Before Satish Kumar Mittal,
Mahesh Grover,
Jaswant Singh,
Harinder Singh Sidhu &
Deepak Sibal, JJ.

SANJEEV KUMAR VERMA—*Appellant*

versus

THE DIRECTOR, URBAN LOCAL BODIES, CHANDIGARH AND OTHERS—*Respondents*

LPA No. 592 of 2013

February 11, 2015

Letters Patent, 1910 - Cl. 10 - Constitution of India, 1950 - Arts. 243R, 243V and 243ZA - Haryana Municipal Act, 1973 - Ss. 9, 13B, 18 and 21 - Haryana Municipal Election Rules, 1978 - Rls. 72-A and 72-B - Motion of No Confidence against President/Vice-President of Municipal Committee - Elected Members - Committee comprising of 15 members - 13 elected and 2 nominated i.e. MP and MLA of the area - No confidence motion passed against the President by 9 members, being 2/3rd majority of 13 elected members - Resolution challenged in writ jurisdiction, contending Committee consisting of 15 members and thus 2/3rd majority would be 10 - Writ dismissed - LPA there against - Reference to Full Bench - Thereafter placed before Larger Bench, as the view taken in earlier Full Bench judgments required re-consideration - Held, members nominated under clause (ii) and (iii) of section 9(3) i.e. MP/MLA, cannot be deemed to be 'elected members of the Committee' - For successfully carrying out No Confidence Motion against President or Vice-President under section 21(3), such nominated members cannot be taken into consideration for counting/ calculating not less than 2/3rd of the elected members of the Committee - A member of the House of People and the Legislative Assembly of the State cannot remain as 'elected member of the Committee' in view of the bar under Section 13-B - Full Bench decision in Krishan Kumar Singla's case overruled - Reference answered.

Held, that the expression "elected members" does not require any further interpretation. These words are plain and simple. Elected members means the members of the Committee who have been chosen through direct election from the territorial jurisdiction of the Municipality in the municipal area. It cannot be said that the elected members naturally would include the members who become members of the Committee by virtue of they having been nominated as members of the Committee being elected to the House of People, Legislative Assembly or Council, as the case may be. Merely because the nominated member may be having better understanding of issues when considered in a larger perspective being member of Parliament and Legislative Assembly, they cannot be given the status of 'elected member of the Committee' and included in the expression "elected member" used in Section 21(3) of the Act. Thus, in our view the aforesaid law laid down by the Full Bench in *Krishan Kumar Singla v. The State of Haryana and others* 1999(3) PLR 150 is held to be contrary to the plain provisions of Sections 13-B and 21(3) of the Act and the same is hereby overruled. In the light of the above, all the three referred questions are answered as under:–

(i) the members of the House of People and the Legislative Assembly of the State or the Council of the States, who have been nominated as members of the Committee under clauses (ii) and (iii) of Section 9(3) of the Act by virtue of their being members of the House of People, Legislative Assembly of the State or the Council of the States, cannot be deemed to be 'elected members of the Committee'.

(ii) in counting/calculating not less than two-third of 'the elected members of the Committee' for successfully carrying out the No Confidence Motion against the President or Vice-President as provided under Section 21(3) of the Act, the nominated members who have been nominated under clauses (ii) and (iii) of Section 9(3) cannot be taken into consideration.

(iii) That a member of the House of People and the Legislative Assembly of the State cannot remain as 'elected member

of the Committee' in view of the bar created under Section 13-B of the Act.

The reference is answered accordingly.

(Paras 41 and 42)

Amit Jhanji, Advocate and Avinit Avasthi, Advocate, *for the appellant.*

Hitinder Singh Lalli, Addl. A.G., Haryana, for respondents No. l to 4.

Anil Rathee, Advocate, for respondent No. 5-Municipal Committee, Naraingarh.

Sanjeev Pandit, Advocate and Balbir Kumar Saini, Advocate, for respondents No. 6 to 14.

SATISH KUMAR MITTAL, J.

(1) Municipal Committee, Naraingarh (hereinafter referred to as 'the Committee') consists of 13 elected members and two nominated members, i.e., Member Parliament from Ambala and Member Legislative Assembly, Naraingarh, who were nominated as such under Section 9(3) of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the Act'). Appellant Sanjeev Kumar Verma was elected President of the Committee in the meeting held on 21.6.2010. His name was notified in the official gazette of the State of Haryana. In a meeting of the members of the Committee held on 3.8.2012, a no confidence motion was passed against the appellant under Section 21 of the Act read with Rule 72-A of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as 'the Rules') for his removal as President. Out of 15 members to whom the notices were given, i.e., 13 elected and 2 nominated, as stated above, only 9 elected members came present in the meeting and unanimously passed the no confidence motion against the appellant by way of secret ballot. Since the no confidence motion was passed by 9 out of 13 elected members of the Committee, it was declared to be carried out with the support of two-thirds of the elected members of the Committee, and on passing the said resolution the appellant was deemed to have vacated his office.

