislation, under the constitutional provisions, taken to all its logical extent, be permitted to create a dent in the various Articles of the Constitution of India and its basic structure, is one of the question amongst others which arise for consideration in the present writ petition ?

(2) Every other law must fall in comity to the constitutional law and must pave way for its preferential prevalence. The 74th Constitutional amendment by Act of 1992 introduced Articles 243-P and 243-ZG with a clear legislative command to bring the governance of the affairs of people by elected bodies, right at the grass-root level. The introduction of these provisions obviously resulted in amendment of some State laws including the provisions of the Haryana Municipal Act, 1973 hereinafter referred to as the Municipal Act. The provisions of this Act, amongst others, provide for constitution of Municipal Committee, election of its members, challenge to such election and all other ancillary matters arising therefrom. Keeping in line with the basic feature of democracy, the provisions were also made for election of the President and Vice-President of the Municipal Committee and for a no confidence motion to be moved against them. Under sub-section (3) of Section 21 of the Haryana Act it was provided that if a no confidence motion is carried with the support of not less than 2/3rd of the members of the Committee, the President or the Vice-President, as the case may be, shall be deemed to have vacated his office. In order to determine which of the members of the Committee has a right to vote on the motion of no confidence, reference amongst other provisions has to be made to the provisions of Section 9 of the Act.

(3) Various provisions of this Act and the Rules framed thereunder have been subjected to repeated amendments by the State Legislature even over a short span of time, more particularly Section 9 and Section 21 of the Act have been subject matter of rapid as well as radical amendments right from 1988 till very

recently. Consequences and effects of frequent legislative amendments were clearly seen even in the judicial pronouncements by the Courts. Which of the members of the Committee would be entitled to vote for a no confidence motion, became a subject of some considered controversy. There was definite conflict in judicial pronouncements on this question alone. It was primarily for these reasons that a Division Bench of this Court considered it appropriate to admit this writ petition for hearing by a Full Bench.

(4) At the very outset we consider it appropriate to refer to the order dated 18th July, 1996 passed by a Division Bench of this Court, which reads as under :—

> "The petition involves important question of law with respect to interpretation of Section 21 of the Haryana Municipal Act, 1973, in view of the fact that for the purpose of removal of a elected Officer bearer, a majority of 2/3rd strength of members including non-voting members has to be counted, while electing the office bearers, the majority is to be counted only amongst voting members. Since this question of law is involved in large number of cases, the counsel for the respondents has challenged the judgment of Division Bench of this Court in *Sukhbir Singh* v. *State of Haryana and others* (C.W.P. No. 4590 of 1996) decided on 17th May, 1996. Admitted to Full Bench. To be listed on week commencing on 23rd September, 1996".

(5) Before we cogitate over the various legal limbs of this important legal controversy, reference to the basic facts would be appropriate. Election to the Municipal Committee, Indri in District Karnal was held in December, 1994 and the Committee was duly constituted and notified on 17th February, 1995. This Committee had a total membership of 18 including elected, nominated and other members. Vide notification dated 2nd February, 1995 the State Government nominated two persons to be the members of the Municipal Committee under Section 3(ii) of Section 9, while it issued another notification dated 20th February, 1995 nominating three members while exercising its powers under Section 9(3) of the Act. Thus, total number of members of the Committee being 13 elected and 5 nominated.

(6) Petitioner Raj Pal was elected as the President of the Committee and had been functioning as such till 13th July, 1995.

On that date special meeting had been convened by the Sub Divisional Officer (Civil), Karnal and Commissioner, Municipal Committee, Indri, Mr. A.K. Yadav under Section 21(2) of this Act. On that date 16 members of the Committee were present. The no confidence motion was presented in the meeting by the officer concerned. The ballot papers were distributed. The resolution was carried by 9 votes in favour of no confidence and 4 against such motion. The officer concerned held that the motion was carried against the President Raj Pal and directed that the government be informed. The copy of this resolution No. 62 dated 13th July, 1995 is annexed to the writ petition as Annexure P/3. It will be relevant to reproduce the contents of this resolution as under :—

> "Members Present : Sd/- Sh. Suresh Kumar Bhatia, Mahesh Kumar, Harbans Lal, Roshan Lal, Avinash Kaur, Sheri Devi, Sumita Devi, Jagir Singh, Rajpal, Bal Krishan, Charanjit Singh, Reshmi Devi, Girdhari Lal, Rajender Kumar, Pala Ram, Sant Lal. The present counsellors demanded for the division of the vote and voting. On this the President Sub-Divisional Officer (Civil) Karnal distributed the ballet papers to the elected members and all the elected members used the ballet papers. After that the President counted the ballet papers and declared that 9 votes have been polled in favour of no-confidence motion and 4 votes against the no-confidence motion, therefore, no confidence motion against the President, Raj Pal, has been. The Government be informed. Sd/- Sh. Bal Krishan, Sant Lal, Palaram, Rajender Kumar, Girdhari Lal, Roshan Lal, Reshmi Devi, Charanjit Singh, Sumita Devi, Shero Devi, Avinash Kaur, Jagir Singh, Harbans Lal, Suresh Bhatia, Mehesh Kumar. Sd/- Sh. A.K. Yadav, S.D.O. (C), Karnal and Commissioner Municipality, Indri."

(7) The above resolution, Annexure P/3, dated 13th July, 1995 has been challenged *inter alia* on the ground that the resolution has not been passed by the requisite majority of 2/3rd members. According to the petitioner, there are 18 members of the Committee and 2/3rd majority of the members comes to 12 and admittedly the resolution was not passed by 12 members and as such the resolution was vitiated and was invalid in the eyes of law. The pith and substance of the contention is that the majority of 2/3d of the members of the Committee would include the nominated members and the members of the Parliament and members of the Legislative

Assembly for the purposes of passing a valid resolution within the purview of Section 21(3) of the Act.

(8) The judgment of a Division Bench of this Court delivered in the case of *Sukhbir Singh* v. *State of Haryana and others* (1), fully supported the contention of the petitioner, but it is the correctness of decision which was doubted by another Division Bench of this Court in the present writ petition, as is clear from the order of reference reproduced above. The provisions of the Municipal Act which have a bearing on the matter in controversy can conveniently be referred as under :—

Section 2(15A) :—

"municipality means an institution of self/government constituted under section 2A which may be a Municipal Committee or a Municipal Council or a Municipal Corporation.

"9. Composition of Municipalities—

(1) The municipalities constituted under section 2A shall consist of such number of elected members not less than eleven as may be prescribed by rules.

(2) Save as provided in sub-section (2), all the seats in the municipality shall be filled in by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards.

