IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8551 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes : YES

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? No : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : YES

5. Whether it is to be circulated to the Civil Judge? No :

MANUBHAI F PATEL

Versus

STATE OF GUJARAT

Appearance:
MR MEHUL SHARAD SHAH for Petitioner
MR K.G.SHETH, AGP for Respondent no.1.
NR MC BHATT for MR MP PRAJAPATI for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

Date of decision: 29/10/1999

ORAL JUDGEMENT

(Per : J.M.Panchal, J.)

Learned counsel for the petitioner, on instructions, seeks permission to delete name of

respondent no.2 from the petition as the presence of respondent no.2 is not necessary, in order to resolve dispute raised in the petition. Permission as prayed for is granted. Name of the respondent no.2 stands deleted from the petition.

2. Rule. Mr. K.G.Sheth, learned Assistant Government Pleader waives service of notice of rule on behalf of respondent no.1. Mr. M.P.Prajapati, learned counsel waives service of notice of rule on behalf of respondent no.3. Having regard to the facts of the case and in view of joint request made by the learned counsel for the parties, the petition is taken up for final hearing today.

3. By means of filing this petition under Art. 226 of the Constitution, the petitioner, who is Upa-Sarpanch of Thaltej Gram Panchayat has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside resolution dated October 13, 1999 by which no confidence motion is passed against the petitioner.

4. The petitioner was elected as Upa-Sarpanch by the members of Thaltej Gram Panchayat, Tal. Dascroi, Dist. Ahmedabad. A no confidence motion was moved against the petitioner in the prescribed form by members of Panchayat on September 29, 1999. It is not in dispute that the notice by which motion of no confidence was moved against the petitioner was supported by one half of the total number of members of Panchayat. A copy of the notice of no confidence motion is produced by the petitioner at Annexure : I to the petition. On receipt of the notice, the Talati-cum-Mantri of Thaltej Gram Panchayat issued intimation dt. October 20, 1999 to the members of the Panchayat informing them that the meeting of the Panchayat would be held on October 27, 1999 to consider no confidence motion moved against the petitioner. A copy of the said intimation is produced by the petitioner at Annexure : J to the petition. Thereafter, the meeting of the Panchayat was held on October 27, 1999. The meeting was conducted under the Chairmanship of Mr. Viththalbhai G. Prajapati, - a Member of the Panchayat. Some objections were lodged to the participation of the Sarpanch in the meeting, but the objections were over-ruled by the Chairman of the Meeting. Thereafter no confidence motion was put to vote and 16 members cast their votes in favour of no confidence motion. The Chairman of the Meeting, therefore, passed a resolution mentioning that no confidence motion moved against the petitioner is carried by majority of not less than

two-thirds of the total number of members of the Panchayat. The resolution passed at the meeting which was held on October 27, 1999, is produced by the petitioner at Annexure: L to the petition. The no confidence motion carried against the petitioner is challenged by him in the petition on several grounds. However, at the time of arguments, the challenge is confined only to one ground namely that the motion was not carried by a majority of not less than two-thirds of the total number of the member of the Panchayat. Therefore, it is not necessary for us to deal with other grounds mentioned in the petition.

5. We may state that the respondent no.3 has lodged Caveat and has also filed an affidavit-in-reply controverting averments made in the petition, but as the question of interpretation of Sec.56(2) of the Gujarat Panchayats Act, 1993 is canvassed by the learned counsel for the parties, it is not necessary to refer to said reply in detail while deciding the petition.

