

RAJASTHAN HIGH COURT

Prem Raj Bohra

Vs.

Jairoopa

Civil Special Appeal Nos. 892 and 899 of 2001; 326, 327, 329, 370 of 2002 and Civil
Writ Petn. No. 3879 of 2001
(Arun Kumar, C.J. and Prakash Tatia, J.)

14.08.2002

JUDGEMENT

Arun Kumar, C. J.

1. This batch of appeals and D. B. Civil Writ Petition No. 3879/2001 raise common questions of law and, therefore, they were heard together and are being disposed of by this judgment. The only additional point raised in D. B. Civil Writ Petition No. 3839/2001 is that it challenges vires of Section 3(36) of the Rajasthan Municipalities Act, 1959 (hereinafter to be referred to as the Act) read with Rule 3, sub-rule (9) of the Rajasthan Municipalities (Motion of No Confidence Against Chairman and Vice-Chairman) Rules, 1974 (hereinafter referred to as "No Confidence Motion Rules") on the ground that these are violative of Articles 14 and 243-R of the Constitution of India. Though, several legal issues have been raised in these cases, the foremost point is, as to whether nominated members of a Municipal Board, who have been meetings of the Board, should be counted in total no confidence in the Chairman or Vice-Chairman of the Board.

2. As per facts on record, no confidence motions in these various cases could be taken to have been passed by two third majority of the members if the nominated members are not counted for the purpose of total number of members of the Municipal Board. However, if the nominated members are included in the total number of members of the Board, no confidence motion in each case would stand defeated on account of not having been passed by two-third majority as required under the relevant Rules.

3. Besides the above legal issue, there are other legal issues in these cases which are

as under :

- (a) Section 61 of the Act requires that every member has to make and subscribe oath of office before entering upon his duties as such.
- (b) The oath of office is to be made and subscribe before the Collector or his nominee.
- (c) The oath of office has to be in a prescribed form.
- (d) Failure to make and subscribe the oath within three months from the date of first meeting of the Board entails automatic vacation of his seat by the member concerned.

4. There is an additional point involved only in DB Special Appeals (W) Nos. 892/2001 and 899/2001. It is regarding suspension of an elected member just before the date of voting, thereby denying a right to vote to that member who happened to be one of the movers of the no confidence motion. The suspension order has been challenged on the ground of mala fides and it is also argued that if a suspended member is not allowed to vote, he should also not be included in the total number of members while determining whether the motion is carried.

5. It has been argued that the above requirements of Section 61 have not been complied with in these cases as the nominated members failed to take oath before nominee of Collector in the prescribed form within three months of the first meeting. As such they could not be counted as members of the Board and therefore, could not be included in the total number of members of the Municipal Board while considering whether no confidence motion stood carried.

6. Taking the facts of Special Appeals No. 892/2001 and 899/2001 for the purpose of appreciating controversy in these cases, it is to be noted that elections to the Municipal Board of Bhinmal, district Jalore, took place in November, 1999. Guman Mal Parmar was elected as Chairman of the Municipal Board. Two persons, namely, Vakta Ram and Raghu Nath Ram were nominated as members of the Board on 16-11-2000. The first meeting of the Board after nomination of the above two members took place on 19-12-2000. Vakta Ram took oath of office on 5th March, 2001, while Raghu Nath Ram took oath of office on 16-4-2001. By a notification dated, 15th January 2001, the State Government prescribed a form of oath. The membership of these two nominated members is challenged on the ground that they did not take oath of office Municipal Board as a result whereof, they are deemed to have vacated their seat in view of it is

argued that they neither took the oath in the prescribed form nor they took the oath before the authorized nominee of the Collector. Admittedly, the oath was not administered by the Collector. The oath was administered by the S.D.O. However, according to the appellants, the S.D.O. did not have authority for this purpose at the relevant time. Regarding Raghu Nath Ram, it is also alleged that he was a member of Panchayat Samiti Bhinmal and, therefore, he could not hold office of the member of Municipal Board, Bhinmal, in view of the provisions of Section 64A of the Act which prohibits two offices being held. In addition to this, a further issue was raised that the M. L. A. concerned also did not take oath as member of the Municipal Board, Bhinmal and, therefore, could not be considered as member of the Board while counting total number of members of the Board for the purpose of considering whether no confidence motion against the Chairman was carried or not.

7. On 5th March, 2001 a motion of no confidence duly signed by the requisite number of members was moved against the Chairman, Guman Mal Parmar, Raja Ram, a duly elected member of the Board, was a signatory to the motion of no confidence. The no confidence motion was to be considered in the meeting of the Municipal Board to be held on 31st March, 2001. Two days before the said date i.e. on 29th March 2001, Raja Ram was suspended and was, therefore, not allowed to vote when the motion of no confidence was taken for consideration on 31st March 2001, even though, he made specific prayer in writing for being allowed to vote specially in view of the fact that he was one of the movers of the motion. Raja Ram was not allowed to vote in the meeting which considered the no confidence motion. Seventeen members voted in favor of the motion. The S.D.O., Bhinmal reported that the motion as carried, which resulted in Guman Mal Parmar, Chairman of the Board, vacating his office, Guman Mal Parmar challenged this by way of Writ Petition filed in this Court. The Writ Petition was allowed by the learned Single Judge vide impugned judgment dated, 19-11- 2001. This led to the filing of D. B. Civil Special Appeals No. 892/2001 and 899/2001.

8. Following a judgment of the Supreme Court in *Raees Ahmed v. State of U. P.*, ¹ and a Division Bench judgment of this Court in *Yogesh Chandra Saini v. State of Rajasthan*, ² the learned single Judge held that the point as to whether the nominated members who have no right to vote, are to be counted while computing total number of members in the context of no confidence motion being carried or not, was no longer res integra. It has been held by the Supreme Court in *Raees Ahmed's* case (supra) that such members are liable to be counted in the total number of members even though,

they do not have a right to vote.

9. In Yogesh Chandra Saini's case (supra), the question for consideration before the Division Bench was formulated as under :

"Whether the Member of the Legislative Assembly (MLA) and Member of Parliament (MP) representing a Council can be treated as full fledged member of the Municipal Council, so as to participate and vote in the proceedings of No Confidence Motion for removing the Chairman or Vice-Chairman of the Municipal Council and hence, were required to be given a notice of the meeting for carrying out the Motion of No Confidence."