(3) In addition to persons chosen by direct election from the territorial constituencies, the State Government shall, by notification in the Official Gazette, nominate the following categories of persons as members of a municipality :—

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

(ii) members of the House of the People and the Legislative Assembly of State, representing

(1) 1996 (3) P.L.R. 169

constituencies which comprise wholly or partly, the municipal area; and

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

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

"Provided further that the persons referred to in clauses (ii) and (iii) above shall neither have right to contest nor right to vote in the election or removal of President or Vice-President of Municipal Committee or Municipal Council, as the case may be :

Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of Municipal Committee, shall have the right to attend all the meeting of the municipality and to take part in discussion but shall not have the right to vote therein."

"18. **Election of President and Vice-President** :— (1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its members to be President for such period as may be prescribed, and the member so elected shall become President of the Municipal Committee or Municipal Council :

Provided that the office of the President in Municipal Committee and Municipal Councils shall be reserved for Scheduled Castes and women in accordance with the provisions made in section 10 :

Provided further that if the office of President is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held from the same category.

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

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

election for the remainder of the period shall be held.

(3) The term of the office of Vice-President shall be one year."

Amendment of section 18 of Haryana Act 24 of 1973 (on 1st March, 1995).

(4) In section 18 of the principal Act, for sub-section (3) the following sub-section shall be substituted, namely :—

"(3) The term of office of the Vice-President shall be for a period of five years or for the residue period of office as a member, whichever is less."

21. Motion of no confidence against President or Vice-President.—(1) A motion of non-confidence against the President or Vice-President may be made in accordance with the procedure laid down in the rules.

(2) The Deputy Commissioner or such other officer not below the rank of an Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall convene a meeting for the consideration of the motion referred to in sub-section (1), in the manner laid down in the rules, and shall preside at such meeting.

(3) If the motion is carried with the support of not less than two-third of the members of the committee, the President or Vice-President, as the case may be, shall be deemed to have vacated his office.

(4) If a no-confidence motion is passed against the President and the Vice-President simultaneously or otherwise, the Sub-Divisional Officer (Civil) of the area in which the municipality is situated or any other officer not below the rank of an Extra Assistant Commissioner authorised by the Deputy Commissioner shall henceforth exercise the powers and discharge the functions of the President till the election (omitted) of a President is notified or a Vice-President is elected.

(5) A meeting referred to in sub-section (2) shall be

presided over by the Deputy Commissioner or the officer authorised by him, but neither he nor such officer shall have the right to vote at such meeting.

27. Quorum.—(1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the members of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at any ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and transacted at, the adjourned meeting, whether there be a quorum present there or not.

29. Vote of majority decisive.—Except as otherwise provided by this Act or the rules, all questions which come before any meeting of a committee shall be decided by a majority of the votes of the members present, and in case of an equality of votes, the chairman of the meeting shall have a second or casting vote.

(9) It is an admitted case of the parties that the amendments in the Haryana Municipal Act, more particularly, introduction of 2nd proviso to section 9 (3), Rule 72-A and amendment of section 21 was subsequent to the date of passing of the No Confidence Motion i.e. on 15th July, 1995 against the petitioner, which is dated 13th July, 1995.

(10) Learned counsel for the petitioner, while relying upon Division Bench judgments of this Court in the case of *Dr. Harbhajan*

Singh v. *The State of Punjab and others* (2), and *Gian Chand Kalra* v. *State of Haryana and others* (3), and the judgment of Hon'ble Supreme Court rendered in the case of *Jethelal Shah* v. *Mohan Lal Bhagwandas and another* (4), argued that all these amendments would no way effect the existing right of the members/President as the amendment cannot be said to be retrospective in their nature and operation and would not give validity to the resolution under challenge.

(11) On the other hand learned counsel for the State, while relying upon the case of *Chanan Singh and Anr.* v. *Smt. Jai Kaur* (5), contended that the amended law would be applicable to the case of the petitioner because such amendments would necessarily have to be construed retrospective in their nature.

(12) It is a settled rule of law that generally the amendment to substantive law would have to be treated prospective in their nature, unless otherwise so specifically provided in the provisions or is so construed on the principles of by necessary implication. Under Article 243-R of the Constitution of India, only the persons specified under section 9 (3)(i) of the Act, were deprived of the right of voting. Similarly before the introduction of the 2nd proviso and Rule 72-A, admittedly, the members nominated under Clause (ii) and (iii) of sub-section (3) of section 9(3) of the Act had the right to vote and effectively participate in the proceedings of the Committee i.e. right to vote, therefore, this valuable and lawful right was available to the members prior to the amendment. Further more, a definite procedure by mandatory provisions was provided for passing of motion of No Confidence. These provisions were subjected to some amendments. These amendments had the effect of changing such substantive procedure to the prejudice not only to the existing system but also to the prejudice of the members of the Committee. The resolution was passed prior to the date of amendments and had attained finality as far as the committee was concerned. There was nothing in these provisions which necessarily suggest that operation of the amended provisions has to be retrospective in that sense. Nor such an approach is necessitated by the scheme of the Act. The existing right which has attained finality cannot be taken

(2) 1995 P.L.J. 24
(3) 1996 P.L.J. 670
(4) A.I.R. 1968 S.C. 1336
(5) A.I.R. 1970 S.C. 349

away without passing of a specific legislative strength in that regard.

(13) In the case of Dr. Harbhajan Singh as well as in the case of Gian Chand (supra) the Division Benches of this Court upon detailed discussion upheld the contention of the petitioner raised in that petition. The Hon'ble division Bench relied upon *M/s Punjab Tin Supply Company Chandigarh etc.* v. *Central Government and others* (6), while considering the identical situation.

(14) At this stage, it may be appropriate to make reference to the judgments of the Hon'ble Supreme Court in the case of *Jethelal Shah* v. *Mohan Lal Bhagwandas and another* (7) and *Mithilesh Kumar and another* v. *Prem Behari Khare* (8). In Mithilesh Kumar and another, the Hon'ble Supreme Court held as under :—

> ".....A retrospective operation is, therefore, not to be given to a statute so as to impaire existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively the Court has to be satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospiectively, would prejudicially affect vested rights or the illegality of the past transactions, or impair contracts, or impose new duty or attach new disability in respect of past transaction or consideration already passed....."

