

**REPORTABLE****HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**Judgment reserved on: 29.09.2026Judgment delivered on: 26.10.2026Judgment (Full) uploaded on: 26.10.2026

D.B. Special Appeal Writ No. 279/2002

CNR: RJHC020223332002 | URN: SAW / 486U / 2002

1. Dharam Pal Singh Jain s/o Shri U.M. Jain, aged near about 61 years, resident of Mangrol, District Baran.
2. Purshottam Jajoo S/o Shri J.D. Jajoo, aged near about 40 years, resident of Mangrol, District Baran.
3. Mathura Lal S/o Shri Baldev Pankaj, aged near about 50 years, resident of Mangrol, District Baran.
4. Rafiq Ahmed S/o Shri Mulla Noor Ahmed, aged near about 42 years, resident of Mangrol, District Baran.
5. Anita Porwal W/o Shri Hemraj Gupta, aged near about 33 years, resident of Mangrol, District Baran.
6. Girija Soni W/o Shri C.P. Soni, aged near about 33 years, resident of Mangrol, District Baran.
7. Shanti Bai Raigar W/o Shri Kalu Lal Raigar, aged near about 50 years, resident of Mangrol, District Baran.
8. Radha Rani Hada W/o Shri Hemraj Singh Hada, aged near about 45 years, resident of Mangrol, District Baran.
9. Prabhu Lal Pareta S/o Shri Chaturbhujh Pareta, aged near about 35 years, resident of Mangrol, District Baran.
10. Ramcharan Pankaj So/ Shri Dhanna Lal Pankaj, aged near about 40 years, resident of Mangrol, District Baran.
11. Radheshaym Meena S/o Shri Dhanna Lal Meena, aged near about 43 years, resident of Mangrol, District Baran.
12. Mohd. Rafiq S/o Shri Alimuddin, aged near about 27 years, resident of Mangrol, District Baran.
13. Rasool Mohd. S/o Shri Hazi Yakoob Seth, aged near about 50 years, resident of Mangrol, District Baran.
14. Prabhjeet Kaur Bagga W/o Shri Tejpal Singh Bagga, aged near about 27 years, resident of Mangrol, District Baran.

----Appellants

Versus





1. The State of Rajasthan, through Secretary, Local Self Department, Government of Rajasthan, Govt. Secretariat, Jaipur.
2. The Minister In-charge, Government Urban Development & Housing Department, Government of Rajasthan, Jaipur.
3. The Municipal Board, Municipality, Mangrole, through its Executive Officer, Mangrole, District Baran.
4. Shri Hemraj Ex-Chairman, Municipal Board, Mangrole, District Baran.
5. The Director, Local Bodies, Government of Rajasthan, Jaipur.

-----Respondents

Connected With

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- 2. The Minister In-charge, Government Urban Development & Housing Department, Government of Rajasthan, Jaipur.
- 3. The Municipal Board, Municipality, Mangrole, through its Executive Officer, Mangrole, District Baran.
- 4. Smt. Nadar Begum, Ex-Chairperson, Municipal Board, Mangrole, District Baran.
- 5. The Director, Local Bodies, Government of Rajasthan, Jaipur.

----Respondents

For Appellant(s) : Mr. Abhay Kumar Bhandari, Sr. Adv. assisted by Mr. Rakshit Jain, Ms. Niti Jain Bhandari, Mr. Hans Kumar Sharma

For Respondent(s) : Mr. Abhishek Sharma and Ms. Pooja Sharma for Mr. Manoj Sharma, AAG

Full Bench

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE SAMEER JAIN
HON'BLE MR. JUSTICE BHUWAN GOYAL

C.A.V. JUDGMENT

Sanjay K. Agrawal, C.J.

For sake of exposition, this judgment is divided in following parts:-

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Preface

1. The Division Bench of this Court comprising of Mr. M.R. Calla, J. and Mrs. G.S. Misra, J. finding disagreement with the judgment of this Court in **Prem Raj Bohra vs. Jairoopa and Ors.**¹, referred the matter to the Chief Justice for constitution of a larger Bench/Full Bench in accordance with Rule 59 of the Rules of the High Court of Judicature for Rajasthan to consider and decide the following question of law:

"Whether the nominated members could be rightly excluded from the total number of members or whole number of members for the purpose of considering the requisite 2/3 majority?"