(2) The appellant challenged the said resolution by filing CWP No. 15125 of 2012 in this Court which was dismissed by the learned Single Judge vide order dated 06.02.2013 while holding that for the purpose of carrying out No Confidence Motion, 2/3rd majority of the elected members, as envisaged under Section 21(3) of the Act, is required, and the members nominated under Section 9(3)(ii) of the Act are not to be taken as elected members for the purpose of counting 2/3rd of the total number of members of the Committee for passing No Confidence Motion. It was held that such interpretation would be contrary to the plain language of Section 21(3) and would further run counter to the true spirit of the legislative intent in framing of the Act. The appellant challenged the said order by filing the instant Appeal. It was contended that the resolution of no confidence was not passed against the appellant with the support of two-thirds 'elected members of the Committee'. According to him, 'elected members' would include the two nominated members, who were elected from larger constituencies, thus, the total elected members came to 15 and two-thirds of which would be 10, whereas the resolution of no confidence was passed only by 9 elected members. In support of his contention, a reliance was placed on the following observations of the Full Bench of this Court in ***Krishan Kumar Singla v. The State of Haryana and others(1)***:-

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

(1) 1999(3) PLR 150

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

(Emphasis added)

(3) It was further contended that in an earlier Full Bench decision of this Court in ***Raj Pal Chhabra v. State of Haryana and others(2)***, it was also held that no confidence motion against the President of the Municipality had to be carried out by not less than two-thirds of the members of the Committee, i.e., elected members as well as the members specified under sub-clauses (ii) and (iii) of Section 9(3) of the Act, and in view of the decision in ***Krishan Kumar Singla's case*** (*supra*), the nominated members falling under Section 9(3)(ii) of the Act would be deemed to be elected members of the Committee for all intents and purposes of Section 21(3) of the Act. It was thus submitted that not only would they have right to vote in the special meeting convened for considering no confidence motion but their numbers were also to be counted for the purpose of calculation of two-thirds members of the elected members of the Committee for carrying out no confidence motion against the President or the Vice-President of the Committee.

(4)The aforesaid argument was resisted by the learned counsels for the respondents and it was contended that Section 21(3) of the Act clearly provided that a motion of no confidence could only be carried out against the President or Vice-President if supported by 'not less than two-thirds of the elected members of the Committee' and 'elected members of the Committee' could be only those members of the

(2) 1998(3) PLR 1

Committee who had been chosen by direct election from the territorial constituency of the Municipal Committee as provided under sub-section (2) of Section 9, and would not include members nominated under clause (ii) of Section 9(3) of the Act by virtue of they being members of the House of the People and the Legislative Assembly. It was contended that though the nominated members of the Committee being members of the Committee by virtue of their nomination, have right to vote in the meeting of the Committee, but they cannot be considered and deemed to be 'the elected members of the Committee' for the purpose of removal of President or Vice-President under Section 21(3) of the Act. It was submitted that in Section 21(3), the intention of the Legislature was clear that so far as passing of the motion of no confidence against the President or Vice-President is concerned, it had to be supported by not less than two-thirds of the 'elected members of the Committee' and not the 'nominated members of the Committee' who have been nominated under clause (ii) of Section 9(3) of the Act. It was further argued that the Full Bench in ***Krishan Kumar Singla's case*** (*supra*) had clearly overlooked Section 13-B of the Act, inserted by Act No.13 of 1997 which clearly provided that a person cannot be simultaneously elected as a member of the Municipal Committee and the Legislative Assembly or Parliament, as the case may be; and if an elected member of the Committee is elected as Member of Legislative Assembly or Parliament, as the case may be, he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament. Learned counsel for the respondents relied upon the decision of the Apex Court in ***Ramesh Mehta v. Sanwal Chand Singhvi and others(3)*** in support of his proposition.

(5) After considering the various submissions, a Division Bench of this Court referred the matter to the larger Bench while observing that the view taken by the Full Bench in ***Krishan Kumar Singla's case*** (*supra*) with regard to issue that the members of the House of the People and the Legislative Assembly of State, who have been nominated as members of the Committee under clause (ii) of Section 9(3) of the Act, would be deemed to be 'elected members' of the Committee for the

(3) (2004) 5 SCC 409

purpose of participating in the special meeting convened under Section 21(3) of the Act for consideration of no confidence motion against the President and Vice- president, required re-consideration by a larger Bench because the effect of Section 13-B and amendment made in Section 18(1) of the Act were not considered by the Full Bench as the same were not brought to its notice, and referred the following questions to be answered:-

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

(6) The said reference was placed before the Full Bench of this Court consisting of three Judges. The Full Bench has agreed with the above reproduced questions posed by the Division Bench in the referral order while observing that the effect of Section 13B and amended

provisions of 18(1) of the Act were not taken into consideration in the earlier Full Bench decision rendered in ***Raj Pal Chhabra*** and ***Krishan Kumar Singla's cases*** (*supra*) and, therefore, the matter would require re-determination by a still larger Bench. In view of said reference, the matter has been placed before this Bench consisting of five Judges for determination of the issues raised above.

(7) We have heard the arguments of the learned counsel for the parties in detail on the aforesaid issues and other consequential issues arising therefrom. Before the aforesaid issues/questions are dealt with in light of the arguments raised by the learned counsel for the parties, it will be appropriate and necessary to go into the history of various relevant provisions of the Constitution of India and the Act involved in the present case as well as various amendments made therein from time to time and the purpose and object of Section 13-B and the amendments made in Sections 18(1) and 21(3) of the Act.

74th Amendment in the Constitution

(8) To strengthen the Urban Local Government, which is considered to be third tier of Indian Federal Government and to fortify the democracy at the grass root level, 74th amendment was made in the Constitution of India. Articles 243P to 243ZG were introduced in the Constitution. Article 243R provides for composition of Municipalities. Article 243T provides for reservation of seats in the Municipal Committee, Municipal Council or Municipal Corporation, as the case may be. Article 243U provides for duration of Municipalities, etc. Article 243V provides for disqualifications of members. Article 243ZA provides for election to the Municipalities. The relevant provisions of these Articles, which have bearing on the issues raised in this reference, are reproduced below:-

> ***"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.*
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> *(2) The Legislature of a State may, by law, provide–*

(a) for the representation in a Municipality of–

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

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

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

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

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

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

"243V. Disqualifications for membership.*—(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality–*

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) ***if he is so disqualified by or under any law made by the Legislature of the State."***

(Emphasis added)

"243ZA. Elections to the Municipalities.*—(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the*

Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) ***Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities."***

(Emphasis added)