(15) We may also refer to a recent Full Bench Judgment of this Court passed in the case of *Kaka* v. *Hussan Bano and another* (9) where the Bench examined whether the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 were retrospective and if so to what extent and after considering various judgments held as under :—

> ".....Where the Legislature intends to apply the law retrospectively it is obligatory on the part of the Legislature to enact specifically in that regard or use

(6) A.I.R. 1984 S.C. 74
(7) A.I.R. 1968 S.C. 1336
(8) A.I.R. 1989 S.C. 1247
(9) 1998(1) A.I.J. 50

such language which in the scheme of the Act would make it imperative for the courts to draw such conclusion. This requirement is more eminent where the intention is to divest persons drawing benefits under settled and vested rights emanating from the judgments of Courts of competent jurisdiction. None of the provisions of this Act or any such similar statute has been referred or brought to our notice, which could persuade us to hold that this Act is retrospective in its operation and that too to the extent of divesting vesting rights.

xx xx xx As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary."

(16) In view of the above settled position of law, "we are in respectful agreement with the view taken by the Full Bench of this Court in Kaka's case and Division Bench in Dr. Harbhajan Singh's and Gian Chand Kalra's cases (Supra). We hold that these provisions do not have retrospective effect in the sense that it could effect the validity or otherwise of the resolution passed, prior to the amendments".

(17) At this juncture, it will be beneficial to notice that provisions of section 9 of the Act were subjected to various amendments. The provisions of section 9 read as reproduced supra. This amendment was made by the amending Act 3 of 1995 which received the assent of the Governor on 14th April, 1995. This section was again amended on 8th December, 1995. The resolution in question, as already, noticed, was passed on 13th July, 1995. In view of the above settled position of law, the reasoning of which we do concurrently adopt, the amendments subsequent to 13th July, 1995 will not have any material bearing on the controversy in the present case. We may also notice here that rules 72-A of the Haryana Municipal Rules. 1978 was introduced for the first time,—*vide* notification dated 13th September, 1995 i.e. subsequent to the impugned resolution. As the procedure for rejection or carrying of such resolution provided in this rule would not be applicable to the present case.

(18) It is the contention on behalf of the respondents before us that these subsequent amendments clinch the issue in controversy and the resolution would be deemed to have been passed with requisite majority.

(19) While countering the arguments raised on behalf of the petitioner, the contention of the learned counsel appearing for the State and other respondents is that it is 2/3rd majority of the elected members (13 in the present case) who have to determine the fate of a motion of no-confidence against a president or vice-president. It is argued that 2/3rd of 13 elected members would be 9, hence the officer concerned has rightly concluded that the motion of no confidence stood carried.

(20) We have already noticed clearly that 74th amendment to Constitution of India has direct and material effect on the structures and functions of the municipalities. It had attached new dimensions to the role of the municipalities and their significance in the State Administration.

(21) Reference to some relevant Articles of the Constitution of India would be necessary to analyse the extent of impact of 74th constitutional amendment on the powers to the State Legislature to enact law in regard thereto.

(22) "The State Legislation in this regard could safely be equated to a subordinate legislation and any specified legislation must be in conformity with the provisions of a statute empowering the State Legislation."

(23) Article 243P(e) defines "Municipality in identical language as defined in Section 2(15A) of the Act. It is an institution of self-government to govern the needs of the persons of the area for which such municipality is constituted. The mandate to constitute a municipal committee is seen in no unambiguous terms in Article 243Q. Article 243R and 243ZF are the other Articles of the Constitution of India which would require reference at this stage as they have direct bearing on the matter in controversy before us :—

> "243R. Composition of Municipalities.—(1) Save as provided in Clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided

into territorial constituencies to be known as wards.

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

(a) for the representation in a Municipality of—

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

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

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

(iv) the Chairpersons of the Committees constituted under Clause (5) of Article 243 S :

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.

243ZF. Continuance of existing laws and Municipalities,—Notwithstanding anything contained in this Part. any provision of any law relating to Municipalities in force in a State immediately before the Commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier :

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State."

(24) Now firstly we would proceed to discuss the legislative scheme contained in the aforestated provisions and then would discuss the effect of the constitutional provisions in regard to the subject matter in controversy before us. Section 9 provides for composition of municipal committees. It must consist of elected members under sub-section (1) of Section 9. Their number could be as fixed by the State, but in no event would be less than 11 elected members. Sub-section (2) of Section 9 provides that all seats in municipality shall be filled in by persons chosen by direct election save as provided in sub-section (3). Sub-section (3) of Section 9 provides that in addition to the persons chosen by direct election from the territorial constituency; the State Government shall, by notification in the Official Gazette, nominate the categories of persons specified under Clauses (i), (ii) and (iii). Not more than three persons having special knowledge or experience of municipal administration, member of the House of People and Legislative Assembly of the State and members of the Councils of the State. In other words municipality should have minimum 11 elected members, three nominated members and two other member's who are elected members to the Assembly or Parliament as the case may be.

(25) Proviso to Section (9) completely debars the nominated persons from exercising any right to vote in the meeting of the municipality. It means that they have no right to vote in the special or ordinary meeting called by the Committee. Their functions primarily appear to be advisory and suggestive in its true ambit and scope. They are the persons who are supposed to help the elected body to function smoothly and bring to the notice of such body the various methods adopted by the State in its administration. Second proviso to sub-section 3 of Section 9 was firstly deleted by Amendment of 1988 but was added by Amendment Act No. 3 of 1988, but again deleted by Amending Act No. 15 of 1989 and again inserted by Amendment Act 3 of 1994 where the entire section 9 was made operative with effect from the date of its notification i.e. 5th April, 1994. Newly inserted section has been referred to above by us.

(26) Legislature while introducing second proviso to section 9,—*vide* notification dated 17th April, 1995 provided that nominated members as specified in clause (ii) and (iii) are also placed at par with the persons specified under clause (i). In other words, they were also deprived of the right to vote in election and removal of the President. They were further debarred from

contesting the election of the President or Vice President of the Municipality. The other relevant provisions of the Act show that the municipality is an institution of self-government constituted under Section 2A of the Act. The municipality so constituted under Section 2A shall consist of such number of elected members not less than 11 as may be prescribed by rules. In addition to the elected members, the nominated members are categorised under sub-section (3) of Section 9. The rights of the nominated members are restricted. The President has to be elected form the members of the Committee for the period prescribed therein. Under Section 21 motion of no confidence against the President or Vice President can be moved in accordance with the procedure laid down in the rules. As we have already noticed that no procedure was provided under the rules prior to the amendment of the said rules by insertion of Rule 72A of the Rules. As such, in the present case, we have to proceed on the basis that Section 21 of the Act itself controlled the entire procedure in regard to introduction of no confidence motion, its voting and its result. Under Section 21 (3) if motion is carried with the support of not *less than 2/3rd of the members of the Committee,* the President or Vice President, as the case may be, shall be deemed to have been removed from his office. In that event, the Deputy Commissioner or the person so empowered or authorised would exercise all powers and functions of the President. Section 27 refers to quorum necessry for transaction of business of the Committee. It provides that quorum of special meeting shall be of 1/2 of the *number of members actually serving at that time* but it would not be less than 3 while in the case of ordinary meeting quorum would be such number of members of the Committee as may be provided under the bye laws but not less than 3. Under Section 29 of the Act, the decision has to be carried by majority vote. The expression used under Section 29 is all the members present.