6. Mr. Mehul S. Shah, learned counsel for the petitioner submitted that the total strength of the members of Thaltej Gram Panchayat is 26 and out of 26 members, one member remained absent, whereas another member was out of Station and yet another member had died as a result of which, resolution cannot be said to have been passed with two-thirds of total strength of the members of the Panchayat, and therefore, the same should be set aside. What was stressed was that only 16 members of the Panchayat had cast their votes in favour of no confidence motion but not two-thirds of total number of members of the Panchayat as contemplated by Sec.56(2) of the Act, and therefore, the relief claimed in the petition should be granted. Learned counsel for the petitioner referred to different expressions appearing in different sections of the Act relating to no-confidence motion which may be moved against President and Vice-President of Taluka Panchayats as well as District Panchayats and submitted that in view of different expressions employed by the legislature at different places, Sec. 56(2) of the Gujarat Panchayats Act ("the Act" for short) must be construed to mean that no confidence motion should be carried by two-thirds of whole number of the members of Panchayat. Learned counsel for the petitioner brought to the notice of the Court judgment rendered by the learned Single Judge in the case of RAMBHAI JOITARAM PATEL vs. STATE OF GUJARAT, 1997 (1) G.L.R. 339 and submitted that interpretation put by the learned Single Judge on Sec.56(2) of the Act to mean that a motion of no confidence should be carried

by majority of not less than two-thirds of total number of members of the Panchayat who constitute the Panchayat, is not only reasonable but in consonance with the object of the provisions of Sec.56(2) of the Act, and therefore, the same should be accepted by the Court. Learned counsel for the petitioner also pleaded that similar view is taken by other High Courts as is evident from the decisions rendered in the cases of MANGALA PRASAD JAISWAL Vs. DISTRICT MAGISTRATE AND OTHERS, AIR 1971 Allahabad, 77 and SHYAMAPADA GANGULY Vs. ABANI MOHAN MUKHERJEE, AIR 1951 Calcutta 420, and therefore, the petition should be accepted.

7. Mr. M.C.Bhatt, learned counsel for respondent no.3 pleaded that the expression "total number of members of the Panchayat" appearing in Sec.56(2) of the Act should be construed to mean, those members who are present and entitled to vote at the meeting and not total number of the members who constitute the Panchayat. Learned counsel for the respondent no.3 pointed out to the court that at the meeting which was held on October 27, 1999, 23 members were present and as 16 members have voted in favour of no confidence motion moved against the petitioner, the competent authority was justified in concluding that no confidence motion was carried by two-thirds of total members of the Panchayat. In support of his submissions, learned counsel placed reliance on the decision rendered by learned Single Judge of this Court in the case of GOPALDAS BAKUBHAI RANA Vs. LUNAVADA NAGAR PANCHAYAT AND OTHERS, 1985(2) G.L.R. 1047.

8. We have heard learned counsel for the parties at length. In order to resolve the question raised in the petition, it would be necessary to notice certain relevant provisions of the Gujarat Panchayats Act, 1993 relating to Village Panchayats. Sec.9 of the Act provides for constitution of Village Panchayats. As per sub-section (1) of Section 9, a village panchayat shall consist of such number of members as provided in sub-section (4). Sub-Section 4 provides that a village panchayat of a village having population not exceeding three thousand shall consist of seven members and in case of a village panchayat where the population of the village exceeds three thousand, then for every one thousand or part thereof in excess of three thousand, the said number of seven shall be increased by two. It is not in dispute that the whole number of members of Thaltej Gram Panchayat is 26. Sec.51 of the Act provides that on the constitution of a village panchayat or on its reconstitution under section 13 or under any other provision of this Act, there shall be called the first

meeting thereof for the election of Upa-Sarpanch from amongst the members of the panchayat. Similar provision is also made for calling the meeting of the members of the Panchayat for the purpose of election of Sarpanch. Sec.55 of the Act specifies as to what are the executive functions of Sarpanch or Upa-Sarpanch. Sec.56 deals with a motion of no-confidence which may be moved against Sarpanch or Upa-Sarpanch As question of interpretation of Sec.56(2) of the Act is involved in the petition, it would be advantageous to reproduce Sec.56 of the Act which is as under:-

SECTION 56 :

Motion of no-confidence.- (1) Any member who intends of move a motion of no confidence against the Sarpanch or the Upa-Sarpanch may give notice thereof in the prescribed form to the panchayat concerned. If the notice is supported by one half of the total number of members of the panchayat concerned, the motion may be moved.