(9) In Article 243R, a clear mandate was given that all the seats in a Municipality shall be filled up through persons chosen by direct election from the territorial constituencies in the Municipal area. The State Legislature is bound to incorporate this mandate while enacting the law with regard to composition of Municipalities. However, one saving clause was provided to this mandate through sub-Article (2) which empowered the State Legislature to frame laws for making provisions for nomination of (i) persons having special knowledge or experience in Municipal administration; (ii) 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) members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area; and (iv) the Chairpersons of the Committees constituted under clause (5) of Article 243S. However, it is specifically provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality. Sub-Article (1) contains a clear mandate that all the seats in a Municipality shall be filled up through persons chosen by direct election from the territorial constituencies in the Municipal area. Sub-Article (2) contains guidelines with a clear mandate that as far as the persons referred to in paragraph (i) are concerned, they shall not have the right to vote in the meetings of the Municipality. Impliedly, it can be said that the persons referred to in paragraphs (ii), (iii) and (iv) may be given the right to vote in the meetings of the Municipality but that would depend upon the law enacted by the State legislation in that regard. These sub-Articles do not contemplate that the category of persons, referred to in paragraphs (ii), (iii) and (iv) have to be given the right to vote in all the meetings of the Municipality, including the meeting of passing the no confidence motion against the President or Vice-President of the

Committee. It is left to the wisdom of the State Legislature to give the right of vote to such members, and to what extent, while framing legislation in this regard. The purpose of creating an exception by sub-article (2) to the general principles was to provide experienced persons as members of the Committee having special knowledge and experience in Municipal administration and the members of the House of the People and the members of the Legislative Assembly of the State, to guide the elected members of the Committee to take right and proper decisions for appropriate and effective development of the Urban Local area of the Committee.

History of the amendments made in the Municipal Act pertaining to the issues involved

(10) In view of the aforesaid amendment made in the Constitution of India, Section 9 of the principal Act was substituted in the year 1994 vide Haryana Act No.3 of 1994 (notified on 5.4.1994) as under:-

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

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

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

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

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

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

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

(11) Certain amendments were also made in Section 18 of the Act which provides for election of President and Vice-president. Section 18 of the principal Act was substituted to the following effect:-

"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."

(12) In Section 21 of the Act which provides for motion of no-confidence against President or Vice-president, certain amendment was made in sub-section (4) and the words "or appointment" were omitted. Sub-section (3) of Section 21 at that time reads as under:-

> *"(3) If the motion is carried with the support of not less than two-thirds of the members of the Committee, the president or vice-president, as the case may be, shall be deemed to have vacated the office."*

(13) Vide notification dated 13.9.1995 the Haryana Municipal Election Rules, 1978 were also amended. Rules 72-A and 72-B were inserted to the Rules which are reproduced below for ready reference:-

> ***"72-A. No confidence motion against president or vice-president.***— *(1) A motion of no confidence against the president or vice-president of a committee may be made through a requisition given in writing addressed to the Deputy Commissioner, signed by not less than one third of the total number of the members of committee:*
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> *Provided that the members who have made such a motion may withdraw the same before the meeting is convened for the purpose.*
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> *Explanation.—Any fraction under this rule shall be taken as a whole.*
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> *(2) The Deputy Commissioner or such other officer not below the rank of Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall circulate to each member a copy of the requisition for the use of the members.*
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> *(3) The Deputy Commissioner or such other officer not below the rank of Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall convene a special meeting by giving a notice of not less than fifteen days for the consideration of the motion referred to in sub-rule (1), and shall preside over at such meetings:*

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

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

72-B Fresh election.—*If the office of the president or vice-president is vacated during his tenure on account of no confidence motion, a fresh election for the remainder of the period shall be held in accordance with the provisions contained in this Part.*

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

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

"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:"

(15) Through the above amendment, the Legislature in its wisdom and vide the power given to it by clause (b) of Article 243R and sub-Article (2) of Article 243ZA, restricted the right to vote of the persons referred to in clauses (ii) and (iii) of Section 9(3) of the Act. As per this amendment they would neither have the right to contest the election of President or Vice-president of Municipal Committee or Municipal Council nor they have the right to vote in such election. They were also not given any right to vote in the removal of the President or Vice-president of the Committee.

(16) The validity of this amendment came up for consideration before a Full Bench of this Court in ***Raj Pal Chhabra's case*** (*supra*). In that case the issue was as to which of the members of the Committee would be entitled to vote in the meeting convened for consideration of

no confidence motion; whether only the elected members of the Committee; or, even the nominated members of the Committee, nominated under clause (ii) of Section 9(3) of the Act. At that time, Section 21(3) only provided that the no confidence motion could be carried out against the President or Vice- president with the support of not less than two-thirds 'members of the Committee'. The Full Bench after considering this question held that the members of the Legislative Assembly of the State and members of Parliament, who have been nominated as members of the Committee under clause (ii) of Section 9(3) of the Act being members of the Committee, would have the right to vote while carrying out no confidence motion against the President or Vice-president. It was held that such persons could not be excluded from the right to vote in the no confidence motion. The amendment made vide Act No.3 of 1995, whereby the 2nd proviso was added to Section 9(3), was declared to be ultra vires to Article 243R of the Constitution. It was further held that it was not within the legislative competence of the State to create a bar on the voting right of such members as incorporated in the 2nd proviso to Section 9(3) of the Act.

(17) When the matter was pending before the Full Bench, Section 9(3) of the Act was again amended by Haryana Act No. 18 of 1996 vide notification dated 16.12.1996. In sub-section (3) of Section 9, clause (i) was omitted which pertains to nomination of the persons having special knowledge or experience in municipal administration. The first proviso which provided that the persons referred to in clause (i) shall not have the right to vote in the meeting of the Committee, was also omitted. The second proviso, which was added by amendment vide Haryana Act No.3 of 1995, was substituted with the following proviso:-

> *"Provided that the persons referred to in clauses (ii) and (iii) above shall neither have right to contest for the election of president or vice-president nor right to vote in the meetings for the election of president and vice-president and in special meetings for consideration of motion of no-confidence against the president or vice-president of the committee, as the case may be."*

(18) In sub-section (1) of Section 18 of the principal Act, the words "one of its members" were also substituted with words "one of its

elected members". Further, the amendment was also made in sub-section (3) of Section 21 of the Act and the words "not less than two-thirds of the members" were substituted with words "not less than two-thirds of the elected members".