(27) Broadly looking at these provisions and scheme of this Act, makes out a clear distinction between elected members of the Committee and nominated members of the Committee. All the three categories specified under Section 9(3) of the Act have no right to vote and in fact as per amended provisions of this section, they have no right to be elected as President or to vote in the no confidence motion. We will be shortly discussing the effect of the amended Act No. 3 of 1995 and other amendments.

(28) At the relevant time, when the impugned resolution

dated 13th July, 1995 was passed, Section 21 of the Act was the only statutory provision governing the entire procedure and decision making process of no confidence motion moved in accordance with the said provision. Under sub-section (3) of Section 21 such motion must be carried by not less than 2/3rd of the members of the Committee. Thus expression members of the Committee has to be given a definite and unambiguous meaning. Whether the expression *"2/3rd members of the Committee"* would include all the 18 members of the Committee i.e. elected as well as nominated members or would it be only the directly elected members of the Committee, while excluding other nominated members. Another view which the Court has to examine is, would this expression in clauses (ii) and (iii) of section 9(3) of the Act, by excluding the members specified under clause (i) of the same section, in view of the fact that the member's specified under section 9 (3) (i) have been deprived of the right of vote even under sub clause (i) of clause (2) to Article 243-R of the Constitution of India as well as under the statutory provisions of the Act. Therefore, Court must keep scheme of the Act, legislative intent and object sought to be achieved by these provisions in mind to find out appropriate meaning of this expression. The distinction between role of elected and nominated members is apparent from the language of the above said provisions. Dissectable area of operation, functions and responsibilities are clear from the scheme of the Act. The intention of the Legislature to keep the functioning of this elected body free from interference of the nominated persons specified under section 9 (3) (i) of the Act in its effective business is clear from the fact that they have been denied right to vote. Such bar being specific under the constitutional provisions, as well as in the conformity thereto in the State Act veritably conveys the objects of the legislation limiting the role and scope of privileges of some of the nominated members.

(29) The expression members of the Committee, in our view must refer to the members of the committee who have a right to effectively participate in the special meeting of the committee called for such purpose with a right to vote. The provisons of this Act as well as the constitutional provisions afore-indicated prohibits and or grant by necessary implication right to vote in such meetings. Right to vote is the very foundation of democratic system of functioning in the elected bodies. The Court will have to look into such other similar expression as has been used by the legislature in other provisions of this Act in order to give a definite meaning to the expression members of the Committee. Synoptic view on the

expression elected members, persons as members, members of the committee, actually serving and members present appearing in various provisions aforestated shows legislative intent to confine the expression members of the Committee, appearing in Section 21 (3) of the Act to be members who have right of participation, consideration and right to vote. If any of the ingredients is missing, it would instantly create a doubt as to whether such a member is entitled to be part of the requisite strength or not.

(30) The expression members of the Committee keeping in mind the language, spirit and substance underlying the provisions of the Act would indicate and include the members, who have right to effectively participate in the business of the Committee and materially affect its decision making process in regard to matters of vital importance. To include the persons who are merely to advise the committee and whose effective participation in the decision making process and right to vote have been specially barred by statute, in our view, cannot legitimately form part of strength of the members of the Committee, who would decide the fate of no confidence motion presented under Section 21 of the Act. The persons nominated as members of the Committee under Clause (i) of sub-section (3) of section 9 are the persons who are so nominated because of their special knowledge or experience in the municipality's administration. They would have no right to vote under the first proviso of the same sub section. Vote of no confidence cannot be termed as mere administrative function of the Committee. In fact it is a question going to the very root of the constitution and functions of elected body and its consequences cannot be equated to normal and routine work or administrative decisions of the committee.

(31) Self governance by elected members of the committee in democratic and progressive manner, is the very foundation of the constitution of these Committees. Who should be the President or whether any elected president has lost the confidence of the house, would have to be decided by members of the Committee. Whether one should continue as President of the Committee or not, must be and has to be decided by the persons who have an effective role to play and right to vote in this process. The persons falling under this category cannot be termed to be members of the Committee for the purpose of section 21 (3) of the Act. In regard to the status of the persons falling under clauses (ii) and (iii) of sub-section (3) of Section 9, we would shortly revert to this question

after discussing the effect of constitutional amendments on the provisions of this Act.

(32) Learned counsel appearing on both the sides placed reliance and made reference to other amended provisions with greater emphasise on section 9 of the Act and Rule 72-A of the rules framed thereunder. The basic reliance has been placed on proviso 2nd to sub-section 3 of section 9 of the Act which could be referred again and reads as under :—

> "Provided further that the persons referred to in clauses (ii) and (iii) above shall neither have right to contest nor right to vote in the election or removal of President or Vice-President of Municipal Committee or Municipal Council, as the case may be".

(33) It is contended on behalf of the State that as the members specified in clause (ii) and (iii) do not have the right to vote under the amended law. Thus, motion of no confidence had been carried with requisite majority under section 21 (3) of the Act. It is further contended that there are 18 members out of which 5 members have no right to vote, that leaves total number of the members 13, 2/3rd of which is less than 9. As the motion was carried by 9 votes in favour and 4 votes against the motion, the motion would be deemed to have been carried and passed validly. On the other hand, learned counsel for the petitioner contended that even under the old law, the motion of no confidence has not been carried in accordance with law. According to him, there are 18 members of the Committee, 2/3rd of which would be 12. Admittedly the motion was carried by 9 votes in favour. Thus, the motion would be deemed to have failed under the unamended provisions. Learned counsel further contended the amendments subsequent to the date of resolution are of no consequence and ought not to be looked into by this Court for the purpose of determining the controversy. It is also contended that even if the amended provisions are taken into consideration, even then the right of the persons under clause (ii) and (iii) of sub section 3 of section 9 of the Act to vote cannot be taken away by the State Legislature as it is so protected under the provisions of Article 243 R of the Constitution of India. As we have already noticed that the amendment to such law would be prospective and would not affect Committee's action or decision taken prior to amendment adversely. We affirm this view on the basis of the judgment aforestated and all these amendments would have to be treated as prospective and not retrospective in their operation. They cannot

prejudicially affect the existing right of members of the committee by its retrospective or retroactive operation. We, therefore, in the light of judgment of the Hon'ble Apex Court and the judgment of this Court hold that the amended provisions of the Haryana Municipal Act would not have any retrospective operation to the extent that such amendments would not extinguish or invalidate the existing rights of the members, or actions or decisions taken by the Committee prior to the amendment, prejudicially, such provisions would be effective prospectively from the date of the amendment. We are of the considered view that the extinguishment of rights and invalidation of actions by giving retrospective effect to these provisions is not even remotely indicated by the legislature in the amended provisions. To that limited extent, we would affirm the view expressed by the Division Bench of this Court in the cases of Dr. Harbhajan Singh and Gian Chand Kalra (Supra). Still we will now proceed to discuss the alternative contentions vehemently raised by the learned counsel for the parties in regard to validity or otherwise of the amended provisions.