1.1 Pursuant to the aforesaid reference, the Chief Justice, vide order dated 28.09.2026, constituted this Larger Bench. This is how the matter comes up before us.

Quintessential facts for answering the reference:

2. No-confidence motion was carried on against Hemraj Sharma, Vice Chairman, Municipal Board, Mangrole, District Baran, which was conducted by the Sub-Divisional Officer, Baran on 13.09.2001 leading to filing of the revision by him before the State Government under Section 300 of the Rajasthan Municipalities Act, 1959. The State Government, vide order dated 08.11.2001, allowed the revision holding that the 2/3 majority required under the Rajasthan Municipalities (Motion

¹ D.B. Civil Special Appeal No.892/2001



of No Confidence against Chairman or Vice Chairman) Rules, 1974 (*hereinafter referred to as 'the Rules of 1974'*) would include the nominated members also in light of the decision of the Supreme Court in **Raees Ahmad vs. State of U.P.**² and consequently, set aside the order dated 13.09.2001 carrying out the no-confidence motion. Dharmpal, who is appellant herein, was the intervenor before the State Government. He filed two writ petitions before this Court under Article 226 and 227 of the Constitution of India. The learned Single Judge, vide judgment and order dated 11.12.2001, dismissed the writ petitions affirming the order of the State Government holding that the nominated members have also to be included in computing 2/3 of the total number of members of the Municipality. Being aggrieved and dissatisfied by the judgment and order passed by the learned Single Judge, the appellant preferred these special appeals, in which by order dated 07.03.2003 finding disagreement to the decision rendered by this Court in **Prem Raj Bohra** (supra), the aforesaid question for determination was referred to larger Bench, while holding that the principle of law laid down in **Raees Ahmad** (supra) cannot be brushed aside, which makes a clear distinction to the effect that the nominated members have also to be included while counting 2/3 out of the total number or whole number of members existed in the Municipality.



Legislative changes pending reference

3. It is appropriate to note that the reference was made way back on 07.03.2003 and it remained pending meanwhile, certain important legislative changes have taken place and it would be appropriate to note these changes before addressing into the question of law so referred.

3.1 The reference was made when the Rajasthan Municipalities Act, 1959 was in force. Thereafter, the Act of 1959 has been repealed and the Rajasthan Municipalities Act, 2009 has been brought into force with effect from 15.09.2009. Section 6 of the Act of 2009 provides for composition of Municipality and proviso (iii) thereto clearly provides that a nominated member shall not have a right to vote in the meetings of the Municipality. Similarly, at the time when the reference was made, Rules of 1974 were in force. Now, it has been repealed and the Rajasthan Municipalities (Motion of No Confidence against Chairperson or Vice-Chairperson) Rules, 2007 have been brought into force. Rule 2(1)(iii) of the Rules of 2007 clearly states that the 'Eligible Member' means Member of a Board or a Council or a Corporation, but shall not include nominated members and any member disqualified or suspended under the provisions of the Act.

Constitutional provision relating to issue involved

4. Article 243R of the Constitution of India reads as under:

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





shall be divided into territorial constituencies to be known as wards.

(2) The legislature of a state may, by law, provide –

(a) for the representation in a Municipality of –

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

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

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

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

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

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

4.1 The aforesaid Article provides for constitutional provision and rights of the Municipality. Article 243R(2)(a)(i) allows the legislature of a State to provide for the representation in a Municipality of persons having special knowledge or experience in municipal administration. However, proviso appended to the said Article provides that no persons referred to in paragraph (i) shall have the right to vote in the meetings of the Municipality. As such, the nominated member has no right to vote in the meetings of the Municipality.