(19) Section 21(3) of the Act is reproduced below for ready reference :-

> ***"21. Motion of no-confidence against president or vice-president.—***
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> *(1)* xx xx xx
>
> *(2)* xx xx xx
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> *(3) If the motion is carried out with the support of not less than two-thirds of the elected members of the committee, the president or vice-president, as the case may be, shall be deemed to have vacated his office."*

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

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

"24. In fact what were the arguments before the Full bench in Raj Pal Chhabra's case have been incorporated by way of legislative amendment. The amended proviso to that extent suffers from the vice of same unconstitution vide which the earlier provisions of Section 9 were held to be bad. We adopt the same reasoning as given in Raj Pal Chhabra's case as that is fully applicable to the facts of the present case in coming to the same conclusion. Further more it is strange that the amendment proposes to divest the members of the House of People and Legislative Assemblies or Councils of State, as the case may be, from the right of voting. The learned counsel for the parties could hardly advance any justification for debarring these two members from the right of voting in special meetings or when a motion of no-confidence is being considered in relation to President or Vice President of the Committee by the House. It appears to be totally arbitrary that these members would have right to vote in day-to-day affairs of the Committee, but would be deprived of the right to vote in the above stated meetings only.

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

(22) As far as amendment made in Section 21(3) of the Act is concerned, where the expression "not less than two-thirds members" was replaced with the expression "not less than two-thirds of the elected members", it was observed that the elected members, would include the members who become members of the Committee by virtue of their having been elected as members of the House of People and Legislative Assembly, as the case may be, for the constituency of which the Municipal Committee was a segment. To give proper meaning to the

expression "elected members" it was held that the nominated members who have been nominated under clause (ii) of Section 9(3) would deem to be the elected members of the Committee. In this regard, the following observations were made by the Full Bench in para 26 of the judgment:-

> *"….(f) Before amendment of Section 21(3) it used the expression 'not less than 2/3rd of the members' who could carry the no confidence motion of a Committee. This Section was amended to incorporate the words 'not less than 2/3rd of the elected members.' The elected members naturally would include the members who become members of the Committee by virtue of their having been elected as member of the House of People, Legislative Assembly or council as the case may be, for the constituency of which the Municipal Committee is a segment. The expression 'elected members' must be given its proper connotation and meaning which would help to further the object of the legislation rather than to oust the people who were otherwise granted a protected right by necessary implication of the constitutional provisions. These elected members would obviously have a better understanding of the controversies, and the implication of a particular decision taken by the Committee and the manner in which such decision could be effectively implemented at different levels of the State Administration. Thus, they effectively participate and help the administration of the Committee at the grass root level, being elected members from a much larger constituency, than that of the Municipal Committee. Thus, in our view, they would be covered by the expression 'elected members' used in Section 21(3) of the Act.*
>
> *(g) It is settled rule of law that normally the Court would not substitute its own words for the expressions used by the Legislature in the enactment. It is also equally true that Courts would not give any other meaning to the language of the Section other than the one which is permissible on its plain reading keeping in mind the object of the legislation. Even the amended provisions of Section 9 of the Act states that the Municipality constituted under Section 2(a) shall consist of such number of elected members, not less than 11, as may be prescribed by the rules.*

As already noticed, the seats of the Municipality have to be filled in by the persons chosen by direct election from concerned constituency or ward, subject to provisions of sub-section (2). Sub-section (3) makes it mandatory by using the expression 'shall' to notify in the official gazette and nominate the member: belonging to the category stated in the amended provisions. Thus, the members of House of People, Legislative Assembly of the State or Council of State shall be the nominated members of the Committee. The constitutional mandate and the legislative intent of the State Legislature clearly lead to an indispensable direction that the elected members to a larger constituency of which the constituency of the Committee is a part, shall be the nominated member of the Committee. The legislation in its wisdom has not used the expression "ex-officio members" in any of the provisions. We see no reason to read into the statute such meaning. A nominated member gets his status as member of the Committee only upon a gazette notification of his being so nominated. As such it is a definite act on the part of the Government which would entitle him to be member of the Committee. The legislature has used different expression in different provisions of the Act (reference can be made to Sections 9, 18 and 21 of the Amended Act). The distinction between the expression "persons chosen by direct election", "one of its election members" and "not less than 2/3rd of elected members of the Committee" used in the above three different provisions may be fine but is a clear one. The legislature could have used the expression 2/3rd of the directly elected members rather than elected members of the Committee. Keeping in view the object of this Act a somewhat liberal construction of these provisions to achieve an effective, purposeful and efficient public administration at grass root level. The legislature in its wisdom through has used different expression as aforestated, in context to the members of the Committee, but term 'member' has not been defined in Section 2 of the Act;

(h) We must notice that Article 243-R(2) empowers in State Legislation to enact law in that regard and it could hardly be

questioned in so far it relates to 'manner of election'. But divestment of the right of the nominated member could hardly be justified on this ground, who, as already noticed, are elected members from a much larger constituency to a more important forum.