(34) SCOPE OF LEGISLATIVE POWERS AND COMPETENCE OF THE STATE LEGISLATURE IN FACE OF 74TH AMENDMENT OF THE CONSTITUTION :—

74th amendment of the Constitution by Amendment Act of 1992, for the first time, introduced the concept of Municipalities in the Constitution with effect from 1st June, 1993. Chapter IX-A of the Constitution of India is a self contained complete code in itself, provides for constitution and composition of municipalities, composition of wards, reservation of seats, disqualification of membership; power, authority and responsibility of Municipalities, election of Municipalities and to what extent they continue and the bar to interference by the court in electoral matters. Articles 243Q, 243R and 243ZF are the Articles which would have an effect on the controversy before us in the present case. Under Article 243R(1) the seats of the Municipality shall be filled by the persons chosen by direct elections, of course subject to the provisions of clause (2). In fact the provisions of this Article are para-materia to section 9 of the Act. Clause (2) of Article 243-R of the Constitution is indicative of the extent and scope of delegated legislation by the State. The parliament in

its wisdom defined the limits of the State legislation by expressing of its intention, in unambiguous terminology. It is reflected by the use of expression (i) State may by law provide for representation in municipalities of the persons falling in sub-clause (i) to (iv) of clause 2-A. Further the State may also by law provide the manner of election of the Chairperson of the municipalities. Restricted power of delegated legislation alone is available to the State Legislature by virtue of Article 243-R of the Constitution, manifestly enunciated in the language of the Article itself. This limited power to legislate revolves only on the two aspects aforementioned. This delegated legislation does not grant power to the State to legislate beyond the specified limit. There is also nothing in the article which could be construed to be of general nature giving wider ambit to the power of legislation by the State in this regard. Apparently there is no saving clause in it. It is a settled rule of law that in the event of conflict or variance between State and Central legislation, Central legislation shall take precedence, more particularly when such legislative power originates from the constitutional provision itself. Any amendment to the Constitution of India falls in the exclusive domain of the Parliament and the law legislated by the State which offends the constitutional provisions or infringes the basic structure of the Constitution, must fall being ultra vires of the Constitution. The state law must give way and stand in comity to the Central law less it should be held to be ineffective on the ground of excessive delegated legislation. One of the important feature which needs to be noticed is that right of the persons specified under clause (i) to (iv) of clause 2-A of Article 243-R of the Constitution cannot be said to be controlled only by language of the proviso to this Article and section 9 could be enacted only in conformity therewith.

(35) In view of the provisions of Article 251 of the Constitution of India, this discussion need not detain us any longer. The framers of the Constitution in an unambiguous language have laid down the limits of a State legislation and in that matter any other legislation which is either repugnant or is offending any of the constitutional provisions the point of time of such enactment would

be immaterial. In other words, it would not make any difference if such law is enacted prior or subsequent to the law enacted by the parliament.

(36) Section 9 of the Haryana Act has been legislated with the intention to carry out the constitutional mandate contained in Articles 243 (P) to 243 (zg) with regard to the constitution of municipality, their elections and functioning etc. The competency of the State Legislature must be construed to be circumscribed by the limitations enumerated in the constitutional provisions. The expression "by law provide" for representation in a municipality of "and the manner of election" of the Chairperson of the Municipality, convey by use of unambiguous language a definite intention that the power of the State to legislate is not to create a parallel law or to frustrate the constitutional law even impliedly. The law so enacted by the State for providing for representation in a Municipality is in relation to the persons identified in (i) to (iv) of clause 2A of Article 243(R) and the persons specified in (i) have been specifically debarred from voting in the meeting of the Municipality. The law, therefore, must confer and relate to no more power than for representation of the people specified therein. The State Legislature can neither add to the kind of representation nor can it subtract what has been specified in Article 243(R). The specified persons who have been prohibited from exercising the right to vote cannot be granted such a right by the State and the persons who have not been debarred from exercising such a right can not be prohibited from doing so by the State Legislature. The manner of election must be construed in a restricted manner. The competency of the State to legislate is only to provide a mode by which the election of a chairperson of the Municipality will be conducted and nothing else, which would have the effect of either directly or by necessary implication destroying the spirit of the constitutional provisions. There is an apparent object in denying the right to vote to the persons specified under (i) of Clause 2(a) of Article 243 (R) as their role is limited to participate in the administration of the municipality and such participation is founded on their knowledge, experience and administrative skill. In other words the primary object seems to be that such persons must render proper help and assistance to the elected body to run the administration of a municipality in an efficient and progressive manner. While the persons specified under clause (ii) and (iii) are already the elected persons to the much larger elected bodies i.e. House of People, Legislative Assemblies or Councils of the State,

these specified persons have not been denied the right of voting by the farmers of the Constitution. Thus, it must be by necessary implication, follow that the persons specified under (ii) and (iii) of Clause 2(a) of Article 243(R) have a right to vote in the meeting of Committee. The nomination of such persons to the elected body is a direct consequence of their being elected members of the House of People, Legislative Assemblies, and Councils of the State.

(37) The power of the State to enact law in this regard flows directly as a consequence of Constitutional provisions contained in Article 243 (R) of the Constitution of India and, therefore, would be nothing but a power to be exercised on the basis of delegated legislation. The power of delegation in our legislative system is wide power. Equally true is the fact that important limitations on power of delegation and delegated legislation, are also well accepted. From the language of the above provisions, it is clear that the Parliament did not and never intended to abdicate its legislative powers in favour of the State Legislature. Such an interpretation could safely be drawn on the basis of the language applied in these provisions. One of the accepted principles of delegated legislation is that ordinarily the Legislature cannot delegate its powers to repeal a law or even to modify it in essential features. Such a delegation would obviously be hit by the principle of excessive delegation. (refer Ramesh Birch v. Union of India (10). The provisions enacted in exercise of power of delegated legislation would be open to Court's scrutiny and would be subject to judicial review wherever such provisions are in violation of the Constitution or violation of the enabling Act. In *Ramesh Birch and others* v. *Union of India and others* (10-A), the observations of the Hon'ble Supreme Court needs to be noticed :—

> "The better way to put the principle, we think, is to say that the extension of an enactment which makes additions to the existing law would also be permissible under S. 7 so long as it does not, expressly or impliedly, repeal or conflict with, or is not repugnant to, an already existing law. In this context reference can usefully be made to the observations in Hari Shankar Bagla AIR 1954 S.C. 465 & (1995) ISCR 380, which seem to countenance the "by-passing" of an existing law by a piece of delegated legislation and to draw the line only at its attempt to repeal the existing law, expressly or by

(10 & 10-A) A.I.R. 1990 S.C. 560

necessary implication. In a sense, no doubt, any addition, however small, does not amend or vary the existing law but so long as it does not really detract form or conflict with it, there is no reason why it should not stand along side the existing law."