On the basis of plain language of the relevant provisions of Section 3(36) of the Act and Rule 3 of the No Confidence Motion Rules while interpreting the words 'total number', it was held that every member of the Board, whether brought in by direct election or by co-option or by nomination had a right to take part to the conduct of the business of the Board. Under the rules, every member of the Board was required to be given notice in writing of the date of the meeting convened by the Collector for the purpose of consideration of no confidence motion against the Chairperson.

10. For purposes of deciding the legal issue it is necessary to refer to certain provisions contained in the Statute as well as in the rules Section 9 of the Act lays down composition of Boards. It provides as under:-

"9. Composition of Boards.- (1) Subject to the provisions contained in the succeeding sub-sections, but save as provided in the following provisions of this sub-section, all seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies known as wards, the number of such seats, not being less than thirteen, being fixed by the State Government from time to time by notification in the Official Gazette:-

(a) the following shall be represented on the board, council or corporation, as the case may be, viz.:-

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

(ii) three persons or ten per cent of the number of elected members of the municipality, whichever is less, having special knowledge or experience in

municipal administration, to be nominated by the State Government by notification in the Official Gazette:

Provided -

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

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

(iii) the term of co-opted members, if any, who were co-opted and are continuing as such on the date of commencement of the Rajasthan Municipalities (Second Amendment) Act, 2000 (Act No. 22 of 2000) shall come to an end upon such commencement:

Provided further that a member referred to in sub-clause (ii) shall not have the right to vote in the meetings of a board, council or corporation as the case may be:

(b) A member of the House of the People representing a constituency which comprises wholly or partly the area of a municipality with a municipal council or as the case may be, a municipal Corporation shall be represented on the Council or Corporation of such municipality:

Provided that a member referred to in sub-clause (1) of clause (a) shall have a right to vote in the meetings of a Board, Council or Corporation or Corporation referred to in clause (b) shall have a right to vote in the meetings of a Council or Corporation;

... .."

11. The next relevant provision is contained in Section 61 of the Act which requires the members to take oath of office. The said section is reproduced as under :-

"61. Oath of office.- (1) Every member shall, before entering upon his duties as such, make and subscribe before the Collector or his nominee for the purpose an oath or affirmation in the prescribed form.

(2) Any member who fails to comply with the provisions of sub- section (1) within a period of three months from the date of the first meeting of the board shall be deemed to have vacated his seat."

12. Section 65 of the Act requires that for every Board there shall be a Chairman and a Vice-Chairman. It provides in sub-section (2) that "the Chairman shall be elected in accordance with the rules made by the State Government in that behalf, by the elected

members of the Board from amongst themselves."

13. Similarly, the Vice-Chairman is to be elected by the elected members of the Board from amongst themselves in accordance with the rules made in this behalf.

14. Section 63 of the Act contains provisions regarding removal of members from the Board. Failure to comply with the provisions of Section 61 (regarding oath of office) is one of the grounds for removal. The power to remove a member under Section 63 of the Act is given to the State Government.

15. Section 64-A contains restriction on simultaneous holding of office of a member in a municipality and membership of Parliament or State Legislative Assembly or a *Panchayati Raj* Institution. It provides as under :-

"No person shall remain both the member of a municipality and a member of Parliament or State Legislative Assembly or a *Panchayati Raj* Institution and if a person who is already a member of Parliament or State Legislative Assembly or a *Panchayati Raj* Institution is elected as a member of a municipality, then, at the expiration of fourteen days from the date of being elected as such member, he shall cease to be such member unless he has previously resigned his seat in Parliament or the State Legislative Assembly or the *Panchayati Raj* Institution, as the case may be:

Provided that if a person, who is already a member of a municipality, is elected as a member of Parliament or the State Legislative Assembly or a *Panchayati Raj* Institution, then, at the expiration of fourteen days from the date of being elected as a member of Parliament or the State Legislative Assembly or a *Panchayati Raj* Institution, as the case may be, he shall cease to be such member unless he has previously resigned his seat in the Parliament or the State Legislative Assembly or the *Panchayati Raj* Institution, as the case may be."

16. This brings us to the relevant rule regarding no confidence motion against a Chairman or Vice-Chairman. This provision is contained in the Rajasthan Municipalities (Motion of No Confidence against Chairman and Vice-Chairman) Rules, 1974. Rule 3 contains the procedure in this behalf, the relevant portions whereof are as under :-

(1) A written notice of intention to make motion of no confidence in the Chairman or Vice-Chairman signed by one-third members of the Board together

with a copy of the motion which is proposed to be made shall be sent to the Collector of the District, who shall thereupon convene a meeting for the consideration of the motion to be held at the office of the board on notice, and at the time appointed by him, which shall not be earlier than twenty or later than thirty days from the date of the receipt of the notice.

(2) to (6)

(7) On the conclusion of the debate or upon the expiry of the said period of four hours, as the case may be, the motion shall be put to the vote of the Board and the Collector or his nominee shall neither speak on the merits thereof nor thereon.

(8) If the motion is not carried by a 2/3 majority of the whole number of members, or if any meeting cannot be held for want of quorum, the motion of no confidence against Chairman or Vice-Chairman, as the case may be, shall be deemed to have been lost.

(9) If the motion is carried by a majority of 2/3 number of whole number of the members, the motion shall be deemed to have been passed against the Chairman or Vice-Chairman, as the case may be and such Chairman or Vice-Chairman shall forthwith be deemed to have vacated his office."

17. The expression "whole number of members" used in these rules is not defined in the rules, but sub-section (36) of Section 3 of the parent Act, i.e., Rajasthan Municipalities Act, 1959 contains the definition as under :-

"(36) 'whole number' or 'total number' when used with reference to the members of a board, means the total number of members holding office at the time."