Validity of other provisions or its effects have neither been questioned before us nor we could venture to comment there-upon specifically where they relate to the manner of election of Chairperson of a Municipality;

(i) It is one of the settled principles of interpretation of statutes that absurd results should be avoided. The doctrine of absurdity makes it necessary for the Court to give interpretation to a provision the results of which would not be opposed to public policy and would not be unreasonable as well. The members elected to a much larger constituency and office of greater public importance would be entitled to participate in the day to day business of the Committee, other meetings except for meeting which are termed as special or meetings for considering "no confidence motion". This itself indicates the extent of unreasonableness by restricting the interpretation of elected members of the Committee as directly elected members to the Committee, result arising from the fact that the elected members to a much larger constituency and office of greater public importance would be entitled to participate in other meetings except for special and meeting held for decision of a no confidence motion."

(23) When the matter was pending before the Full Bench, Section 13-B of the Act had already been inserted vide amendment made by Haryana Act No.13 of 1997, which reads as under:-

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

(2) If an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall

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

(24) By the aforesaid provision, it was clearly laid down that an elected member of the Committee simultaneously cannot be member of Legislative Assembly of the State or member of Parliament, and if such member is elected to the Legislative Assembly or Parliament, he shall cease to continue as an elected member of the Committee. It is a fact that the aforesaid amendment was not considered by the Full Bench in ***Krishan Kumar Singla's case*** (*supra*) while deciding the case. It appears that the aforesaid amendment was not brought to the notice of the Full Bench.

(25) Section 13-B of the Act has a great bearing on the issue raised in this reference, particularly in light of clause (b) of Article 243V(1) and sub-Article (2) of Article 243ZA of the Constitution. By this amendment, a member of the Legislative Assembly or Parliament has been disqualified to be an elected member of the Committee. This disqualification has been laid down under the law by the State Legislature. If a member of the Legislative Assembly or member of the State or member of Parliament simultaneously cannot remain an elected member of the Committee, then it is to be taken that such a member is disqualified to be elected member of the Committee.

(26) Subsequently, in the year 2000, Section 9 of the Act was amended vide Haryana Act No. 14 of 2000 and for first proviso to sub-section (3) of Section 9 of the Act, the following proviso was substituted, namely :-

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

(27) Again, in the year 2005, Section 9(3) was amended vide Haryana Act No. 10 of 2005. Clause (i) of Section 9(3) which was omitted vide Haryana Act No.18 of 1996, was again inserted, and existing proviso to Section 9(3) was substituted by the following:-

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

(28) In the year 2006, clause 14-A was inserted in Section 2 of the Act vide amendment made by Haryana Act No.26 of 2006, w.e.f. 3.10.2006, which reads as under:-

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

(29) In light of the aforesaid amendments made from time to time, the questions of law referred to in this appeal are required to be considered and examined.

(30) In ***Raj Pal Chhabra*** and ***Krishan Kumar Singla's cases*** (*supra*), primarily two issues were raised, considered and decided. Firstly, whether the State legislature could restrict the right to vote of the persons referred to in clauses (ii) and (iii) of Section 9(3) of the Act. In ***Raj Pal Chhabra's case,*** the second proviso added to sub-section (3) of Section 9 of the Act vide Haryana Act No.3 of 1995, which provides that persons referred to in clauses (ii) and (iii) shall neither have right to contest nor right to vote in the election or removal of President or Vice-President of the Municipal Committee or Municipal Council, as the case may be, was challenged being *ultra vires* to Article 243R, and in ***Krishan Kumar Singla's case*** (*supra*), the second proviso, which was substituted, after making certain amendment by Haryana Act No.18 of 1996, as first proviso to sub-section (3) of Section 9 by omitting the earlier first proviso, which provides that persons referred to in clauses (ii) and (iii) shall neither have right to contest for the election of President or Vice-President nor right to vote in the meetings of election of President or Vice-President or in special meetings for consideration of motion of no confidence against the President or Vice-President of the Committee, as the case may be, was challenged being *ultra vires* to Article 243R of the Constitution.

(31) The second issue which was raised and considered in the aforesaid two judgments was whether the nominated members of the

Committee who have been nominated under clauses (ii) and (iii) of Section 9(3) of the Act are to be considered as the elected members of the Committee having the right to vote in the process of considering no confidence motion against the President or Vice-President of the Committee.

(32) As far as the first issue was concerned, it was held that the right to vote of the nominated members cannot be restricted as it violates Article 243R of the Constitution, and the State legislative was not within its competence to create such a bar as incorporated in second proviso to Section 9(3) of the Act. In ***Krishan Kumar Singla's case*** (*supra*) when this issue again came up for consideration with regard to amendment made in the proviso by Haryana Act No. 18 of 1996 it was held that the amended proviso was unconstitutional on the same reasoning as given in ***Raj Pal Chhabra's case*** as this amended proviso also divested the members of the House of People and Legislative Assemblies or Councils of State nominated under clauses (ii) and (iii) of Section 9(3) of the Act from the right of voting. It was further held that there was no justification for debarring these members from the right of voting in special meetings or when a motion of no-confidence is being considered in relation to the President or the Vice- President of the Committee. This amendment was thus held to be arbitrary.

(33) As far as the issue with regard to restriction of the right of nominated members is concerned, in our opinion, it does not survive as subsequently in the year 2000 the first proviso to sub-section (3) of Section 9 was substituted providing that the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice-President, and the further amendment made in this proviso in the year 2005 by Haryana Act No.10 of 2005, which was omitted vide Haryana Act No.18 of 1996, was again inserted. After the said amendment the proviso to Section 9(3), which is in existence today, provides that the persons referred to in clause (i) above shall not have any right to vote and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice-President. This amendment in this proviso is in consonance of Section 18(1) of the Act which provides that only an elected member of the Committee can be elected as President or Vice- President of the Committee. Now in this

proviso there is no limitation or restriction to the right of vote of these persons. Therefore, at present there is no issue before us that the right of the nominated members, who have been nominated under clauses (ii) and (iii) has been restricted by the proviso added to Section 9(3) of the Act. Nobody has challenged this provision. Though we have strong reservation against the interpretation given by the Full Bench in ***Raj Pal Chhabra*** and ***Krishan Kumar Singla's cases*** (*supra*) in this regard, as in our view, the Full Bench have not properly appreciated clause (b) of Article 243R(1) and Article 243ZA(2) of the Constitution, which have given ample powers to the State legislature to make provisions by law with respect to all matters relating to or in connection with, election to the Municipality and election of the President or Vice-President. In our view, the State legislature in its wisdom had restricted the voting right of the nominated members under clauses (ii) and (iii) to the extent that these persons shall not have voting rights in the election or removal of President or Vice-President of the Municipal Committee and according to us such restriction cannot be said to be arbitrary or *ultra vires* to Article 243R. Since as held above this issue does not arise at present, we are not commenting further on this issue.