(38) In the case of *Tata Iron and Steel Co. Ltd.* v. *Workmen of M/s Tata Iron and Steel Co. Ltd. and others* (11) the Hon'ble Apex Court commented upon the scope of delegated legislation as follows :

"Due to the challenge of the complex socio-economic problems requiring speedy solution the power of delegation has by now as per necessity become a consituent element of legislative power as a whole. The legal position as regards the limitation of this power is, however, is no longer in doubt. The delegation of legislative power is permissible only when the legislative policy and principle are adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the legislature. The legislature, it must be borne in mind, cannot abdicate its authority and cannot pass on to some other body the obligation and the responsibility imposed on it by the Constitution."

(39) With this background, now we proceed to interpret the expressions "members of the Committee" as used by the State Legislature in Section 21 of the Haryana Act. In order to understand its meaning we must look into the provisions of Section 9 and Section 18 of the Act. Under Section 18 every Committee or Council has to elect one of its members to be President of the Committee Under Section 9 person specified above have a right to vote. Once a person is a member of a Committee his right to vote would be necessary corollary thereto unless such right is intentionally taken away by the Legislature either by use of specific language or if such interpretation becomes necessary on the principle of necessary implication. We are unable to see as to on what premises can the persons (members of the Committee) under (ii) to (v) of Article 243 (R) (2)A can be denied the right to vote. The right to vote must be by very nature of thing stand by their membership of the Committee, unless such right is specifically excluded by a valid

(11) A.I.R. 1972 S.C. 1917s

piece of legislation. While the framers of the Constitution considered it appropriate not to impose any restriction on the right of the members of the Committee, nominated under clause (ii) to (iv) of Article 243 (R) and elected members while they specifically debarred the nominated persons falling under clause (i) from exercising the right to vote in the affairs of the Committee. Thus, it is not within the legislative competence of the State to create such a bar as incorporated in the 2nd proviso to section 9 (3) of the Haryana Municipal Act. The expression "members of the Committee", appearing in 2nd proviso to section 9 (3), therefore, must be read *ed jus generem to the provisions contained in Section 9 of* the Act. It must be construed harmoniously with the aforestated provisions keeping in view the objects and scheme of this enactment. The object of the Legislature is to provide for the election of the President of the Committee under the above referred provisions and to protect him from removal except by vote of no confidence supported by not less than 2/3rd majority of the members of the Committee. The members of the Committee should be and ought to be the members who have a right to participate and decide in this regard. In other words the members of the Committee who are required to effectively participate in the discussion whether the motion of no confidence should or should not be carried must necessarily have the right to vote as well in furtherance to that discussion, unless otherwise debarred from exercising such right by a proper legislation. Election or removal of President by vote of no confidence cannot be called or termed as administrative matters of the Committee. It is an obligation imposed and a right to vote which accrues from the statutory provisions of the Haryana Act, upon the members of the Committee. The elected members are really the persons who constitute this body. All elected members consequently have a right of participation and voting without restriction and hinderance. In all matters related to the Committee their right to vote is unfettered and unrestricted. The provisions of the Haryana Act are in no way the result of innovative legislation, but are a mere derivative reproduction of Constitutional provisions. These provisions only predicate the legislative intent contained in the constitutional provisions. They form a class in themselves and would stand at a higher pedestal than the nominated members falling under (i) of Clause 2A of Article 243 (R). The elected members have been given a definite status under the provisions of this Act as well. This would be true from the scheme of this Act which uses different expressions in relation to members of the Committee in different provisions and also provides complete regulatory measure to control their

conduct, powers in the affairs of the Committee and privileges available to them under this Act. In other words the expression "2/3rd members of the Committee" would only include the members who have a right to participate and vote as on 31st July, 1995.

(40) Another important fact is that the persons specified in clause (i) of sub-section 3 of Section 9 of the Act have been debarred from voting in the meeting of the Municipality. In other words, they do not have a right to vote even in administrative matters much less in important matters like the no confidence motion.

(41) It is settled rule of interpretation of statute that the provisions of an enactment must be construed in a manner which would further the cause and achieve the object, intended to be so achieved by the framers of the relevant law. The elected members to the Committee or the nominated members falling under (ii) and (iii) who themselves are elected members to a much larger body would be the right persons to participate and determine the question of such importance, in regard to the very constitution of the Committee. In other words, it should be 2/3rd majority of the members who are directly elected to the Committee and the members who are nominated to the Committee by the State Government being the Members of the Parliament, Legislative Assembly and or legislative council, as the case may be.

(42) In view of the settled position of law, we are not in a position to accept the contention raised on behalf of the State that persons specified under clause (ii) and (iii) of section 9(3) of the Act will not have a right to vote. The proviso to that limited extent would be *ultra vires* of the constitutional provisions and the basic structure thereof. It infringes the very basic spirit of the constitutional provisions contained in Article 243-R of the Constitution. The right to vote is an indispenable right of the above members of the Committee. Thus, it would be inevitable interpretation of such electorallars founded on any accepted norms of interpretation and keeping in mind the principle governing the democratic system of functioning in such elected bodies.

(43) Any law enacted on the strength of delegated legislature cannot be permitted to frustrate such indispensible right specially when constitutional provisions do not place any embargo or restriction thereupon. Limited scope of delegated legislation must adhere to the guidelines and mandate contained in the provisions of the Constitution. The State legislation cannot thus create a law

which will run counter to the constitutional provisions or would destory the basic structure thereof *Right to vote is an integral part of any democratic system and the persons under clause (ii) and (iii) are obviously elected persons who have to play their role for the benefit of the much larger constituencies and at higher pedestrain, are expected to further the cause of municipality and its welfare activities, by their contribution in affairs of the municipality. One is unable to see any valid reasoning for the proviso so far it limits and takes away the right of these persons to vote.* To that extent this part of the 2nd proviso to section 9 (3) of the Act being severable from rest of the proviso has to be held *ultra vires* of the constitutional provisions. Such appears to us the scheme underlining the provisions contained in part IX-A of the Constitution and enabling Article of the Constitution empowering the State to legislate to a limited extent in that regard. In this context reference can be made to the judgments in the case of *Woolwich Equitable Building Society* v. *Inland Revenue Commissioner (12), Delhi Transport Corporation* v. DTC *Mazdoor Congress* (13), *State of Punjab* v. *Prem Sukhdas* (14), and *M.J. Shivni v. State of Karnataka* (15).