18. Finally, Article 243-R of the Constitution of India has an important bearing on the controversy before us and, therefore, the same is reproduced as under:-

"Article 243-R. (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

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

(a) for the representation in a Municipality of-

- (i) persons having special knowledge or experience in Municipal Administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- (iv) the Chairpersons of the Committee constituted under clause (5) of Article 243-S:

Provided that the persons referred to in paragraph (1) shall not have the right to vote in the meetings of the Municipality;

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

19. In the background of the legal provisions, the learned counsel for the appellants submitted that the nominated members of the Municipal Board should not be counted for purposes of whole number of members while considering whether a no confidence motion against the Chairman is carried or not. It is argued that the nominated members are given representation on the Board for reasons of their having special knowledge or experience in municipal administration. They are not elected members. The State Government nominates them on account of their above abilities. Section 9 of the Act specifically provides that the nominated members shall not have the right to vote in the meetings of the Board. The reason for this appears to be that the nominated members are given an advisory role by virtue of their past knowledge and/or experience. They are not supposed to indulge in party politics which is the domain of the elected members. The nominated members are supposed to be above party politics. They are expected to contribute in improving municipal governance rather than indulge in politics. Therefore, it is contended that when the legislature itself has not given to nominated members a right to vote at the meetings of the Board, why should they be counted at all in the total number of members for purposes of determining whether a motion of no confidence against a Chairman is carried or not? The moment nominated members are included in total number of members the voting pattern gets affected resulting in the statutory bar being rendered redundant.

20. Section 65 of the Act, which deals with election of Chairman and Vice- Chairman, specifically provides that the Chairman is to be elected by the elected members of the Board from amongst themselves. The nominated members, therefore, have no say in

the election of Chairman of the Board, why should they have a say in removal of the Chairman, specially when they have been denied voting rights. Counting the nominated members for purposes of total number of members has an indirect effect on voting. By inclusion in total number of members the vote of the nominated members will always be a negative vote. To illustrate, if a Board has 24 elected members and 2 nominated members, a no confidence motion would be carried if 16 members vote for it when only elected members are taken as constituting total number of members. If the nominated members are counted in the total number of members, the motion would be defeated even though the nominated members do not have a right of vote. Thus, the mere fact of nominated members being counted for purposes of determining the total number of members defeats the motion.

21. Proviso to sub-clause (iii) of sub-section (1)(a) of Section 9 of the Act specifically debars a nominated member from exercising right to vote. Likewise, Article 243-R of the Constitution of India provides that members who enjoy representation in municipalities on account of their special knowledge or experience in municipal administration shall not have a right to vote in the meetings of the municipality. It is argued on behalf of the appellants that counting nominated members for purposes of determining the total number of municipal votes leads to an inevitable result that the nominated members have voted against the motion. Since the nominated members do not exercise any right of vote, they can never vote in favor of the no confidence motion, but their inclusion in the total number of members results in the motion getting defeated without vote being cast by them either way. The question for consideration is whether in the face of specific bar contained in the Statute as well as in the Constitution of India against vote being cast by nominated members in meetings of the Municipal Boards, nominated members can be allowed to influence the voting pattern. The bar to voting is indirectly lifted which is plainly violative of the statutory as well as Constitutional provisions.

22. In support of his argument, Shri M.S. Singhvi, the learned counsel for the appellants submitted that only the elected members are required to elect from amongst themselves a Chairman of the Municipal Board, therefore, it will be travesty of justice and it will also be contrary to law that others are given a right to vote in case of consideration of no confidence motion against a Chairman or Vice-Chairman of the Board. When somebody has no say in election of the Chairman, why he/she should have a say in removal of the Chairman.

23. In reply to the above argument, the learned counsel for the respondents only relied on the decision of the Supreme Court, in *Raees Ahmad's case* (AIR 2000 Supreme Court 583) (supra) and that of this Court in *Yogesh Chandra Saini* (2002 (1) DNJ 208) (supra). Besides relying on these judgments, the learned counsel submit that Section 3 (36) of the Act is clear on the point as it lays down that expression 'whole number or 'total number' when used with reference to members of a Board means the total number of members of a Board holding office at a time. According to them, total number of members holding office at a time include nominated members because nominated members are also members of the Board. Thus, according to the learned counsel for the respondents, a plain reading of Section 3 (36) of the Act and sub-rule (9) of Rule 3 of the No Confidence Motion Rules shows that for purposes of treating the motion of no confidence as carried the majority of 2/3 of whole number of members has to be taken into consideration. According to them, plain reading of these provisions is sufficient to hold that nominated members must be included in total number of members. The learned single Judge accepted this argument and also found that in view of the decision of the Supreme Court in case of *Raees Ahmed* (supra), the issue is no longer open for consideration. It stands concluded and the nominated members must be counted for purposes of total number of members while considering a no confidence motion, even though the nominated members have no right to vote.

24. In *Raees Ahmed's case* (supra), the Allahabad High Court had taken the view that since the nominated members had no right of vote, their number could not be taken into consideration in total number of members for purposes of no confidence motion and 2/3 majority needed for purposes of carrying through the motion had to be considered by excluding them. The Supreme Court reversed this view of the Allahabad High Court. It was observed that Section 87-A of the Uttar Pradesh Municipalities Act, 1916 contained the relevant provisions in sub-section (12) thereof, which reads as under :-

"The motion shall be deemed to have been carried only when it has been passed by a majority of two-thirds of the total number of members of the Municipality."

25. Section 9 of U.P. Municipalities Act deals with composition of the Municipality, which includes nominated members but the proviso to the said section specifies that the nominated members shall not have a right to vote in the meetings of the Municipality. The Supreme Court noticed that the nominated members are part of

composition of the Municipality and are referred to as the nominated members. Sub-section (12) of Section 87-A of the U.P. Municipalities Act uses the expression "total number of members" of the Municipality and, therefore, it was held that the nominated members, even though they did not enjoy the right to vote at the meetings of the Municipality, were to be included in the total number of members.

26. We have carefully considered the rival contentions of the learned counsel for the parties.

27. In our view of the decision of the Supreme Court in Raees Ahmed's case (AIR 2000 Supreme Court 583) (supra) is clearly distinguishable and the point of distinction is contained in the relevant statutory provisions of the U.P. Municipalities Act and the Rajasthan Municipalities Act. Under the U.P. Act, the Chairman/President of the Municipality is elected directly by the electorate on the basis of adult franchise exercised by voters of the area. Section 43 of the U.P. Act is the relevant section in this connection, which provides as under :-

"Adhyaksh Nagar Palika Khsetra me nirvachak dwara vayaskmatadhikar ke aadhar par nirvachit kiya jayegga."