(2) Where in the case of the Sarpanch or, as the case may be, the Upa-Sarpanch, the motion is carried by a majority of not less than two-thirds of the total number of the members of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, shall cease to hold office after a period of three days from the date on which the motion is carried unless he has resigned and the resignation has become effective earlier; and thereupon the office held by him shall be deemed to have become vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder a Sarpanch or, as the case may be, an Upa-Sarpanch, shall not preside over a meeting in which a motion of no confidence is discussed against him; but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote).

(4) When the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, such officer as the Taluka Development Officer may authorise in this behalf shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of Sarpanch but he shall not have the right to vote in any meetings of the panchayat.

(5)(a) Notwithstanding anything contained in section 91 or 95 a meeting of the panchayat for dealing

with a motion of no confidence with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which the notice of such motion is received by the panchayat;

(b) If the Sarpanch fails to call such meeting, the Secretary of the panchayat shall forthwith make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the panchayat within a period of fifteen days from the date of the receipt of the report.

Chapter V of the Gujarat Panchayats Act, 1993 makes provisions for Conduct of business, Administrative Powers and Duties, Property and Fund, Officers and Servants, Budget Estimates and Audit of the Accounts etc. of Panchayats. In Part I of Chapter V provisions relating to Village Panchayats are made. The relevant provisions are as under:-

Section 96 :

Questions to be decided by majority of votes.All questions before a meeting of a panchayat or committee thereof or of a gram sabha shall be decided by a majority votes of the members present and unless otherwise provided in this Act, the presiding officer of the meeting shall have a second or casting vote in all cases of equality of votes:

Provided that such circumstances and subject to conditions as may be prescribed, a decision on any question before a panchayat or committee thereof may be taken by circulating the propositions therefor for the vote of members.

Section 97 :

Modification or cancellation of resolutions.- No resolution of a panchayat shall be modified, amended, varied or cancelled by a panchayat within a period of three months from the date of the passing thereof, except by a resolution supported by two-thirds of the whole number of members of such panchayat.

It may be mentioned that Sec.70 deals with motion of no confidence which may be moved against the President or Vice-President of Taluka Panchayats, whereas Sec.84 of the Act deals with motion of no confidence to be moved against the President or Vice-President of District

Panchayats. As those provisions have been pressed into service by the learned counsel for the petitioner, it would be advantageous to reproduce the same. They are as follows :

Section 70 :

Motion of no confidence - (1) Any member who intends to move a motion of no confidence against the President or Vice-President may give a notice thereof in the prescribed form to the panchayat. If the notice is supported by such number of members as may be prescribed, the motion may be moved.

(2) If the motion is carried by a majority of not less than two -thirds of the total number of the then members of the panchayat, the President or the Vice-President, as the case may be, shall cease to hold office after a period of three days from the date on which the motion is carried, unless he has resigned earlier, and thereupon the office held by such President or Vice-President shall be deemed to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder a President or Vice-President shall not preside over a meeting in which a motion of no confidence is discussed against him; but he shall have a right to speak or otherwise to take part in the proceeding of such a meeting (including the right to vote).

(4)(a) Notwithstanding anything contained in section 122, a meeting of the panchayat for dealing with a motion of no confidence under this section shall be called within a period of fiteen days from the date on which a notice of such motion is received by the panchayat.

(b) If the President of the panchayat fails to call such meeting, the Secretary of the panchayat shall make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the panchayat within a period of fiteen days from the date of the receipt of the report.

SECTION 84 :

Motion of No Confidence.- (1) Any member who intends to move a motion of no confidence against the President or Vice-President may give notice thereof in the prescribed form to the panchayat. If the notice is supported by such number of members as may be prescribed, the motion may be moved.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then members of the panchayat, the President or Vice-President, as the case may be, shall cease to hold office, after a period of three days from the date on which the motion was carried unless he has resigned earlier; and thereupon the office held by such President or Vice-President shall be deemed to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder, a President or Vice-President shall not preside over a meeting in which a motion of no confidence is discussed against him; but he shall have a right to speak or otherwise to take part in the proceedings of such a meeting (including the right to vote).

4(a) Notwithstanding anything contained in Section 144, a meeting of the panchayat for dealing with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which a notice of such motion is received by the Panchayat.

(b) If the President of the panchayat fails to call such meeting, the Secretary of the panchayat shall make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the panchayat within a period of fifteen days from the date of the receipt of the report.