Issue involved decided by Hon’ble Supreme Court pending reference

5. The question as to whether in counting the whole number of members of the Municipal Board in terms of Section 3(9) of the Rules of 1974 against Chairman or Vice Chairman, nominated members have to be taken into consideration and/or whether counted for calculating majority requiring for carrying the no-confidence motion against Chairman, Vice





Chairman of the Municipal Board came to be answered by three Judge Bench of Supreme Court in the matter of **Ramesh Mehta vs. Sanwal Chand Singhvi**³, wherein their Lordships of the Supreme Court categorically observed that the post of Chairman or Vice Chairman shall stand vacated on passing of no-confidence motion by the members of the Board, who are entitled to vote. As such, the whole number or total number would mean the total number of elected members. Thus, the only elected members and those who are treated at par with the elected members, were entitled to participate in the proceedings against the Chairman of the Municipality. In fact, the decision in **Ramesh Mehta** (supra) directly answered the referred question. In **Ramesh Mehta** (supra), the following question of law was formulated for answering, which states as under:

"1. The question raised in these civil appeals is whether in counting "the whole number of members of the municipal board" in terms of rule 3(9) of the Rajasthan Municipalities (Motion of No-Confidence against Chairman or Vice-Chairman) Rules 1974, nominated members have to be taken into consideration.

2. to 7. xxxxxxxx

8. The question involved in the present civil appeals is whether nominated members in a Municipal Board are to be counted for calculating the majority required for carrying a no-confidence motion against a Chairman/Vice-Chairman of the Board."

6. Their Lordships in case of **Ramesh Mehta** (supra) considered the aforesaid question and held that the 'majority' would mean 'majority of persons entitled to vote'. It was held in paragraphs 9 and 10 as under:

³ (2004) 5 SCC 409





"9. At the outset, we may notice the legal position prior to 1994. Section 3, which is a definition section, begins with the words "unless the context otherwise requires". Section 3(36) defines the expression "whole number" or "total number" to mean total number of members holding the office at the time. Under section 72 read with section 274 of the said Act, the State Government enacted the 1974 Rules, which have remained unchanged till date. Rule 3 prescribes procedure for passing no-confidence motion. Rule 3(5) states that no meeting for consideration of no-confidence motion shall be held unless the quorum of 1/3 of the whole number of members is present. Rule 3(8) states that if the motion is not carried by 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 the Chairman/Vice-Chairman shall be deemed to have been lost. Rule 3(9) states that if the motion is carried by a majority of 2/3 of the whole number of members, the motion shall be deemed to have been passed. Section 9(4) dealt with co-option of two members. Under clause (ii) of sub-section (5) of section 9, the co-opted members had a right to vote on all motions and accordingly, they were put on par with elected members. Under section 65(9) of the Act, the office of the Chairman/Vice-Chairman stood vacated as and when no-confidence motion was passed by a majority of "the whole number of members" and conversely if the motion was not carried by a majority, such motion would fail. Reading the above provisions of the un-amended Act and the 1974 Rules, it is clear that even prior to 1994 the legislative intent was that the Chairman/Vice-Chairman had to vacate his office on passing of no-confidence motion by requisite majority of members who had the right to vote, which included the co-opted members. In *Shackleton: Law and Practice of Meetings* (8th Edn., p.66) while explaining the word "Majority" the learned author states that in Legislative Assemblies it is usual to decide the questions by a majority of those who have voting rights. The learned author, further states, that in cases where a motion is to be determined by a majority consisting of 2/3 of the votes, the word "Majority" would mean majority of persons entitled to vote on the proposal and once the motion is voted upon by the requisite majority, it becomes resolution of the meeting. Therefore, the word "majority" would mean majority of persons entitled to vote. In the present case, the word "majority" finds place in sections 65(9) and 72(9) of the Act prior to amendment. Therefore, even prior to 1994 amendment of the Act, the legislature intended that the Chairman/Vice-Chairman of the Municipal Board shall be removed only by a requisite majority of members having right to vote on the motion. We are, therefore of the view that even prior to 1994, the words "whole number of members" under rule 3 of the 1974 Rules meant total number of members who have voting rights.