(44) Following these principles, we have no hesitation in holding that 2nd proviso to section 9 of the Act limited to the extent where it debars the specified members in clause (ii) and (iii) of sub-section 3 of Section 9 of the Act is *ultra vires* and cannot be sustained in law. In regard to remaining part of the proviso we refrain from commenting and in any case, the remaining portion of the proviso can safely be protected on the principle of doctrine of severality.

(45) Now we will proceed to demonstrate numerically though hypothetically, that any other interpretation given to these provisions is likely to frustrate the objects of legislation. Under clause (ii) and (iii) of sub section 3 of section 9 of the Act, the members of the Legislative Assembly of the State representing the contituencies which comprise partly or wholly of the municipal area in question and the members of the municipal council of the State are required to be nominated by the State Government. This exercise of nomination is a command of constitutional provisions

(12) 1991 (4) India England Reports 92
(13) A.I.R. 1991 S.C. 101
(14) A.I.R. 1997 S.C. 1640
(15) 1995 SCALE 80

contained in Article 243-R of the Constitution, where State has been directed to effect such notification. It is conceded case of the parties before us that after bifurcation of Punjab into State of Punjab and Haryana by the Punjab Re-Organisation Act, 1966 council of State has not been constituted in either of the States till date. Thus, the question of nomination of the persons by the State would have to restrict to clause (i) and (ii) of section 9 (3) of the Act.

(46) Under sub-section (i) if Section 9 of the Haryana Municipal Act, the Committee shall be constituted under section 2A and shall consist of such number, of elected members, but not less than 11. Thus, the minimum number of elected members of the Committee as provided is 11. Under Section 9 (3) (i), three members would be nominated, who assist the Committee, but would have no right to vote, while under section 9 (3) (ii) two persons would be nominated. Under the unamended Act, they had a right to vote but after introduction of 2nd proviso to section 9, they would also have no right to vote while considering the resolution of No Confidence Motion. Thus, there would be total 16 members of a Committee, out of which earlier three and now 5 would have no right to vote. 2/3rd of 16 members would be 10.6 say 11 (rounding up being permissible under rule). Thus, total number of members required to carry No Confidence Motion would be 11. The number of elected members is also 11. The President/Vice President against whom the No Confidence Motion has been moved, as the case may be, obviously never vote against himself and therefore, in any situation the motion cannot be ever carried. Thus, it is demonstrated that the interpretation put forward by the State and even to some extent by the counsel for the petitioner would not purposefully achieve the object of the legislation. However, we must notice here that no reason was put forward on behalf of the State in support of the contention that there was even remote nexus between the object sought to be achieved by the amendment of the scheme of the Act. In fact the amended provisions run contrary to the scheme of the Act and the Constitutional provisions governing the subject. Testing the argument afore indicated on the facts of the present case, it can again be demonstrated that in probabilities of the resolution being ever carried would be much more dominant. There are total 18 members in the Municipal Committee, Indri, out of which 5 members would have no right to vote as per amended law. Thus, the members who have the right to vote would only be 13. 2/3rd of 18 is 12A president obviously would not vote against himself and is expected at least to have one supporter out of the 13

elected members. Such a President/Vice-President therefore, would be able to frustrate the resolution. Therefore, we are of the considered view that it will not be permissible to accept the contended interpretation of these provisions. The intention of the legislation behind such provisions relates to governance and democratic functioning right at the grass root level. Such a pious intention must lead to its ultimate objects of fair administration by a duly elected body rather than to frustrate such objects.

(47) The complete picture that emerges from the aforestated discussion on legal principles is that the expression "members of the committee" used in section 21 of the Act must take colour and be read in conjunction with the provisions of Section 9 (3) of the Act. Both these provisions obviously must be interpreted and construed in complete respect to the constitutional provisions contained in Article 243(R) of the Constitution. The law as it stands today, would include the elected members who are members of the Committee and have right to participate effectively and purposefully for considering the question of such provenance and would have unfettered right to vote. These are the members who must be treated as members eligible and ought to be considered as members of the committee for the purpose of achieving the end stated by law under section 21 of the Act. This position would not in any case be altered even by introduction of rule 72(a) of the Rules. This rule only postulates that motion for no confidence would be initiated only after such requisition is signed by 1/3rd of the total members of the committee but the motion would be deemed to have been carried if only when 2/3rd of the members of the committee vote for motion. Thus, there is no contradiction in these provisions and they must be read in harmony as they operate as different stages. The purpose appears to be that motion of no confidence should not be initiated so lightly that it becomes a routine. Thus at least 6 members are expected to sign such move (in the facts of this case). What should be the meaning given to the expression "members of the committee" has already been explained by us above. To determine the requisite majority required under section 21 (3) of the Haryana Municipal Act, 1973, the members who have a right to effectively participate in discussion of such motion and have a right to vote as aforestated would be the only members entitled to be counted for that purpose. In other words, the persons specified under clause (i) of section 9 (3) of the Act would not be entitled to be counted as members of the committee for that purpose.

(48) Thus, we are of the views that reliance placed by the

learned counsel for the State upon rule 72-A cannot advance any further, the argument raised on behalf of the State. Even if we assume it for the sake of argument that rule 72 (A) could be retrospective in operation, even then, it would not alter the basic principle of law aforestated. The Legislature in its wisdom has used the expression not less than 1/3rd of the *total number of the members of the committee in sub-rule 1 of Rule 72 (A), while in sub-rule (4)* of the same rule the expression used is not less than *2/3rd members of the Committee.* The above two expressions are distinct and different. They may appear to be homogeneous but they are, in fact, not so. There is clear and definite distinction clearly identifying the field and stage of their operation, though they may have circuitous connection. One operates where No Confidence Motion is to be moved in accordance with law. Emphasise at this stage is on the expression "total number of the members of the committee". The expression "total number" used by the Legislature excludes the possibility of carrying out an exception in regard to any members with relation to their character of membership. Total number of the members in the present case is 18 whose 1/3rd has to be counted for the purpose of bringing of motion of no confidence. While this motion of no confidence can be carried only if supported by 2/3rds of the members of the committee to vote for the motion. Thus, the words members of the committee have to be given different connotation and meaning than the words total numbers of the members of the Committee.