28. Thus, it is a direct election, whereas, as per Section 65 of the Rajasthan Act, the Chairman of a Municipal Board is elected from amongst the elected members, by the elected members themselves. In our view, this distinction between the two statutory provisions has an important bearing on the point in issue, which was never brought to the notice of the learned single Judge. Raees Ahmed's case (supra) was decided on the basis of the provisions contained in the U.P. Act and the fact that the President of the Municipality is directly elected by the electorate of the municipal area requires that the provision regarding removal of the President from office should be more stringent and, therefore, it was appropriate that all the members of the Municipality including the nominated members were entitled to be included in the total number of members while considering the no confidence motion against the President under the Rajasthan Act, the Chairman of the Municipal Board is elected by the elected members of the Municipal Board alone and no other members whether nominated or ex officio has a say in that. Therefore, it does not appear to be a legally sound proposition to introduce the nominated members and allow them to have a say in the matter of removal Chairperson of the Board. In view of the above distinction between the two statutory provisions, the decision of the Supreme Court in Raees Ahmed's case (AIR 2000

Supreme Court 583) (supra) is clearly distinguishable in our view and, therefore, it need not be said that the present case is covered by the said decision.

29. Coming to Yogesh Chandra Saini's case (2000 (1) DNJ 208) (supra), which is a Division Bench decision of this Court, it is to be observed that the Division Bench did not notice or appreciate the impact of the provision of Section 65 of the Act which confines the right to elect a Chairman within the elected members of the Municipal Board. Secondly, the Division Bench did not consider that when the nominated members had no say in the matter of election of the Chairman, why to include them in the total number of members while considering whether a no confidence motion against the Chairman is carried or not ? It amounts to giving them a voting right and thereby influencing the decision of the elected members in the choice regarding Chairman of the Board. Illustrations can be many, which would show that even if the nominated members do not cast their votes either for or against the motion, the mere fact of their inclusion in the total number of members affects the fate of the motion, because, by their inclusion in the total number of members, their votes automatically become negative votes.

30. Saini's case (supra) was concerned with the notice being given to every member regarding the meeting to be held for consideration of no confidence motion against the Chairman of the Board. The question for consideration in the present case is totally different, i.e. whether all the categories of members are to be included in the total number of members for consideration of two-third majority required for passing no confidence motion. The important difference between the case in hand and Saini's case (supra) is about the right to vote. A person may have a right to attend the meeting. If the right to attend meeting was not ensured, there was no point in nominating members to the Board of Municipality at all, because without attending the meetings of the Board, the nominated members could not contribute anything to the Board. Their nomination would become redundant. So, Saini's case (supra) ensured that every member had a right to attend the meetings of the Municipal Board and to get a notice in writing for that purpose. The present case goes a step further i.e. being counted for total number of members when specifically nominated members have been debarred from voting by the Statute. Right to attend meetings automatically flows from nomination as member of the Board. But being counted in total number of members while determining result of voting cannot be said to be on same level, specially when nominated members have no right to vote. Counting in the total

number of members affect voting result and has bearing on voting pattern. Can something which the Statute specifically bars, be indirectly permitted ? Thus, Saini's case (supra) and the present case tread in different areas. Saini's case (supra) does not notice or deal with issues raised before us. These issues did not arise in Saini's case (supra). Saini's case (supra) cannot, therefore, be said to be a binding authority.

31. What is next to be considered is the meaning of the word "vote", Dictionary meaning of the word "vote" is expression of voter's will, A vote is a formal expression of a wish, will, or choice in regard to any measure proposed. It is a formal expression of a wish, Will, choice or opinion. When the matter is left to the wish, will or choice or opinion of a voter, his wish, Will, choice or opinion cannot be circumscribed. Can it be said that one has a right to vote, but it can only be a negative vote ? In present context, the nominated members have no right of vote as per the statute, still by including them in the total number of members, they are being indirectly given a right of vote because this way they influence the fate of the no confidence motion. Will it be prudent to allow nominated members who have no say in the matter of election of Chairman, to have a say in removal of Chairman? We have already demonstrated that mere inclusion of nominated members in the total number of members, even though the nominated members do not exercise a right of vote as such, amounts to their voting against the motion. In our view, this does not appeal to reason and that which does not appeal to reason, cannot be legal. Section 65 of the Act which confines the matter of election of Chairman of the Municipal Board within the hands of elected members has a very important bearing on the decision of this case in our view. When election of Chairman is confined in the hands of the elected members, removal of the Chairman cannot be allowed to be influenced by anyone else except the elected members.

32. This approach also fits in with the ethos, permeating the relevant provisions of the statute and the Constitution. Section 9 of the Rajasthan Act as well as Article 243-R of the Constitution of India show that the object behind having the nominated members as representatives of the Municipal Boards, is to provide to the Municipal Boards benefit of knowledge and experience of these persons in municipal administration. Municipal administration is a complex function and young and inexperienced persons may get elected to the Municipal Boards who may not be able to do full justice to the job. Framers of law thought it appropriate to provide benefit of experience and knowledge in the field to the municipal administration to the elected members. Nominated members are, therefore, expected to guide the other members of the Board,

so as to make the functioning of the Board more useful to the society. From the provision that nominated members will have no right of vote in the meetings of the Board, the legislative intention is clear that nominated members should confine to their role as advisors and guides and should not indulge in party politics, which is forte of the elected members. In order to enable the nominated members to keep aloof from party politics and not to influence any political issues, which includes removal of Chairman of the Municipal Board, it is proper to interpret the relevant provisions to mean that nominated members should not be included in the total number of members while considering a no confidence motion. We make it clear that we are giving the above interpretation in the context of the provisions of the Rajasthan Municipal Act, which are clearly different from the provisions of the U.P. Municipalities Act.

33. As a result of the above discussion, we hold that in the context of the provisions of the Rajasthan Municipalities Act, the nominated members are not to be included in the total number of members for purposes of considering a no confidence motion against a Chairman or Vice-Chairman of Municipal Board. Sub-rule (9) of Rule 3 of the No Confidence Motion Rules, which uses the expression 'whole number of members' and the definition of "whole member of members" contained in Section 3(36) of the Rajasthan Municipalities Act, 1959, defining whole number means total number of votes at a time, therefore, are clearly *ultra vires* the provisions contained in Article 243-R of the Constitution of India. If from the result of the combined reading of these two provisions it follows that the nominated members are to be included in the total number of members for purposes of consideration of no confidence motion against the Chairman, it will lead to unintended and unreasonable results which will also be clearly arbitrary and violative of Article 14 of the Constitution of India. Such an interpretation will mean that nominated members are being allowed a say in the removal of Chairman of Municipal Boards which is based on voting. This will be contrary to the provision of Article 243-R of the Constitution of India and Section 9 of the Rajasthan Municipalities Act. If nominated members have a say in removal of the Chairman, it amounts to they being allowed to influence voting pattern in meetings where no confidence motions are under consideration. This will be in clear violation of the said provisions of the Constitution of India and the Act. To this extent, sub-rule (9) of Rule 3 of the No Confidence Motion Rules and Section 3(36) of the Rajasthan Municipalities Act are held to be violative of the Act as well as the Constitution of India and, therefore, *ultra vires*.