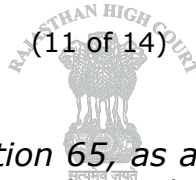


10. *There is no dispute with the proposition that the right to elect and the right to be elected is a statutory right and that the mode and manner of election to any post could be different from the scheme of removal of a person from that post. However, in each case, we have to examine the Act in question, which we have done hereinabove. In the circumstances, we do not wish to discuss the judgments cited on behalf of the appellant in support of the above proposition. However, reliance was placed on the judgment of this Court in the case of Raees Ahmad v. State of U.P. reported in [(2000) 1 SCC 432]. In the said case this Court was concerned with the provisions of U.P. Municipalities Act under which the Chairman is elected by direct election. Under section 43 of the U.P. Act the Chairman is elected directly by the electorate on the basis of adult franchise exercised by the voters of the area. It is the case of direct election. On the other hand, in the present case under section 65 of the Rajasthan Municipalities Act with which we are concerned the Chairman is elected from amongst the elected members of the Board. This distinction, in our view, is very important. As stated above, prior to 1994 the co-opted and the elected members were put on par. Both the categories had the right to vote. The Chairman was elected from amongst the members of the Board. Consequently, the Chairman/Vice-Chairman had to vacate the office when such members voted in support of the motion. In the circumstances, the judgment of this Court in the case of Raees Ahmad (supra) has no application to the facts of the present case."*

6.1 The Supreme Court finally answered the question in paragraphs 11 and 13, which read as under:

11. *In the present case, on facts, we are concerned with post 1994 position. Article 243R brought about a drastic change in the matter of composition of Municipalities. It lays down guidelines with regard to the constitution, composition, election and rights of the members of a Municipality. Under the said Act, members of a municipality are persons chosen by direct election by the residents of a municipal area (ward). Article 243R(2)(a)(i) allows the legislature of a State to appoint any person as a member of the Board who has special knowledge in the field of municipal administration, however, the proviso appended to the said Article precludes persons nominated under sub-clause (i) from having a right to vote in the meetings of the Municipality. The Constitution, therefore, makes a distinction between elected members and nominated members who play essentially an advisory role. Pursuant to the Seventy-fourth Constitutional Amendment of 1994, section 9, 65 and 72 of the Act were amended. Prior to the amendment the co-opted members were at par with the elected members, however, after 1994 only elected members and members of the legislative assembly have a right to vote under section 9(1) of the Act. Under sub-*





section (2) of section 65, as amended, the Chairman has to be elected by "elected members of the Board". This change is very important. Prior to 1994, the Chairman was to be elected by the "members of the Board", which is the phrase used in the unamended section 65(2), as the co-opted members had a right to vote. However, in 1994, section 65(2) of the Act was amended and the expression "members of the Board" in the old section is substituted by the expression "elected members of the board". In fact, the expression "whole number of members" earlier appearing in sections 65 and 72 of the Act have been deleted because in section 65(2) it is expressly provided that the Chairman shall be elected only by elected members of the Board from amongst themselves. Therefore, the scheme of post 1994 Act is that the Chairman/Vice-Chairman shall be elected by the elected members of the Boards and their office shall stand vacated on passing of no confidence motion by the elected members of the Board. The position which, therefore, emerges is that both before and after 1994, the no-confidence motion had to be voted upon by members who were entitled to vote. As stated above, section 3 of the Act begins with the words "unless the context otherwise requires". Section 3(36) defines the expression "whole number"/"total number" to mean total number of members holding the office at the given time. The said expression "whole number of members" finds place in rule 3(5), (8) and (9). Hence, we have to read rule 3(5), (8) and (9) in the context of the provisions of the said Act. As stated above, the basic scheme of the Act prior to 1994 and post 1994 has remained unchanged. In both cases, the legislative intent has been that the office of the Chairman/Vice-Chairman shall stand vacated on passing of no-confidence motion by the members of the Board who are entitled to vote. Hence, in our view, the expression "whole number" or "total number" connotes the "total number of elected members".

12. xxxx

13. To sum up, under pre-1994 and post-1994 provisions, the legislature intended that Chairman/Vice Chairman shall be removed on passing of no-confidence motion by requisite majority of members having right to vote."