(49) Some what similar distinction has been spelt out in the language of Article 169 of the Constitution of India where the legislative assembly of the State could pass a resolution for abolition and creation of a State Council by majority of total members of the Assembly and by a majority of not less than 2/3rd members of the Assembly present and voting. In other words, non-compliance with either of them could defeat such a resolution. Similarly, there will be compliance of sub rules (i) and (iv) of Rule 72 (A) of the Rules at two different stages. At the second stage compliance of sub-rule 4 of Rule 72-A read with section 21(3) of the Act relatable to the strength of the members excluding the members under clause (i) of section 9(3) of the Act.

(50) The Hon'ble Division Bench of this Court dealing with Civil Writ Petition No. 10116 of 1995 has doubted the correctness of judgment of another Division Bench of this Court in the case of Sukhbir Singh (Supra) (PLR 1996, Vol-II, page 169). Though the

order of the Division Bench passed in Civil Writ petition No. 10116 of 1995 was a mere admission order but the point of doubt in the mind of the Bench was clearly referred in the order of 18th July, 1995. Thus, we will now proceed to discuss the judgment of the Division Bench in the case of Sukhbir Singh (Supra).

(51) Though in Sukhbir Singh's case the amendment of section 9 as well as insertion of Rule 72(A) was not in question, because admittedly the resolution of no-confidence against President in that case was subsequent to these amendments. As the controversy has been raised before us even on the basis of amended provisions which we have already answered above. Thus, it becomes necessary for us to express a view in regard to correctness of the view taken in Sukhbir Singh's case.

(52) After discussing the law on the subject, the Hon'ble Division Bench found that the motion of no-confidence can be treated as carried if not less than two third of total members of the committee voted for it. The whole number of members of the committee has to be counted and there is no reason to exclude the nominated members for the purposes of gaining of one-third number or two-thirds number as the case may be for determining the compliance of Rule 72-A and section 21 (3) of the Act.

(53) Firstly we are of the view that the question with regard to the validity of the amended provisions of the Haryana Municipal Act was not assailed before the Hon'ble Division Bench. Secondly, their lordship of the Division Bench equated the expression "total number of the members of the Committee" to the "members of the Committee" used in section 21 (3) of the Act, to which we are unable to persuade ourselves to agree.

(54) To us it appears that the view taken by the Hon'ble Division Bench and the interpretation given if accepted, are likely to produce manifestly unjust result and would probably defeat the legislative intents and object rather than achieving the same. We cannot lose sight of the relevant constitutional provisions contained in Chapter IX-A of the Constitution. The language used by the Legislature is the best and perfect instrument for the expression of human intention and construction of language. Thus, it would be an important factor in determining the real legislative intent under lying such provisions. Firstly the interpretation given has achieved object intended by the legislature and secondly it ought not to hamper or deprive on it is true achievement of such object

(refer *Commissioner of Income Tax, Bangalore* v. *J.H. Goatia (16).* We have considered the object as well as the legislative intent behind these provisions.; Settled rules of construction and interpretation of statute provide for above dual test in this regard.

(55) We though partly but most respectfully disagree with the view expressed in Sukhbir Singh's case to the extent that for determining the majority of 2/3rd members of the Committee within the meaning and scope of section 21(3) of the act and the Rules 72(A) (4) of the Rules, nominated members specified in clause (I) of Section 9 (3) of the Act are not to be excluded.

(56) Another judgment by the learned Single Judge of this Court (where similar view was taken in) the case of *Pritam Singh v. State of Punjab,* (17), was also brought to the notice by the petitioners in support of their case. Again respectfully we are not in a position to wholly subscribe to the proposition laid down by his Lordship in that case.

(57) Thus, in view of our above discussion, we hold that the non-confidence motion against the President or the Vice-President of municipality will have to be moved by at least one-third of total number of members of the Committee, that is, nominated members as well as elected members. But, the motion has to be carried by not less than two third members of the committee (i.e. the elected members and the members specified under clause (ii) and (iii) of sub-section (3) of section 9). Further, the newly inserted 2nd proviso to sub section (3) of the Section 9 of the Act in so far as it debars the members falling in category (ii) and (iii) from exercising the right to vote, to that limited extent is declared *ultra-vires* being repugnant and contrary to the provisions, spirit and basic structure contained in Article 243 (R) and scheme of Chapter IX-A of the Constitution of India. Consequently, we strike down the same limited to the extent aforestated. Therefore, the members of a committee who are nominated under clause (ii) and (iii) being elected members from a much larger constituency, of which the municipality itself forms part, would have a right to vote while considering no-confidence motion in the Committee. In view of the meaning given by us to the expression members of the Committee No confidence Motion in the facts of the present case would in any case fail, whether examined under the amended or unamended Act.

(16) A.I.R. 1985 S.C. 1698
(17) 1995 (2) P.L.R. 378s

(58) Reverting back to the facts of the present case, in all there are 18 members of the Municipal Committee, Indri. As already noticed, it has 13 elected, 3 nominated under section 9 (3)(1) and two other nominated persons under section 9 (ii) and (iii). As we have already held that the nominated persons under section 9 (ii) and (iii) of the Act would have the right to participate and vote in consideration of No Confidence Motion and that the members of the Committee would include other members but exclude the nominated members under section (3)(i), thus, the total number of the members, who would matter for the purpose of consideration of motion, would be 18-3=15. 2/3rd of 15 is 10. Admittedly, the alleged No Confidence Motion was carried by 9 members voting for the motion and 4 against the motion, as such, the motion cannot be said to have been carried by the requisite majority. As is clear that the motion of No Confidence in the present case was carried by 9 members, therefore, it is not supported by the required majority of not less than 2/3rd members of the Committee and as such the resolution had failed.

(59) Consequently, we allow this petition and set aside and quash the resolution No. 62 dated 13th of July, 1995 passed by the municipality of Indiri in its special meeting held on that date under section 21(3) of the Act. The obvious result would be that the petitioners are entitled to all consequential reliefs.

(60) However, the respondents would be at liberty to act in accordance with law. Keeping in view peculiar facts and circumstances of the case, there shall be no order as to costs.

R.N.R.

Before G.S. Singhvi and B. Rai, JJ

BIMLA DEVI,—*Petitioner*

versus

PRESIDING OFFICER, LABOUR COURT, BATHINDA AND OTHERS,—*Respondents*

CWP 9606 OF 1997

2nd December, 1997

Industrial Disputes Act, 1947,—Ss.2(oo)(bb) and 25-F—Hospitals and dispensaries—Whether an industry within the meaning of Act—Unfair labour practice—Deliberate breaks in