9. Before adverting to submissions advanced at the Bar and decisions cited by learned Counsel for the parties,it would be important to notice certain well settled canons of interpretation of statutes. The primary and foremost task of a Court in interpreting a statute, is to ascertain the intention of the

legislature, actual or imputed. Having ascertained the intention, theCourt must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. If two constructions are possible upon the language of the statue, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need not be meek and mute submissions to the plainness of the language. To avoid patent injustice, anomaly or absurdity, the Court would well be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by suplementing the written word if necessary. Though normally it is not permissible to read words in a statute which are not there, but, "where the alternative lies between either supplying by implication words which appear to have been accidently omitted or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words." Having regard to the context in which a provision appears and the object of statute in which the said provision is enacted, the Court should construe it in a harmonious way to make it meaningful. An attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended by the statute.

Having regard to the abovereferred to salutory principles of interpretation of statutes,we will now proceed to ascertain intention of the legislature in enacting section 56(2) of the Act. Section 55 of the Act defines the executive functions of Sarpanch or Upa-sarpanch. As per sub-section (1) of Section 55 of the Act, the executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a Village Panchayat vests in the Sarpanch. The Sarpanch is directly responsible for the due fulfilment of the duties imposed upon the Panchayat by or under the Act. In the absence of the Sarpanch, his powers and duties have to be exercised and performed by the Upa-Sarpanch. It is an admitted position that in the case of Thaltej Gram Panchayat, the Division Bench vide order dated May 10, 1999 passed in Letters Patent Appeal No. 631 of 1999, has restrained the Sarpanch from conducting the proceedings as Sarpanch and, therefore,

the present petitioner, who is Upa-Sarpanch has exercised and performed, powers and duties of the Sarpanch. Sub-section (2) of Section 55, enumerates powers and duties of bothSarpanch and Upa-sarpanch, without prejudice to the generality of provisions of sub-section(1) of Section 55. A bare look at sub-section (2) of Section 55 makes it manifest that the Sarpanch is empowered to operate on the fund of Panchayat and make payment, issue cheque etc. He is responsible for the safe custody of the fund of the panchayat and has to exercise supervision and control over the acts done as wellas actions taken by all officers and servants of the Panchayat. In the light of executive functions of Sarpanch and Upa-sarpanch as enumerated in Section 55 of the Act, Section 56 which deals with motion of no-confidence against the Sarpanch or Upa-sarpanch, has to be viewed and interpreted. The members of the Panchayat are supposed to be vigilant and when any one of them notices, financial irregularities or lapse in discharge of duties on the part of either Sarpanch or Up-sarpanch, he is entitled to give notice of no-confidence to the Panchayat and if noticeis supported by one half of the total number of members of the Panchayat, the motion has to be moved. Sub-section (2) of section 56 provides that when the motion is carried by a majority of not less than two-thirds of the total number of the members of the Panchayat, the Sarpanch ceases to hold office. Thus, it becomes evident that theobject and intent of section 56 is to enable themembers of the Panchayat to bring no-confidence motion against Sarpanch or Upa-Sarpanch and bring his term to an end as such if he has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under the Act or has become incapable of performing his duties and functions under the Act. Now the powers and functions of President and Vide-President of Taluka Panchayats are enumerated in section 69 where as those of President and Vice-President of District Panchayats are enumerated in section 83 of the Act. In the case of President and Vice-President of Taluka Panchayats and District Panchayats also, similar enabling provisions have been enacted by the legislature for motion of no-confidence against them by the members of the Panchayat concerned. Those provisions are to be found in sections 70 and 84 of the Act. The object underlying in enacting sections 56, 70 and 84 ofthe Act is one and the same viz. to enable the members of Panchayat concerned to remove errant and erring Sarpanch, Upa-sarpanch, President or Vice-President of the Panchayat concerned. Now when the

legislature has provided that motion of no-confidence can be carried against President or Vice-President of Taluka Panchayats or District Panchayats by a majorityof two-thirds of the total number of the then members of Panchayat concerned, it would be unreasonable and unfair to attribute a different intention to the legislature by holding that the legislature intended that in case of Sarpanch or Upa-sarpanch of a village panchayat, motion of no-confidence should be carried by a majority of two-thirds of the whole number of the members of such panchayat, more particularly when underlying object of enacting the three sections is found to be one and the same. Such an interpretation would not only render section 56 of the Act unworkable and cause practical inconvenience, but would also give an upper hand and undue advantage to Sarpanch or Upa-sarpanch of a village panchayat in comparison to President or Vice-President of Taluka Panchayats and District Panchayats, which is not intended at all.