6.2 The aforesaid paragraph 13 specifically answered the question that under pre-1994 and post-1994 provisions, the legislature intended that the Chairman/Vice Chairman shall be removed on passing of no-confidence motion by requisite majority of members having right to vote.

7. In **Ramesh Mehta** (supra), Justice S.B. Sinha gave a concurring and separate opinion and answered the question





that only members with voting right are entitled to participate in that proceedings and not the nominated members. Justice S.B. Sinha has held as under:

"41. The decisions of the courts as regards right of participation of the member who was an elected member or who had a right equal to that of an elected member had been taken notice of by Brother Kapadia, J. The said decisions are pointers to the fact that only elected members and those who are to be treated at par were entitled to participate in a proceeding initiated for removal of the Chairman of the Municipality.

42. By reason of the amendment in the Constitution and consequent amendment by the State Legislature in the Rajasthan Municipalities Act, however, no indication has been given that by reason thereof a special right is sought to be created in the nominated members although they would not participate in such a proceeding and would not have any voting right either at the election of the Chairman or in the proceedings for his removal.

43. We, therefore, are of the opinion that the Rules which were made in the year 1974 having not been amended; with a view to give an effective and proper meaning must be construed to mean that only members with voting right are entitled to participate in that proceedings and not the nominated members."

Decision of the Supreme Court in Raees Ahmad (supra)

8. However, the Supreme Court distinguished the principle of law laid down in **Raees Ahmad** (supra). In that case, the Supreme Court was concerned with the provisions of Rajasthan Municipality Act, under which the Chairman shall be elected by direct election under the Rajasthan Municipalities Act, 1959. The Chairman was the elected member of the Municipal Board and the Supreme Court further held that the nominated members shall remain members and had to be counted for vote even though a proviso denied them a right to vote. The Supreme Court held in para 4 as under:





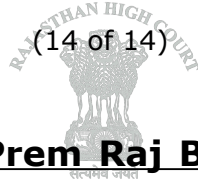
"4. It will be noticed that nominated members are part of the composition of the Municipality and are referred to in the statute as the nominated members thereof. For the purposes of finding whether a motion of no-confidence against the President has been carried, what has to be seen is whether it has been passed by "a majority of two third of the total number of members of the Municipality". There can be no doubt, therefore, that, on a plain construction of the statute the number of the nominated members has to be taken into account in determining whether or not a motion of no-confidence against the President has been carried."

Finding

9. The decision of the Supreme Court in **Ramesh Mehta** (supra) directly construes the very Act and the very Rules of 1974 in issue here, and its ratio governs the instant question of law. The whole number of members under the Rules of 1974 read in its statutory and constitutional context, means the whole number of members entitled to vote on the motion. Nominated members, having no voting right, are accordingly excluded from the denominator. The decision in **Raees Ahmad** (supra) is clearly distinguishable from the facts of the present case. This Court was concerned with the provisions of the Municipalities Act, under which the Chairman was elected by direct election. As such, the decision in **Raees Ahmad** (supra) has no application in the instant case.

Conclusion

10. Accordingly, reference is answered in affirmative under the Rajasthan statutory scheme governing a motion of no-confidence, nominated members who have no right to vote are not to be included in the whole number or total number of members for computing the requisite majority, as held by their Lordships of the Supreme Court in **Ramesh Mehta**



(supra) and as such, **Prem Raj Bohra** (supra) was correctly decided holding that the nominated member would not have the voting right and should not be included in the total number of members in counting 2/3 majority of voting for passing no-confidence motion. The reference is, accordingly, answered.

11. Ordinarily, we could have remitted the matter to the learned Division Judge for deciding the appeal in view of the question of law as answered hereinabove, but since the no-confidence motion was carried way back on 13.09.2001, remitting the matter would not serve any useful purpose.
12. Accordingly, the appeals are disposed of as having become infructuous leaving the parties to bear their own costs.

(BHUWAN GOYAL),J. (SAMEER JAIN),J. (SANJAY K. AGRAWAL),CJ

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