34. The next point which is factual and which arises for consideration only in DB Special Appeal (W) Nos. 892/2001 and 899/2001 and DB Civil Writ Petition No. 3879/2001, is regarding suspension of one of the elected members of the Municipal Board, Rajaram, petitioner No. 2 in DB Civil Writ Petition No. 3879/2001 was an elected member of the Municipal Board, Bhinmal. He was a signatory to the motion of no confidence moved against the Chairman of the Municipal Board. The no confidence motion against the Chairman was moved on 5-3-2001. It was addressed to the Collector of the area . On the basis of the motion a meeting for consideration of no confidence motion was conveyed on 31-3-2001. Two days before the said meeting, i.e., on 29-3-2001, Rajaram was suspended from membership. The power to suspend a member is given in Section 63(4) of the Act. The ground for which purportedly the suspension order was passed against Rajaram had been pending for long years. Ghuman Mal Parmar against whom the no confidence motion was moved was party to complaint against Rajaram on the basis whereof he was suspended. Suddenly on 29-3-2001, the suspension order was passed against Rajaram, which disentitled him to cast his vote. By virtue of the suspension order, his right to vote stood suspended. Still, he was counted as a member of the Board for computing the total number of members for purposes of no confidence motion. You cannot have it both ways. If he is suspended, he should be kept totally out - not out for one and in for another.

35. The learned counsel for the appellants argued that the suspension of Rajaram just two days before the crucial date of consideration of no confidence motion was *mala fide* and secondly, it is submitted that if Rajaram's suspension is assumed to be valid, he should be treated to have been suspended for all purposes and he should not be included in the counting of total number of members. By counting him, in the total number members, the result is that his vote become a negative vote even though he was a signatory to the no confidence motion and would have voted in favor of the motion. To say the least, the manner in which the respondents have proceeded in this matter it appears to be totally only one sided. A wholly *mala fide* and unreasonable approach had been adopted. By adopting this approach, a person who is supposed to be in favor of the motion and who was actually the mover of the motion, has been taken to have cast a vote against the motion. There was no reasonable reply coming from the side of the respondents to the sudden suspension of Rajaram. By signing the no confidence motion Rajaram had made it more than clear that the he was in favor of the motion and he would have voted for the motion. Suddenly, order of suspension

was passed on 29-3-2001, suspending Rajaram from membership of the Municipal Board, which clearly appears to be mala fide. Why the authorities woke up suddenly and passed the suspension order of Rajaram just two days before the crucial date of voting on the no confidence motion ? The power of suspension may be there, what is being examined is *bona fide* exercise of the power. In the present case, the exercise of power appears to be clearly intentional and it was to keep the concerned member out of voting process. This act is *mala fide* exercise of power.

36. We further agree with the learned counsel for the appellants that even if the exercise of the power could be assumed to be valid, the suspended member should have been taken as suspended for all purposes and should not have been included in the total number of members for considering whether no confidence motion was carried or not. Suspension is temporary removal. This period can never be restored back. Nor can the term be extended by the period of suspension in the event of suspension being held illegal. If a suspended member cannot exercise right of vote, he cannot cast a negative vote either. By including him in the total number of members, he has been taken to have cast a negative vote, which, in our view, is wholly unreasonable, arbitrary and uncalled for.

37. Accordingly, the action of the respondents *qua* petitioner Rajaram is held to be illegal and mala fide.

38. Mr. N.M. Lodha, Advocate, appearing for Guman Mal Parmar, the Chairman sought to be removed, argued that mere technicalities should not weigh with the Court in unseating duly elected representatives of people. In support of this proposition, he cited a few decisions of the Supreme Court and the this Court. In our view, the case is not being decided by us on mere technicalities. The discussion regarding the interpretation of the substantive provisions of law does not leave any scope for the argument that these are mere technicalities. Therefore, we need not go into the authorities referred to by Mr. Lodha.

39. Mr. M.R. Singhvi, Advocate, appearing on behalf of the respondents, argued that the decision of the Supreme Court in Raees Ahmad's case (AIR 2000 Supreme Court 583) (supra) is binding on this Court and in view of the said decision, it is not open for this Court to embark upon a fresh consideration of the point in issue. He particularly drew our attention to the following observations of the Supreme Court in *Dwarikesh*

"When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts, in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

40. So far as the legal position is concerned, it is well settled and there is no doubt that the same is binding on us. However, we have pointed out the distinction between the statutory provisions of the U.P. Municipalities Act on the basis whereof Raees Ahmed's case was decided and the Rajasthan Municipalities Act with which we are concerned in the present case. The distinction between the provisions of the two Statutes renders Raees Ahmed's case clearly distinguishable and not applicable in the facts of this case.

41. Learned counsel for the appellants also argued that since Raees Ahmed's case does not address to the various issues raised before us in the present case, the decision in Raees Ahmed's case (AIR 2000 Supreme Court 583) should be taken as per incuriam particularly in view of the fact that the interpretation contained therein does not take note of Article 243-R of the Constitution of India and it goes contrary to the said provision. The Latin expression 'per incuriam' means, through inadvertence. A decision can be said to be per incuriam when the Court decides a question ignoring a previous decision of its own or of a superior Court. We feel that there is no need to go into this aspect in view of the fact that Raees Ahmed's case is clearly distinguishable as already stated hereinbefore.