(34) On the second issue, it was held in ***Raj Pal Chhabra's case***, particularly in view of unamended provisions of Section 21(3) which made no distinction between nominated members and elected members of the Committee, and where Section 21(3) itself provided that no confidence motion could be carried out against the President or Vice-President with the support of not less than two-third members of the Committee, that the nominated members of the Committee under clause (ii) of Section 9(3) of the Act being members of the Committee would have the right to vote while carrying out no confidence motion against the President or Vice-President. It was held that such persons could not be excluded from the right to vote in the meeting convened for no confidence motion. When the matter was pending before the Full Bench in ***Raj Pal Chhabra's case***, an amendment was made in sub-section (1) of Section 18 of the Act substituting the words "one of its members" with the words "one of its elected members", and further an amendment was also made in sub-section (3) of Section 21 and the words "not less than two-thirds of the members" were substituted with words "not less than

two-thirds of the elected members". This amendment was not taken into consideration by the Full Bench in ***Raj Pal Chhabra's case*** (*supra*) on the ground that in that case the resolution of no confidence motion was passed much before the aforesaid amendment came into force and was held to be not applicable in that case but when this issue again came up for consideration in ***Krishan Kumar Singla's case*** (*supra*), these amendments were considered by the Full Bench and it was held that nominated members of the Committee, who have been nominated under clause (ii) of Section 9(3) would be deemed to be the elected members of the Committee and fall under the expression "elected members" used in Section 21(3) of the Act as these members having been elected from a larger constituency than that of the Municipal Committee and being nominated to the Municipal Committee by virtue of their being elected as members of the House of People, Legislative Assembly or Council of States, as the case may be, for the constituency of which Municipal Committee is a segment. When the Full Bench in ***Krishan Kumar Singla's case*** gave the aforesaid interpretation to Sections 18 and 21(3) of the Act, Section 13-B had already been inserted in the Act vide Haryana Act No. 13 of 1997 which clearly provided that no person shall be elected as member of the Municipal Committee, Member of the Legislative Assembly or Member of Parliament simultaneously, and if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as elected member of the Committee from the day he is elected as a Member of the Legislative Assembly or Member of Parliament. This mandatory provision was not considered by the Full Bench in ***Krishan Kumar Singla's case*** (*supra*). It appears that this provision was not brought to the notice of the Full Bench.

(35) The learned counsel for the appellant argued that the interpretation to Section 21(3) of the Act as given by the Full Bench in ***Krishan Kumar Singla's case*** is perfectly valid and reasonable and achieves the object of the provisions of the Act and the same does not require any re-consideration by this Bench. According to the learned counsel even insertion of Section 13-B in the Act does not have any impact on the interpretation given by the earlier Full Bench. According to the learned counsel, the whole scheme of making provisions for

nominating the members of the Assembly or the Parliament, is to strengthen democracy at the grass root level and the nominated members cannot be debarred from participating in the process of considering no confidence motion against the President or Vice-President of the Committee. The learned counsel while referring to sub-section (3) of Section 21, particularly to the words "not less than two-third of the elected members of the Committee" and while putting much emphasis on the word "the", argued that the nominated members, who are elected from the larger constituency, on their nomination also become elected members of the Committee. According to him, this was the only interpretation which could be given to harmonize the various provisions of the Act. It has been further argued that the nominated members under clause (ii) of Section 9(3) have an unrestricted right to vote in the meetings, therefore, they cannot be restricted from exercising their right to vote in the special meetings convened for considering no confidence motion, and even if they have not participated in the meeting their number has to be taken into consideration for counting the percentage of two-thirds of the elected members for passing of the no confidence motion.

(36) Article 243R provides that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. This part of Article 243R is mandatory as the word "shall" has been used. In sub-article (2) of Article 243R, the State Legislation has been given the power to enact laws with regard to the manner of election of the Chairperson of a Municipality and also for providing 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. As far as the voting rights of such nominated members in the meetings of the Committee are concerned, it has been categorically stated that the persons mentioned in clause (i) shall not be given the right to vote in the meetings of the Municipality. However, with regard to the persons mentioned in clauses (ii), (iii) and (iv) nothing has been mentioned and it has been left to the wisdom of the State Legislature whether to give them the voting rights in the meetings

