

under protest. Accepting the costs, according to the Division Bench amounts to accepting the order as correct and merely mentioning that the same are being accepted under protest does not affect the correctness of the order and the party is precluded from challenging the same. So far as the judgment of the Supreme Court (Supra) referred to by the learned counsel for the petitioner is concerned, it may be observed that the Supreme Court made a distinction between a conditional order allowing amendment or allowing additional evidence on payment of costs and an order where simply costs are awarded on allowing an application for amendment or additional evidence. In that case the impugned order by which the amendment had been allowed was in the following terms :—

“Thus for the aforesaid reasons the amendment is to be allowed on Rs. 50 as costs.”

(7) This order was interpreted to mean that it was not a conditional order allowing amendment subject to payment of costs. The order meant that costs were being awarded on allowing the application. Under these circumstances it was held that the acceptance of costs would not debar the aggrieved party to challenge the order allowing amendment as principle of estoppel would not apply. Otherwise the Supreme Court held that if the order is a conditional order and the costs are accepted, then the party is precluded from challenging the validity of the order.

(8) For the foregoing reasons, I do not find any merit in this Revision Petition which is hereby dismissed.

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*J.S.T.*

*Before Hon'ble V. K. Jhanji, J.*

PRITAM SINGH AND OTHERS,—*Petitioners.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 3348 of 95*

12th May, 1995.

*Constitution of India 1950—Arts. 226/227—Punjab Municipal Act 1922—S. 22—Removal of President or Vice-President by 2/3rd of members of committee—Expression 2/3rd members of Committee does not exclude associate members.*

*Held* that, the Legislature in its wisdom has provided for removal of President or Vice-President if the resolution requesting his removal is passed by two-third of members of the Committee. The constitution of the committee is prescribed in Section 12 of the Act which not only includes elected and co-opted members but also associate members. The expression used both in Section 22 and its proviso is "two-third of members of the committee". It has not excluded associate members. If the intention of the Legislature was to exclude the associate members, it would have used the words "two-third of members of the committee other than associate members".

(Para 8)

S. P. Jain, Advocate and Rajesh Gumber, Advocate, for the Petitioners.

S. K. Bhanot, D.A.G. Punjab, for the Respondents No. 1 & 2.

I. P. S. Doabia, Advocate, for the Respondent No. 3.

R. L. Batta, Sr. Advocate with Sanjay Tangri, Advocate, for the Respondent No. 4.

#### JUDGMENT

V. K. Jhanji, J.

(1) In this petition under Article 226 of the Constitution of India, petitioners are seeking a writ in the nature of *Mandamus* directing respondent No. 1 to proceed further for the removal of respondent No. 4 from the office of President, Municipal Committee, Zira, District Ferozepur in view of "no confidence" motion having been passed against him by two-third members of Municipal Committee, Zira.

(2) Municipal Committee, Zira, consists of 17 members out of which thirteen are elected, three are co-opted and 17th member is local M.L.A. Shri Inderjit Singh as an associate member. Respondent No. 4 was elected as President and he performed his duties as such till 15th March, 1995 when this Court restrained him from acting as President of Municipal Committee, Zira (in short, the Committee). Petitioners who are members of the Committee submitted requisition on 27th January, 1995 seeking convening of the meeting of the Committee to discuss the motion of "no confidence" against respondent No. 4. It has been averred in the petition that though the requisition was submitted on 27th January, 1995 and under Section 25 of the Punjab Municipal Act, 1911 (in short the

Act) the President of the Committee was required to call the meeting within fourteen days, yet he issued the agenda-papers on 8th February, 1995 convening the meeting of the Committee for 25th February, 1995 at 10.30 A.M. Petitioners having felt that they would not be allowed to attend the meeting, filed a writ petition in this Court for a direction to the respondents not to interfere in the rights of the petitioners in attending the meeting and further appointing an observer to attend the meeting of the committee. Before the writ petition could be heard,—*vide* resolution dated 25th February, 1995 eleven members i.e. petitioners who were present in the meeting decided that Kimti Lal Jain, President (respondent No. 4) has no right to continue as such because he has lost confidence of the House. It finds mention in the proceedings held on that date that the Government be requested to take further action in this regard. Inderjit Singh M.L.A. too was present in the meeting. It has further been averred that after the meeting the Executive Officer came to the meeting hall at 11.05 A.M. and by that time the meeting was already over. The Executive Officer at that time did not make mention of any order having been passed by any Authority but later on the petitioners came to know that Shri P. P. S. Kahlon, Deputy Commissioner, Ferozepur had passed an order on the application submitted by respondent No. 4 postponing the meeting to 8th March, 1995. Copy of the order has been annexed as P-9 to the writ petition. The order of the Deputy Commissioner postponing the meeting is being sought to be quashed on the ground that the Deputy Commissioner had no jurisdiction to postpone the meeting of the Committee especially when it had been convened under Section 25 of the Act on a requisition submitted by some members of the Committee. The petitioners have also averred that although the resolution has been passed by 11 members which is more than two-third of the total strength of the House, but the respondents are not treating the President under suspension and are not proceeding further for his removal from the office of President of the Committee.