42. Mr. M.S. Singhvi, learned counsel for the appellants also argued that even though a word 'whole number' has been used in sub-rule (9) of Rule 3 of the No Confidence Motion Rules and 'whole number' by virtue of Section 3 (36) of the Act refers to total number of members holding office, they should be read as members entitled to vote. This should be so particularly in view of the fact that Section 65 of the Act provides that only elected members elected the Chairman from amongst themselves. According

to the learned counsel, we are dealing with the matters in the realm of statutory rights. Right to seek election and right to become Chairman are statutory rights and are not common law rights. Therefore, these rights are to be strictly construed in order to uphold the statutory mandate. Nominated members have not been given a right to vote for the reasons spelled out in the statutory provisions itself. Nominated members are in advisory capacity and they are expected to remain neutral. When they are not given a right to vote, why should they be included in the total number of members when considering whether a no confidence motion is carried by a two third majority of members.

43. Mr. P.P. Choudhary, learned counsel appearing for the appellants, in D.B. Special Appeals No. 326/2002 and 327/2002, advanced a proposition of law to the effect that the Municipal Board was constituted in the year 1999, whereas the amendment of the statute by which the State Government was permitted to nominate members as representatives on the Municipal Boards came in operation w.e.f. 22nd July, 2000. According to the learned counsel, this amendment is prospective in nature and, therefore, the Boards which had already been constituted in the year 1999 could not be disturbed by nominating or adding members to them.

44. We are unable to accept this proposition. It is not a case of disturbing an already constituted Board. The State Government has taken a decision to add to existing Boards certain members by way of nomination in view of their special knowledge and experience in the area of municipal governance. We find nothing wrong in this. The decision of the State Government for which the Act had to be amended is in the interest of the institution, i.e. Municipal Board and is, therefore, in public interest which does not call for any interference. It was never a condition that the constitution of Municipal Boards will remain the same for the full term of the Boards. Changes could become necessary in normal course on account of death or resignation by members. On the basis of the mere fact that the Amendment Act came into operation on 22nd July, 2000 and by virtue of the amendment certain members were nominated to the Municipal Board, it cannot be said that a retrospective effect is given to the amendment. The nominated members joined the Municipal Board only after nomination by the State Government and in accordance with the provisions of the statute. Whatever has happened in the past is not intended to be disturbed. There is no retrospective application of the amendment. For all these reasons, we are unable to accept the argument advanced by Mr. P.P. Choudhary.

45. This takes us to consideration of the other legal points raised in these cases based on Section 61 of the Act.

46. As per sub-section (1) of Section 61, every member of the board is required to take oath in prescribed form before the Collector or his nominee and sub-section (2) requires compliance of sub-section (1) within a period of three months from the date of "first meeting of the board" failing which there is the deeming provision of vacating of seat by the member of the board. According to learned counsel for the appellant, compliance of each and every part of Section 61 is mandatory in nature which is clear from the consequences providing in sub-section (2) of the Section 61. It is also submitted that first meeting of the board has not been defined in Rajasthan Municipalities Act but it is defined in Rule 96 of the Rajasthan Municipalities (Election) Rules 1994. Rule 96 says that first meeting of the board shall be the meeting, which is conveyed to elect the chairperson of the board. Learned counsel for the appellant submitted that, their cannot be different dates of the first meeting of the board for different members, one for nominated members another for elected members and since, nominated members failed in taking oath of the office within the period of three months from the date of the meeting which was held for election of the Chairperson or in alternative failed to take oath within three months from the first meeting held after their nomination and also have not taken oath in prescribed form and also have taken oath before unauthorized person, therefore, seats of all nominated members stand vacated with the expiry of the period of three months from the date of meeting of the board in which the Chairperson was elected.

47. The arguments advanced by the learned counsel for the appellant may be attractive but do not stand to reason. A person, who is nominated by the State Government, has a right to take oath as per sub-section (2) of Section 61 up to the full period of limitation of three months. This right accrues to the nominated member only when he is nominated by the State Government. This period of limitation of three months cannot be reduced by taking into account the event which occurred even before nomination of the member. The starting period of limitation given in sub-section (2) of Section 61 from the 'first meeting of the Board', naturally, means the first meeting for the nominated members against whom the limitation will start running and not for others who have nothing to do under the provisions of Section 61 as nominated member. Interpretation otherwise will result into holding that a limitation prescribed

under law will start running against a person even before his birth which is absolutely impermissible in law. In other words it will result into saying that limitation for taking oath will start running or will expire even before accrual of right to take oath by a member. In this view, the possible interpretation of words first meeting of the Board used in Section 61(2) means the first meeting of the Board held after the member is nominated to the Board. If period of limitation will be allowed to start from the date of meeting in which the Chairperson is elected than in all cases full period of limitation will not be available to the nominated members as it will be absolutely impracticable to think that state will make nomination of the members for the board even prior to the election of the Chairperson of the board which is required to be held on the next succeeding day of declaration of the results of the election of the members of the Board. And there are no compelling reasons for the State to nominate a member to the board before election of the Chairperson when nominated member even cannot take part in the election of the Chairperson because Section 65 provides that chairperson shall be elected only by elected members of the board.

48. Not only above reasons, but close scrutiny of the relevant provisions of law also makes it clear that the definition given in Rule 96 of the rules of 1994 has no application and cannot have application for this purpose. It is true that neither in Section 61 nor anywhere else in the Act, it has been clarified as to which date will be the first date of the meeting of the board for the purpose of Section 61 and it is also true that it is said in the Rule 96 of the rules of 1994 that the meeting held for the election of the Chairperson shall be the first meeting of the board. Above definition is given Chapter IV of the Elections Rules 1994. Chapter IV of the Elections Rules of 1994 deals with the subject of election of a Chairperson/Vice-Chairperson/President/Vice President/Mayor and Deputy Mayor of the Municipal council/board or the Corporation as the case may be. Rule 79 provides that meeting of the members for election of the Chairman shall be held on the day immediately succeeding the day on which the result of its members is declared with a proviso giving power to the State Election Commission to permit the holding of meeting on some other day. It appears that intention of the legislature was that the election of the Chairperson must be held immediately on next succeeding day to the day on which the results of members of Board is declared, and in case due to any reason election of the Chairperson is not held on the next day of declaration of results of the election, then also meeting of the board is required to be convened first for election of the Chairperson and on whatever day the meeting is conveyed, it must be for election of

the Chairperson and therefore, it has been termed as the first meeting of the board. It also suggests that before start of business of the board, the board must elect its chairperson. Therefore, it appears that the definition of "first meeting of the board" given in Rule 96 is with different purpose only.