of the Municipality or not. Thus, it is clear that Article 243R recognizes two types of members, i.e., the elected members and the nominated members of the Municipality. There is nothing in Article 243R which provides that the nominated members of the Municipality shall be considered as elected members of the Municipality. Rather, sub-Article (1) provides that 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. Thus, in Article 243R we find that there is no intention that the nominated members would be deemed to be the elected members of the Committee. There is also no mandate under Article 243R that such kind of nominated members under clauses (ii) and (iii) must be given the right to vote in the election and removal of the President or Vice-President of the Committee. Rather clause (b) of this Article clearly empowers the Legislature of a State to provide by law the manner of election of the Chairperson of a Municipality. Obviously, being nominated members of the Committee, they could not have been given the right to contest the election of the President or Vice-President. Even this right only vests in the elected members of the Committee. Therefore, a clear distinction has been made by the State Legislature between the elected and nominated members of the Committee while enacting the law with regard to their right to vote in the election or removal of the President of the Municipal Committee. The proviso to Section 9(3) of the Act clearly provides that the nominated person has no right to contest the election of the President or Vice-President. The said right has been given only to the elected members of the Committee. In our view Section 9(3) can be considered to be only in the nature of a removal of doubt clause. It appears to have been added as a matter of abundant caution. If the provisions are examined in the background of the objectives and purpose of the Seventy third and Seventy Fourth Amendment, which is to provide for direct democracy at the third tier, which is evident from the mandate whether in Article 243C (in relation to Panchayats) or Article 243R (in relation to Municipalities) that all seats shall be filled by persons chosen by direct election, then even in the absence of such a provision, persons provided representation in terms of clause (b) of Article 243R, could not justifiably be considered to have any right or claim to be elected as President or Vice President i.e., claim any elective office in these bodies. The emphasis is not only on direct

democracy in the Panchayats and Municipalities (the third tier) as a whole, but direct democracy for each level therein. This is manifested when provisions of Article 243C(5)(b) are noticed which provide that the Chairperson of Panchayat at intermediate level or distinct level shall be elected, by and from amongst, the elected members thereof. The intention is only to enable providing for representation to them in the Municipalities. But providing for such representation is not mandatory. Legislature may or may not make provision for such representation. Further, Section 18 clearly provides that one of the elected members of the Committee shall further be elected as President of the Committee. This amendment was made vide Haryana Act No. 18 of 1996 where "one of its elected members" was added in the said Section. We have to give a plain meaning to this amendment, i.e., only an elected member can become President of the Municipal Committee. The nominated member cannot be elected as President or Vice-President of the Committee. This aspect has not been considered by the Full Bench in ***Krishan Kumar Singla's case*** (*supra*). This position was further clarified by the amendment made in 2005 vide Haryana Act No. 10 of 2005, whereby in place of first proviso, the new proviso was substituted, namely, "Provided that the persons referred to in clause (i) above shall not have right to vote in the meetings of the municipalities and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of president or vice- president." Thus, as per the Scheme and provisions of the Act and the Constitution, there is a difference between an elected member of the Committee and a nominated member of the Committee, and a nominated member of the Committee cannot be deemed to be an elected member of the Committee. The above distinction was further made clear by the legislature while inserting Clause 14-A in Section 2 of the Act vide Haryana Act No.26 of 2006, which reads as under:-

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

This definition of the "Member" further provides that there are two categories of members, one is elected and other is nominated by the State Government. Therefore, in our opinion, a nominated member cannot be deemed to be the elected member of the Committee.

(37) Now we will examine the impact of Section 13-B, which was inserted vide amendment made by Haryana Act No. 13 of 1997, and was not taken into consideration by the Full Bench in ***Krishan Kumar Singla's case*** (*supra*) while giving the interpretation that a nominated member of the Committee under Clause (ii) of Section 9(3) of the Act is deemed to be the elected member of the Committee and would fall under the expression "elected member" as provided under Section 21(3) of the Act. Clause (b) of Article 243V(l) clearly provides that a person shall be disqualified for being chosen as, and for being, a member of a Municipality if he is so disqualified by or under any law made by the Legislature of the State. Thus, this clause clearly empowers the State Legislature to enact a law providing disqualification for being a member of a Municipality. In view of the said provision, the State Legislature has enacted Section 13-B and inserted the same in the principal Act vide Haryana Act No. 13 of 1997. Sub-section (1) of Section 13-B clearly provides that no person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously. Sub-section (2) further provides that if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament, as the case may be. This Section clearly mandates that the member of Legislative Assembly of the State or member of Parliament cannot be an elected member of the Committee, and if the elected member of the Committee is elected to the State Legislative Assembly or Parliament he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament. It means that a member of State Legislative Assembly or member of Parliament cannot remain as elected member of the Committee. If he cannot remain as elected member of the Committee, then he cannot be deemed to be the elected member of the Committee and, thus, would not fall under the expression "elected member" as provided under Section 21(3) of the Act. The said interpretation given by the Full Bench is contrary to the provisions of Section 13-B which was not even discussed by the Full Bench. Thus, in our opinion, a nominated member of the Committee under clauses (ii) and (iii) of sub-section (3) of Section 9, who has been nominated as member of the Committee by

virtue of his office, can be considered to be member of the Committee, but in light of the aforesaid Sections 18(1), 13-B and 9(2) of the Act, he cannot be considered and held to be an elected member of the Committee. Being a nominated member, he may cast vote at the time of election of President or Vice-president, but in view of the bar created vide proviso added vide Haryana Act No.10 of 2005 he shall not have any right to contest the election of the President or Vice-president as he is not the elected member of the Committee, and as per Section 18(1) of the Act only the elected member of the Committee can be elected as President or Vice-president. Merely because he has a right to cast the vote in the election of President or Vice- president being nominated member, he cannot be deemed to have a right to participate and vote in the proceedings of no-confidence motion as sub- section (3) of Section 21 clearly provides that a motion of no-confidence can only be carried by two-third elected members of the Committee. The right to elect and right to be elected is a statutory right and not a common law right. It can only be conferred by the statute. Further the mode and manner of election to a post can be different from the scheme of removal of such person from the post. A member nominated under clause (ii) of Section 9(3) may have right to vote in the election of President or Vice-President, but he can be debarred by law enacted by the State Legislature to participate in the process of removal of President or Vice-President. Further in view of Section 13-B, a nominated member cannot be taken as elected member of the Committee for the purpose of participating in the special meeting convened under Section 21(3) for consideration of no-confidence motion against the President or Vice-President as the said sub-Section clearly provides that a motion of no-confidence can only be carried against the President or Vice-President with the support of not less than two-third elected members of the Committee. The language of Section 21(3) is clear and unambiguous. It is well settled as held in ***State through Central Bureau of Investigation v. Parmeshwaran Subramani and another(4)***, that where there is no ambiguity in the provisions, and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if