The word 'Panchayat' is defined to mean a village panchayat, taluka panchayat and district panchayat. Section 96 of the Act deals with manner in which questions should be decided by a panchayat at its meeting and provides that all questions before a meeting of the panchayat should be decided by a majority of votes of the members present. The only change mode in case of motion of no-confidence is that such motion should be carried by majority of two-thirds of the members and not by simple majority. However, when concept of voting by those members who are entitled to vote is introduced in sections 70 and 84 of the Act, it would not be reasonable to exclude applicability of the said concept to section 56 of the Act while interpreting it. It is significant tonote that concept of the majority of two-thirds of the whole number of members of Panchayat concerned is introduced by legislature only when question of modifying, amending, varying or cancelling a resolution passed earlier arises as is manifest from the provisions of section 97 of the Act. It is not necessary at all to read the words,"by a majority of not less than two-thirds of thewhole number of members of the panchayat' as is canvassed by the learned Counsel for the petitioner while interpreting section 56 of the Act. We notice that post of a member of a panchayat may become vacant on his resignation,death, incurring disqualification etc., but during any vacancy in a panchayat, the continuing members have to act as if no vacancy had occurred as provided in section 62(4) of the Act and, therefore, section 56 of the Act cannot be interpreted to mean that motion of no-confidence should be carried by a majority of not less

than two-thirds of the total number of the members constituting the panchayat as is suggested by the learned Counsel for the petitioner. If the expression, "the total number of members of the panchayat" appearing in section 56(2) of the Act is interpreted to mean whole number of members of the panchayat, it would amount to rewriting section 56(2) of the Act which is not permissible to the Court.

10. It is true that in the case of Rambhai Joitaram Patel (supra), the learned Single Judge of this court has taken the view that two-thirds of total number of the members of the Panchayat means two -thirds of total number of the members who constitute the Panchayat. However we notice that while interpreting Sec.56(2) of the Act, provisions of Secs. 96 and 97 of the Act were not brought to the notice of the learned Single Judge who decided the said case, nor the earlier judgment rendered by another learned Single Judge of this Court in case of Gopaldas B. Rana (Supra). In our view, having regard to the intention of the legislature as well as purpose and object for which Section 56 is enacted, it is difficult to agree with the submission made by the learned counsel for the petitioner that the expression "total number of members of the Panchayat " appearing in section 56(2) of the Act, should be construed to mean " whole number of members of Panchayat. The learned Single Judge in the case of Rambhai Joitaram Patel (supra) has laid much emphasis on the fact that the legislature with a view to give greater protection to a Sarpanch elected by direct election, has not used the words " the then " and has only said " total number of members of the Panchayat". It is also held by the learned Single Judge that the use of two different expressions at different places in the same statute clearly indicates that they have different connotations and it must be presumed that the legislation has used different expressions at different places with different intentions. In our view, this premise is not correct inasmuch as Section 56(2) of the Act not only confers protection to Sarpanch but also to the Upa-Sarpanch of the Panchayat who is elected by members of the Panchayat. Every law is designed to further the ends of justice, but not to frustrate on the mere technicalities. Though the function of the courts is only to expound the law and not to legislate nonetheless the legislature, cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the Court to mould or creatively interprete the legislation by liberally interpreting the statute. True, normally, courts should be slow to pronounce the

legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary gramatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for the courts to take into account all the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. In given circumstances, it is permissible for the Court to have functional approach and look into the legislative intent and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile. The legislature often fails to keep pace with the changing needs and the values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary, but obligatory on the courts to step in to fill the lacuna. When courts peform this function, undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the Society. Or to put it negatively to prevent the frustration or the legislation or perversion of the goals and values of the society. Under the circumstances, much weight to the presumption arising out of use of different words in different parts of a statute cannot be given when dealing with a statute, for instance, Gujarat Panchayats Act, 1993 which is a consolidating Act containing incongruous provisions lumped together. Even otherwise, the rule is subordinate to context as a less careful draftman may use different words to convey the same meaning. A construction deriving support from different phraseology in different sections of statutes may be negatived on consideration that it will lead to unreasonable or irrational results. Therefore, we find it difficult to agree with the view expressed by the learned Single Judge in case of Rambhai J. Patel (supra). The interpretation put by the learned Single Judge on Section 56(2) of the Act is more stringent than the provision which is made in the Constitution for the amendment of the constitution as is to be found in Art.368 of the Constitution. It may be mentioned that as per provisions of Article 368 of the Constitution, an amendment of the Constitution can be made by introduction

of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, the constitution stands amended. Having regard to the provisions of Sec.56(2) of the Act, we are of the opinion that such a stringent interpretation is not called for and we find it difficult to agree with the view expressed by the learned Single Judge in the case of Rambhai J. Patel (supra). We are of the confirmed opinion that correct principle of law is not laid down in Rambhai's case. In Shyamapada Ganguly (supra), the learned Single Judge of Calcutta High Court had occasion to interpret the phrase "not less than two-thirds of the whole number of the commissioners" appearing in section 61(2) of the Bengal Municipal Act, 1932. The facts of the case were that there were 17 elected commissioners of Bally Municipality. At a special meeting convened upon requisition to consider a resolution for removal of the petitioner from the office of the chairman, 11 commissioners voted for the resolution, three voted against and two were absent. The resolution was challenged before the High Court in a petition filed under Article 226 of the Constitution. On interpretation of expression "not less than two-thirds of the whole number of commissioner" it was held that, "whole number" in section 61(2) means the total number of elected seats on the Municipality as fixed by the orders of the Government. In our view, principle laid down in this case is not applicable to the facts of the present case as in this case, the Court is required to interpret the expression "not less than two-thirds of the total number of the members of the panchayat and not the phrase "not less than two-thirds of the whole number of commissioners" which was enacted in section 61(2) of the Bengal Municipal Act, 1932. Again, in Mangala Prasad Jaiswal (supra) the admitted facts were that the total number of members of the Town Area Committee of Gola Bazar was ten. Five members gave notice of their intention to move a motion of no-confidence against the chairman. All the five members voted in favour of the said motion and the Presiding Officer declared that the motion was passed. Section 87-A (12) of the U.P.Municipalities Act provided that "the motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the Committee. Section 47-A of the Act which was substituted for section 47-A of Act II of 1916 was as under :-

"If a board has adopted, by a majority consisting

> of more than one half of the members of the board for the time being, a resolution expressing no-confidence in its chairman (not being an ex-officio chairman) and a subsequent meeting has, by a majority consisting aforesaid, adopted a resolution calling upon him to resign, such chairman shall, within three days of receipt of notice that the resolution has been adopted, submit his resignation in the manner prescribed by section 47".

The Full Bench of Allahabad High Court was of the opinion that the Legislature was aware of implications of the words, "the total number of members of the board for the time being" and held that the words "total number of members of the Committee in section 87-A meant the total number of members initially constituting the committee and not the members for the time being. In our view, the words "for the time being" have not been employed by Legislature while enacting sections 56(2), 70 and 84 of the present Act and, therefore, this decision does not help the petitioner. Even otherwise, the judgment of Full Bench of Allahabad High Court has mere persuasive value and not binding on this court as a binding precedent. With great respect we are unable to agree with the view expressed in Mangala Prasad as we are fortified in our view by another decision of this Court in Gopaldas B.Rana (supra).