49. If argument of the learned counsels for the appellants is accepted, it will lead to position that State Government will not have power to nominate a member after expiry of the period of three months from date of meeting of the Board in which Chairperson is elected even when Section 9 nowhere puts such restriction of period of limitation for nominating member for the board. It will also make it impossible to fill up casual vacancies under Section 30 of the Act, which may occur after three months of the said first meeting of the Board because oath after three months from the date of such meeting, according to the interference suggested, is of no use. Not only above, in case, if any casual vacancy though occurring just on the day of election of the Chairperson or thereafter then also full statutory period of three months will not be available to that elected member who is elected against casual vacancy. When the Act has not given meaning of the first meeting of the Board, a plain and simple meaning which stands to reason is required to be taken.

50. Learned counsel for the writ petitioner/respondents, Sri N.M. Lodha submits that even the Collector concerned as well as the State Government were not clear in their mind with respect to the legal position that whether the nominated members are required to take oath or not and therefore, the district collector sought guidance from the State. The State Government thereafter, only on 15 January, 2001 prescribed the form in which the nominated members were required to take oath before which the nominated members were not in position to take the oath. The State Government had to issue another order dated 5th March, 2001, directing all the Collectors that State Government had prescribed the pro forma of the oath by order dated 15 January, 2001, therefore, oath to the nominated members should necessarily be administered within the period of three months from the date of nomination notification or from the date of above order (15-1-2001), whichever is later. Therefore, nominated members who took oath within period of three months of order dated 5th March, 2001 or at least within three months from 15th January, 2001 cannot be held disqualified for the simple reason that a person cannot be compelled to do which is impossible for him to do. Learned counsel Sri Lodha relied upon number of judgments in support of his arguments for which there is no quarrel. However, it is to be borne in mind that a

nominated member acquired right to the office under the Statute and when Statute itself prescribes the eventuality in which the nominated member loses this right, then above plea is not available. Such a plea is available to a person who is having his independent right or a right under civil law. A right created by a statute can be put to an end by the same Statute, and if the right which was created in favor of the nominated member has extinguished under the same Statute, above abstract proposition of law cannot help the nominated members. So far as a alleged confusion in the mind of the Collector or the State Government is concerned, it cannot extend the period of limitation for the reason that Section 61 clearly says that every member is required to take oath without any exception and the period of limitation for taking oath is also clearly provided in sub-section (2) of Section 61. Therefore, the confusion, even if created by not reading the law correctly, it cannot be a reason for holding a different period of limitation then provided by the statute. It even cannot be a ground for condonation of delay in taking oath because law does not permit condonation of delay. Therefore, we do find any force in the submission of the learned counsel for the respondents that limitation for taking oath provided under sub-section (2) can be ignored and new period of limitation can be created by the help of orders or circulars issued by the State Government.

51. It was submitted by the learned counsel for the appellant that the nominated members have not taken oath in prescribed form despite the fact that the State Government prescribed form on 15-1-2001. It is an admitted case that Section 9 was amended subsequent to the election of the Municipality. Rule 69 of the Rules of 1994 prescribes the form in which the elected person is required to take oath. The form prescribed in the Rule 69 is as under :-

"I do solemnly swear (or affirm) that I will be faithful and bear true allegiance to the Constitution of India as by law established and that I will loyally carry out the duties of the office upon which I am about to enter."

52. Whereas the State Government prescribed the form of oath for nominated members on 15-1-2001 with the only difference that in the form prescribed for the nominated members there is a clear mention of fact that the nominated member is taking oath as nominated member. The oath which was taken by the nominated member though not specifically says that he is taking oath as nominated member but at the same time it is clear that even the elected members are also not required to say in oath that they are taking oath as elected members of the Corporation or Council. It

appears that oath is towards true allegiance to the Constitution of India and towards loyalty to duty of the office upon which a member is entering. The pro forma in which the oath has been taken by the nominated member fulfills these requirements of taking oath. Therefore, it cannot be said that the members have not complied with this part of the provisions of sub-section (1) of Section 61.

53. In view of the above reasoning, members who have taken oath before the Collector or his nominee within three months from the date of first meeting of the Board after their nomination cannot have any disqualification under sub-section (2) of Section 61.

54. We do not find any force in the submission of the learned counsel for the respondent that unless and until State Government passes an order under sub-clause (b) of sub-section (1) of Section 63; the nominated member does not cease to be member. Sub-section (2) of Section 61 clearly provides that in case of non-compliance of the provisions of sub-section (1) of Section 61, the seat of that member shall be deemed to have been vacated. If any order is required to be passed for non-compliance of sub-section (1) of Section 61 then the entire purpose of enacting sub-section (2) of Section 61 will frustrate and the provision will lose its entire meaning. The words are "shall deem to have vacated his seat." The same controversy came before this Court in case of *Madan Lal v. The State of Rajasthan reported in* ⁴ This Court in above case held that a distinction is drawn in the act between the vacating one's seat and vacating one's office. A member only enters upon his office as such after taking a valid oath. Till he has taken valid oath he does not hold any office. He has merely been elected to a seat on the board. Therefore, it was held that vacating of seat under sub-section (2) of Section 61 is automatic. We do agree with the reasoning given by the learned single Judge in above judgment.

55. In S.B. Civil Writ Petition Number 445/2002 a novel method was adopted by the respondent No. 3 to get rid of the motion of no confidence dated 14 Sept. 2001. The meeting was convened to consider the no confidence motion against respondent No. 3 in which twenty eight members voted in favor of the Motion and 2 against the motion. The votes in favor of the motion were sufficient to carry the no confidence motion against the respondent if the nominated members are not counted for the purpose of whole number of the members of the board. The Sub-Divisional Officer, after recording the proceedings of the meeting of the board, sent its report to the concerned Collector by intimation dated 14 Sept. 2001. The intimation letter sent by the S.D.O.