(3) Respondents 2 and 4 in their separate written statements have submitted that respondent No. 4 approached respondent No. 3 on 25th February, 1995 by way of an application praying *inter-alia* that there was fear of hooligan elements making breach of peace in the town and accordingly, respondent No. 3 passed an order adjourning the meeting to 8th March, 1995 at 10.30 A.M. Respondent No. 4 has also stated that in view of law and order situation prevalent in the town and pendency of writ petition in the High Court,

he requested the Executive Officer of the Committee to postpone the meeting, but on his failure to do so, he approached respondent No. 3 at about 9.00 A.M. and requested him to get the meeting postponed. The Deputy Commissioner accepted his request and postponed the meeting to 8th March, 1995 at 10.30 A.M. The order was conveyed to Sohan Singh, Agenda Clerk of the Committee at about 10.20 A.M. on telephone and Sohan Singh conveyed the message so received to the members present in the Town Hall before the start of the proceedings. He has thus averred that the meeting held was not valid one. In regard to passing of resolution and his removal, he has submitted that no valid resolution was passed in the meeting as for the removal/suspension of the President or Vice-President, resolution has to be passed by 12 members of the Committee whereas resolution in the meeting held on 25th February, 1995 has been passed only by 11 members.

(4) Learned counsel for the petitioners contended that expression "two-third of members of the committee" as appearing in Section 22 and its proviso has reference only to the total number of elected and co-opted members and not to ex-officio members, the reason being that an ex-officio member is not entitled to vote in a meeting. Counsel thus contended that 11 members out of total strength of 16 having passed the resolution, it would have the effect of removing respondent No. 4. In answer to this submission, learned counsel for the respondents submitted that the committee comprises of not only elected and co-opted members but also associate member and all have to be counted to determine the strength of the committee and the resolution would be valid only if it had been passed by two-third of members of the committee. He thus contended that total strength of the committee being 17, the resolution having been passed by 11 members i.e. less than two-third of members of the committee, is not valid.

(5) In order to appreciate the respective contentions of learned counsel for the parties, relevant provisions of the Act deserve to be noticed :

*"Section-3—Definitions :*

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|-------------------------------------------------------------------------------|-----|-----|
| (1) ***                                                                       | *** | *** |
| (2) ***                                                                       | *** | *** |
| (3) ***                                                                       | *** | *** |
| (4) "committee" means a municipal committee established by or under this Act. |     |     |
| (5) to (21) ***                                                               |     | *** |

*Section-12 : Constitution of committees,—*

- (1) Subject to the provisions of section 1, a committee for each municipality shall consist of the following members, namely—

*Section-12 : Constitution of committees, (1) Subject to the provisions of section 1 a committee for each municipality shall consist of the following members, namely :—*

- (a) such number of elected members as the State Government may prescribe in this behalf ;  
(b) co-opted members, if any ; and  
(c) associate members, namely, every member of the Punjab Legislative Assembly represent the constituency in which the municipality any part thereof is situate :

Provided that an associate member shall not be entitled to vote at, but shall subject to the other provisions of the Act, have the right to speak in and otherwise take part in the proceedings of any meeting of the committee or its sub-committee of which he may be a member.”

*Section-22 :*

*Resignation of President and Vice-President :*

Whenever a President or Vice-President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office ; and a President or Vice-President may be removed from office by the (State) Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee :

Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two-third of the members of the committee the President or as the case may be the Vice-President shall be deemed to be under suspension immediately after such resolution is passed :

Provided further that before the State Government notifies his removal, the reason for his proposed removal shall be

communicated to him by means of a registered letter in which he shall be invited to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the appropriate Secretary to Government within twenty-one days of the despatch of the said registered letter, the State Government may proceed to notify his removal."