(4) (2009) 9 SCC 729

undertaken by the courts may amount to amending or altering the statutory provisions. It is not the duty of the Court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain and clear. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. In this regard, our view finds support from the judgment of the Constitution Bench of the Apex Court in ***Nathi Devi v. Radha Devi Gupta***, reported as(5). Para 11 of the judgment, which is relevant, is reproduced below for ready reference:-

> *"The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admit of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional."*

(38) To the same effect is the judgment of the Apex Court in ***A.N. Roy, Commissioner of Police and another v. Suresh Sham Singh***, reported as(6). Para 22 of the judgment, which is relevant, is reproduced below:-

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(5) (2005) 2 SCC 271

(6) (2006) 5 SCC 745

> *"It is now well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."*

(39) The other judgments of the Apex Court, which reiterate the above proposition of law, may be referred to and they are ***Vijay Narayan Thatte and others v. State of Maharashtra and others(7)***; ***Competition Commission of India v. Steel Authority of India Ltd. & another(8)*** and a recent judgment in the case of ***Union of India and another v. National Federation of the Blind and Others(9)***. In ***Union of India and another v. National Federation of the Blind and others*** (*supra*) the relevant paragraphs are reproduced below:-

> *"43. It is settled law that while interpreting any provision of a statute the plain meaning has to be given effect and if language therein is simple and unambiguous, there is no need to traverse beyond the same. Likewise, if the language of the relevant section gives a simple meaning and message, it should be interpreted in such a way and there is no need to give any weightage to headings of those paragraphs. This aspect has been clarified in Prakash Nath Khanna & Anr. v. Commissioner of Income Tax & Anr. (2004) 9 SCC 686. Paragraph 13 of the said judgment is relevant which reads as under:*
>
> > *"13. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is*

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(7) (2009) 9 SCC 92

(8) (2010) 10 SCC 744

(9) (2013) 10 SCC 772

plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage. The view was reiterated in Union of Indfa v. *Filip Tiago De Gama of Vedem Vasco De Gama and Padma Sundara Rao v. State of T.N."*

44. It is clear that when the provision is plainly worded and unambiguous, it has to be interpreted in such a way that the Court must avoid the danger of a prior determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. While interpreting the provisions, the Court only interprets the law and cannot legislate it. It is the function of the Legislature to amend, modify or repeal it, if deemed necessary.

45. The heading of a Section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. However, when the Section is clear and unambiguous, there is no need to traverse beyond those words, hence, the headings or marginal notes cannot control the meaning of the body of the section. Therefore, the contention of Respondent No.1 herein that the heading of Section 33 of the Act is "Reservation of posts" will not play a crucial role, when the Section is clear and unambiguous."

(40) In light of the above principle of literal interpretation, if we examine the following observations made by the Full Bench in the case of ***Krishan Kumar Singla*** *(supra)*, we find the same to be not sustainable:-

"26.(f) Before amendment of Section 21(3) it used the expression 'not less than 2/3rd of the members' who could carry the no confidence motion of a Committee. This Section was amended to incorporate the words 'not less than 2/3rd of the elected members.' The elected members naturally would include the members who become members of the Committee by virtue of their having been elected as member of the House of People, Legislative Assembly or council as the case may be, for the constituency of which the Municipal Committee is a segment. The expression 'elected members' must be given its proper connotation and meaning which would help to further the object of the legislation rather than to oust the people who were otherwise granted a protected right by necessary implication of the constitutional provisions. These elected members would obviously have a better understanding of the controversies, and the implication of a particular decision taken by the Committee and the manner in which such decision could be effectively implemented at different levels of the State Administration. Thus, they effectively participate and help the administration of the Committee at the grass root level, being elected members from a much larger constituency, than that of the Municipal Committee. Thus, in our view, they would be covered by the expression 'elected members' used in Section 21(3) of the Act."

(Emphasis added)

(41) In our opinion, the expression "elected members" does not require any further interpretation. These words are plain and simple. Elected members means the members of the Committee who have been chosen through direct election from the territorial jurisdiction of the Municipality in the municipal area. It cannot be said that the elected members naturally would include the members who become members of the Committee by virtue of they having been nominated as members of the Committee being elected to the House of People, Legislative Assembly or Council, as the case may be. Merely because the nominated member may be having better understanding of issues when considered in a larger perspective being member of Parliament and Legislative Assembly, they cannot be given the status of 'elected member of the Committee' and

included in the expression "elected member" used in Section 21(3) of the Act. Thus, in our view the aforesaid law laid down by the Full Bench in ***Krishan Kumar Singla's case*** is held to be contrary to the plain provisions of Sections 13-B and 21(3) of the Act and the same is hereby overruled. In the light of the above, all the three referred questions are answered as under:-

(i) the members of the House of People and the Legislative Assembly of the State or the Council of the States, who have been nominated as members of the Committee under clauses (ii) and (iii) of Section 9(3) of the Act by virtue of their being members of the House of People, Legislative Assembly of the State or the Council of the States, cannot be deemed to be 'elected members of the Committee'.

(ii) in counting/calculating not less than two-third of 'the elected members of the Committee' for successfully carrying out the No Confidence Motion against the President or Vice-President as provided under Section 21(3) of the Act, the nominated members who have been nominated under clauses (ii) and (iii) of Section 9(3) cannot be taken into consideration.

(iii) That a member of the House of People and the Legislative Assembly of the State cannot remain as 'elected member of the Committee' in view of the bar created under Section 13-B of the Act.

(42) The reference is answered accordingly.

(43) Registry is directed to list this appeal for hearing before the Division Bench for further orders, as per roster.

V. Suri