Hanumangarh which was addressed to the District Collector, *Hanumangarh* merely say "that in compliance of your order, today on 14-9-2001 meeting for no confidence motion against Chairperson, Municipal Board, *Hanumangarh* Smt. Sangeeta Midha was concluded. In favor of the no confidence motion 28 votes received and against it 2 votes received. The minutes of the proceedings are being sent for further action. Photocopy of the proceeding is kept for the purpose of record." After receipt of the above report, the District Collector recorded on 14 Sept. 2001 itself that since no confidence motion was carried, therefore, respondent No. 3 ceases to be chairperson of the board. The respondent No. 3 preferred revision petition under Section 300 Rajasthan Municipalities Act, treating the above intimation letter sent by the S.D.O. as an order which by no stretch of imagination can be said to be an order. The Revision Authority not only entertained the revision petition but allowed it and that too without impleading any of the members of the board who favored the motion of no confidence. Only the Sub-Divisional Officer, was impleaded as party in the revision petition who even had no right to speak in the meeting as per sub- rule (7) of Rule 3 of the Rajasthan Municipalities (Motion of No Confidence Against Chairman or Vice-Chairman) Rules 1974. One of the members who was for no confidence motion suo motu appeared before the Director Local Bodies. The revision petition was allowed by order dated 18-10-2001 and the so called order of the Sub-Divisional Officer dated 14 Sept. 2001 which in fact is not an order, was set aside. It is a clear case of abuse of process of law. The basic principles of law were not followed, not only by the party who preferred revision petition but also by the Revisional Authority. Neither the revision petition was maintainable nor any order was before Revisional Authority and even no opportunity of hearing was given to the any of the party who were bound to be adversely affected by the order of the Revisional Authority. Unfortunately the effect of the absolutely null and void order dated 18-10- 2001 was also not interpreted correctly. Even if the order of the Revisional Authority remains as it is, how it can be treated as order of setting aside the no confidence motion against the respondent No. 3 ? The consequence of the result of voting over no confidence motion is automatic and needs no further order of any authority. With the passing of the resolution of no-confidence motion, as per sub-rule (9) of Rule 3 of the Rules of 1974 it is deemed that the Chairperson has vacated his office. The law does not permit any authority to pass any order to make the no confidence motion effective, and when no order is required to be passed to make the no confidence motion effective, there cannot arise any question of challenging the no confidence motion indirectly by treating the forwarding letter as an order of any authority even if passed under assumed authority as the

nominee of the Collector or by the Collector himself. Hence, the Revisional Authority had no jurisdiction to entertain revision petition by taking help of Section 300 Rajasthan Municipalities Act.

56. In view of the discussion above, it is held that (1) the judgment delivered by the Supreme Court in case of Raees Ahmed (AIR 2000 Supreme Court 583), and the Division Bench judgment of this Court delivered in case of Yogesh Chandra Saini (2002 (1) DNJ 208), have no application in the facts of these matters. (2) Definition of "whole number of members" contained in Section 3 (36) of the Rajasthan Municipalities Act, 1959 is *ultra vires* the provisions contained in Article 243 R of the Constitution of India. (3) The expression "whole number of members" used in sub-rule (9) of Rule 3 of the Rajasthan Municipalities (Motion of No Confidence Against Chairman or Vice-Chairman) Rules, 1974 does not include in it the nominated members, nominated under Section 9 of the Rajasthan Municipalities Act, 1959. Hence, (4) the members nominated under Section 9 of the Rajasthan Municipalities Act, 1959 are not to be included in the total number of members for purposes of considering a no confidence motion against the Chairperson or Vice-Chairperson of a Municipal Board. (5) The expression "first meeting of the Board" used in sub-section (2) of Section 61 of the Act of 1959, for the nominated members of the board, means the first meeting of the board, which is held after their appointment as nominated members and not the meeting which is held for election of Chairperson. (6) In case the nominated member fails to take oath within a period of three months from the first meeting of the board than he is deemed to have vacated the seat and it is not dependent upon any order of the State Government under clause (b) of sub-section (1) of Section 63 of the Act of 1959. (7) No revision under Section 300 of the Rajasthan Municipalities Act, 1959 lies against the no confidence motion proceedings conducted by the nominee of the Collector or by the Collector himself. (8) The notification dated 24 Oct. 2000 is neither null and void nor contrary to Section 9 of the Act of 1959. (9) The inclusion of nominated members cannot be termed as giving retrospective effect to the notification dated 24th Oct. 2000.

57. Therefore, *Kanti Lal v. State of Rajasthan*⁵ is allowed and the judgment dated 21-5-2001 by the learned single Judge is set aside and the writ petition filed by the petitioner Man Singh is dismissed.

58. *Kanti Lal v. State of Raj.*⁶ is allowed and the judgment of the learned single

Judge dated 21-5-2002 delivered in the writ petition is set aside. Writ Petition of the petitioner Kanti Lal is allowed partly. Respondent No. 4 Sardar Khan and respondent No. 5 Satya Narayan cease to be members after three months of 15-12-2000 as they failed to take oath within period of three months from meeting of the Board held on 5-12-2000. The notification dated 24-10-2000 is valid and is given effect correctly.

59. *Prem Raj Bohra v. Jairoopa Ram* ⁷ is allowed and the judgment of the learned single Judge dated 19-11-2001 is set aside. The writ petition No. 1553/2001 filed by Jairupa Ram is dismissed.

60. *Devendra Agarwal v. State of Rajasthan* ⁸ is allowed and the judgment of the learned single Judge dated 21-5-2001 is set aside and the writ petition filed by the petitioner is allowed. The impugned order dated 18-10-2001 is quashed and it is declared that respondent No. 3 stands removed from the office of the Chairperson of the Municipal Board, *Hanumangarh*.

61. D. B. Civil Special Appeal No. 329/2002 is allowed. The judgment delivered by the learned single Judge in S. B. Civil Writ Petition No. 4178/2001 is set aside. The writ petition filed by Ramesh Mehta is dismissed.

62. D. B. Civil Special Appeal No. 899/2001 is partly allowed ⁹ *Guman Mal Parmar v. State of Rajasthan and others* is dismissed. D. B. Civil Writ Petition No. 3879/2001 is partly allowed in the light of decision given above and it is declared that No Confidence Motion against respondent No. 4 stood carried.

Order accordingly.

Cases Referred.

1. (2000) 1 SCC 432
2. 2002 (1) DNJ 208
3. (1997) 6 SCC 450
4. 1965 Raj LW 342
5. D.B. Civil Special Appeal No. 326/2002
6. D. B. Civil Special Appeal No. 327/2002
7. D. B. Civil Special Appeal No. 892/2001

8. D. B. Civil Special Appeal No. 370/2002

9. S. B. Civil Writ Petition No. 1610/2001