(6) A reading of the above-quoted provisions shows that as per Section 12 of the Act, a Committee established by or under the Act comprises of : (i) elected members, (ii) co-opted members and (iii) associate member(s). This of course is subject to provisions of Section 17 which deals with filling of vacancies. As per proviso to Section 12, an associate member has no right to vote but only a right to speak in and otherwise take part in the proceedings of any meeting of the committee or sub-committee of which he may be a member. Section 22 deals with resignation of President or Vice-President and also his removal from office on the ground of, (i) abuse of his powers ; (ii) habitual failure to perform his duties ; and (iii) resolution requesting his removal passed by two-thirds of the members of the Committee. Immediately on passing of resolution, the President or Vice-President would be deemed to have been under suspension provided the resolution is passed by two-third of members of the committee. However, before the State Government notifies the removal, reasons for proposed removal have to be communicated to the person concerned inviting his explanation in writing within 21 days and in case no explanation is received, the State Government has to proceed to notify his removal.

(7) The question to be determined in this petition is as to what expression "two-third of members of the committee" appearing in Section 22 of the Act refers to. Whether it means two-third of total number of members of the committee including associate members or only those members who are entitled to cast vote in a meeting. A some what identical expression "two-third of the total number of its members" came up for consideration before a Division Bench of this Court in *Ranjit Singh v. The State of Punjab and others* (1), wherein provisions of sub-section (1) of Section 18 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 provided that the Chairman or Vice-Chairman shall cease to be the Chairman or

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(1) 1964 P.L.R. 631.

Vice-Chairman if he ceases to be a member of the Panchayat Samiti or if by a resolution passed by not less than two-third of the total number of its members the Panchayat Samiti decides at a meeting convened in the manner prescribed, that he shall vacate his office. (Emphasis supplied). The Division Bench while interpreting the expression "total number of members" held that expression as used in Section 18(1) of the 1961 Act refers to all members of the Samiti including associate members and *ex officio* members. It was also held that though associate members and *ex officio* members are not entitled to vote in a meeting, they are entitled to be taken into account in determining the two-third strength necessary to pass a resolution for removing a member. In this very context, decision of Patna High Court in *Sukhdeo Narayan and others v. Municipal Commissioners of Arrah, Municipality and others* (2), may be noticed. Therein Section 34 of the Bihar and Orrisa Municipal Act, 1922 provided that a Chairman or Vice-Chairman may be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of Commissioners have given their votes at a meeting specially convened for the purpose. The learned Judges of the Division Bench of Patna High Court while interpreting the expression "whole number of the Commissioners" held "It cannot be held that the Chairman or the Vice-Chairman could be removed by a resolution of Commissioners in favour of which not less than two-thirds of the Commissioners present at the meeting gave their votes. It is only natural for the Legislature to apply a very strict test in an important matter which concerned the two highest executive of a Municipal Board." It was thus held that the resolution removing the Chairman or a Vice-Chairman can be passed if it is so passed by not less than two-thirds of the whole number of Commissioners present at such meeting." In *Samiruddin Ahmed v. S.D.O. Mangaldoi and others* (3), the Division Bench interpreted the words "at least a minimum of two-thirds of total number of members" occurring in Section 27(1)(b) of the Assam Gram Panchayat Act by saying that it refers to two-thirds of the total sanctioned strength of the Gaon Panchayat and not to two-thirds of the existing members of it functioning at that time. In that case, total strength was 30 and two-third of it being more than 8, "no confidence" motion passed

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(2) A.I.R. 1956 Patna 367.

(3) A.I.R. 1971 Assam & Nagaland 163.

against the President was found not to be valid. Hon'ble Mr. Justice M. Rama Jois (when his Lordship was a Judge of Karnataka High Court) in *S. Shivashankarappa and others v. The Davangere City Municipality, Davangere and others* (4), interpreted the expression "not less than two-third of total number of Councillors" contained in Section 42(9) of the Karnataka Municipalities Act, 1964 to mean that calculation must be made with reference to the total number of Councillors prescribed for any Municipal Council and not with reference to the actual number of Councillors in office on the day when resolution expressing want of confidence in a President or Vice-President is moved. The contention urged by the petitioner therein that the requisite majority of two-thirds of the Councillors required for resolution expressing want of confidence which has an effect of removing a President or Vice-President, as the case may be, has to be calculated only with reference to existing number of Councillors, was not accepted. It was held that if the intention of the Legislature was that the two-third of the existing number of Councillors, on any given day, when a resolution expressing want of confidence is passed against a President or Vice-President, as the case may be alone should be taken into account, the legislature would have used the words "existing number of councillors" in Section 42(9) of the 1964 Act.