11. At this stage, it would be instructive to refer to another judgment of the learned Single Judge of this Court rendered in the case of Gopaldas B. Rana (supra). In the said case, petition under Art.226 of the Constutition was filed by the petitioner who was one of the members of Lunavada Nagar Panchayat challenging a resolution passed by the Panchayat by which a motion of no confidence was passed against the Chairman of Panchayat. One of the contentions which was urged in support of the petition was that notice of no confidence motion was not moved against the Chairman by two -third of total number of members of the Panchayat as contemplated by Sec.48(1) of the Gujarat Panchayats Act, 1961. The said contention was negatived by the learned Single Judge in the following terms:

> "That leaves out consideration of the last contention canvassed by Mr. A.H.Mehta in support of the petition. Place reliance of sec.48(1), Mr. Mehta contended that if notice of motion of no confidence is to be moved by any member

against Sarpanch or the Chairman, as the case may be, it has to be supported by 1/2 of the members of the concerned panchayat and it is such a notice which can be legally given. In the present case, at the relevant time, when the notice was served on the panchayat on 27-12-82, there were only 18 members in the said panchayat, 19th member viz. Smt. Jyotsnaben Doshi had tendered her resignation addressed to the Chairman of the panchayat viz, petitioner no.2 on 26-11-1982 and it was received by the petitioner at 2-15 p.m. The said fact is clearly borne out from the affidavit-in-reply filed by petitioner no.1 in this petition. It is, therefore, obvious that on the day on which the notice for motion of no confidence was moved there were only 18 members. The covering letter of the notice in form 'A" itself is signed by 11 members. Thus, the said notice duly complies with the statutory requirement of sec.48(1) as one-half of total members of the panchayat would be 9; while the notice is signed by more than 9 members in any case. Thus, the last contention of Mr. A.H.Mehta is also devoid of any substance and has to be repelled."

12. Section 48(1) of the Repealed Act provided that any member who intended to move a motion of no confidence against Sarpanch or Upa-Sarpanch or as the case may be, Chairman or Vice Chairman should give notice thereof in the prescribed form to the Panchayat concerned. It further provided that if the notice was supported by one half of total number of members of the Panchayat concerned, the motion should be moved. We may state that the phraseology used in old section 48(1) and section 56(2) of the present Act is the same,namely, total number of members of the panchayat. In the above referred to reported decision, it was noticed that though total number of members of the Panchayat was 19, when the notice was served on the Panchayat, there were 18 members in the said Panchayat, as 19th member had tendered resignation. The learned Single Judge, on interpretation of Sec.48(1) of the Gujarat Panchayats Act 1961, held that on the date on which the notice for motion of no confidence was moved, there were only 18 members and as the covering letter of the notice was signed by 11 members, the notice duly complied with statutory requirement of Sec.48(1) as one half of the total members of the Panchayat were 9, whereas the notice was signed by more than 9 members of the Panchayat. We are in respectful agreement with the view expressed and

principles laid down by the learned Single Judge in the case of Gopaldas B. Rana and applying said principle to the case on hand, we hold that the expression "total number of members of the Panchayat " appearing in Section 56(2) of the Act, cannot be construed to mean whole of members of the Panchayat. The number of vacancies of members of the Panchayat which are not filled up, cannot be taken into consideration while interpreting the expression "total number of members of the Panchayat" occurring in Sec.56(2) of the Act. In view of our these conclusions, Sec.56(2) of the Act cannot be interpreted to mean two-thirds of the whole number of the members of the Panchayat and the resolution which is impugned in the petition cannot be said to be illegal at all. It is an admitted position that 24 members of the Panchayat including Sarpanch were entitled to vote at the no-confidence motion which was placed in the meeting of the members of the panchayat held on October 27, 1999, and motion was carried by 16 members who had voted in favour of said motion. Thus, it becomes clear that motion which was moved against the petitioner was carried by majority of not less than two-thirds of total number of members of the Panchayat within the meaning of Sec.56(2) of the Act. Under the circumstances, we are of the opinion that the petitioner is not entitled to relief claimed in the petition and the petition is liable to be dismissed.

13. We may mention that though several grounds have been urged in support of the petition, this was the only ground which was canvassed by the learned counsel for the petitioner and no other point was urged at all. Therefore, we do not express any opinion on other points which are raised in the petition.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs.

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(ccshah)