(8) Learned counsel for the petitioners contended that the word "whole" or "total" is conspicuously missing in Section 22 of the Act and therefore, the ratio of the afore-mentioned decisions is not binding as a precedent. This contention of counsel is devoid of any merit. The Legislature in its wisdom has provided for removal of President or Vice-President if the resolution requesting his removal is passed by *two-third of members of the committee*. The constitution of the committee is prescribed in Section 12 of the Act which not only includes elected and co-opted members but also associate members. The expression used both in Section 22 and its proviso is "two-third of members of the committee". It has not excluded associate members. If the intention of the Legislature was to exclude the associate members, it would have used the words "two-third of members of the committee other than associate members". It is elementary that the primary duty of the Court is to give effect to the intention of Legislature as expressed in the words used by it and no outside consideration can be called in aid

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(4) A.I.R. 1978 Karnataka 140.



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to find out that intention. Hon'ble Mr. Justice M. Rama Jois in *S. Shivashankarappa's* case (supra) has rightly observed that the object in prescribing stringent requirement of two-third members of the committee for passing a resolution against President or Vice-President, as the case may be, is to provide security of tenure in the interest of ensuring proper discharge of duties or responsibilities of a President or Vice-President, as the case may be, without fear by change of loyalty of few members. Thus, if the well-settled principle of interpretation of statutes that wherever statute contains stringent provisions they must be literally and strictly construed so as to promote the object of the Act is applied and the expression "two-third of members of the committee" when construed strictly, the conclusion is inevitable that it requires two-third of members of the committee for passing a resolution of "no confidence" against a President or Vice-President, as the case may be, and not on the basis of members who are entitled to cast vote in a meeting, excluding associate members.

(9) The decisions in *Shivdas Govind Lanjewar v. Municipal Council Bhandara and others* (5) and *Namdeorao Madhavrao Thakre v. Dulaji Sitaram Patil* (6), on which Mr. Jain placed reliance, are of no help to the case of the petitioners. In *Shivdas Govind Lanjewar's* case (supra), under consideration was subsection (1) of Section 55 of the Maharashtra Municipalities Act, 1961 which reads as follows :

"55. (1) A President shall cease to be President if the Council by a resolution passed by a majority of not less than two-thirds of the total number of Councillors (excluding the co-opted Councillors) at a special meeting so decides."

(10) Therein the Council had a total strength of 38 members but one member had resigned and thus Council consisted of 37 members. In the meeting convened for passing resolution of "no confidence" motion against the President 36 Councillors assembled, one of them being a co-opted councillor. Out of these 36 Councillors, 10 refused to mark the presence and left the meeting hall leaving behind 26 Councillors including a co-opted councillor. The motion

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(5) A.I.R. 1986 Bombay 268.

(6) 1969 Maharashtra Law Journal, 74.

was then put to vote. As the co-opted councillor had no vote he refrained from voting. The other 25 councillors voted against the President. Two-thirds of the total number of councillors were calculated on the basis of figure "37" which was 24.66 and hence the motion passed by 25 members was held to be valid. This decision, as a matter of fact, goes against the petitioners because the co-opted member was also included in 37 members. Likewise in *Namdeorao's* case (supra) where sub-section (7) of Section 49 of the Maharashtra Zila Parishads and Panchayat Samitis Act, 1962, was being dealt with by Full Bench on the subject of "no confidence" motion against President or Vice-President, it provided that "if the motion is carried by a majority of the total number of Councillors (other than associate Councillors) the President, or as the case may be, the Vice-President shall cease to hold office forthwith; and the office held by such President or Vice-President shall be deemed to be vacant." As already noticed, in the present case the associate members have not been excluded from the constitution of the committee whereas in the Maharashtra Act "associate members" have specifically been excluded.

(11) In view of the above discussion, it must be held that the members of the Committee at the material time were 17 and therefore, the motion passed by 11 members will be deemed to have been lost as having not been passed by two-third of members of the committee.

(12) In the result, the writ petition fails and is accordingly dismissed. No costs.

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*J.S.T.*

*Before Hon'ble N. K. Sodhi, J.*

CEMENT CORPORATION OF INDIA LTD,—*Petitioner.*

*versus*

GOVERNMENT OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 16522 of 1994.

29th May, 1995.

*Industrial Disputes Act, 1947—Ss. 38C (1) & 39—Industries (Development and Regulation) Act, 1951—S. 2—Award of reinstatement with 50 per cent back wages—Application made for recovery due under the award—Labour Commissioner exercising powers*