

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.10670 OF 2016

1. Radhakishan Sadarangani)
Adult, Indian Inhabitant,)
Residing at 5th Floor, Link Apartment)
Plot No.357, 13th Road,)
Khar (W), Mumbai – 52.)

2. Hardeep Singh Arora)
Adult, Indian Inhabitant,)
Residing at 3rd Floor, Link Apartment)
Plot No.357, 13th Road,)
Khar (W), Mumbai – 52.)

3. Ramesh Lachhmandas Pherwani)
Adult, Indian Inhabitant,)
Residing at 4, Dharam Palace,)
Hughes Road, Mumbai – 7.)

4. Smt. Sarataj Kaur Bhasin)
Adult, Indian Inhabitant,)
Residing at 5th Floor, Link Apartment)
Plot No.357, 13th Road,)
Khar (W), Mumbai – 52.)

.. Petitioners

Versus

1. Smt. Deepa Rohera, Chairperson)
Adult, Indian Inhabitant,)
Residing at 4th Floor, Link Apartment)
Plot No.357, 13th Road,)
Khar (W), Mumbai – 52.)
2. Subhas Ravindranath Sharma)
Hon. Secretary,)
Adult, Indian Inhabitant,)
Resi. at Flat No.101, Link Apartment)
Plot No.357, 13th Road,)
Khar (W), Mumbai – 52.)
3. Akhilesh Jain, Treasurer)
Adult, Indian Inhabitant,)
Resi.at Flat No.121A, Oscar Apartment)
2nd, 17th Road, Danda Road,)
Khar (W), Mumbai – 52.)
4. Link Apartment CHS Ltd.)
Plot No.357, 13th Road, Khar (West),)
Mumbai – 52.)
5. Assistant Registrar)
Co-operative Societies)
H/W ward, Bhandari Bank Bldg.)
P.L.Kale Guruji Marg,)
Dadar (w), Mumbai – 28.)

6. State of Maharashtra)
through Principal Secretary)
Co-operation, Dept. Mantralaya,)
Mumbai – 400 032.) .. Respondents

Mr.S.P.Kanuga for the petitioners.

Mr.Madhav Jamdar for the respondent no.4.

Mr.S.D. Rayrikar, AGP for the respondent no.6-State.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 11th July 2018

PRONOUNCED ON : 28th August 2018

Judgment :

. By this petition under Article 227 of the Constitution of India, the petitioners have impugned the order dated 2nd August 2016 passed by the respondent no.5 rejecting the “no confidence motion” moved by the petitioners against the respondent nos.1 to 3. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. Some time in the year 1986, the respondent no.4 Society was formed consisting of 17 members. In the month of November 2015, elections were held for the post of Managing Committee Members. 8 Members of the Managing Committee were elected. Since 3 posts were reserved for reserved category candidates who were not available, the

Managing Committee of the respondent no.4-Society comprised of 8 members.

3. It is the case of the petitioners that on 13th December 2015, the respondent nos.1 to 3 appointed themselves as Chairman, Secretary and Treasurer in the Special General Body Meeting of the respondent no.4 society in violation of Section 73 CB of the Maharashtra Co-operative Societies Act, 1960 (for short “the MCS Act”).

4. According to the petitioners, the respondent nos.1 to 3 started committing gross violation of various provisions of law and bye-laws of the society. The petitioners addressed various letters to various authorities for taking action against the respondent nos.1 to 3 however no action was taken on those letters addressed by the petitioners against the respondent nos.1 to 3.

5. It is the case of the petitioners that the respondent nos.1 to 3 themselves appointed a Contractor to carry out major repairs to the building and have been threatening the members that if they did not pay amounts as demanded, serious consequences will follow.

6. On 14th July 2016, the petitioners addressed a letter to the Registrar, H/W ward setting out grounds for “no confidence motion.” On receipt of the said requisition, the respondent no.5 called a meeting in terms of provisions of Section 73-1D of the Maharashtra Co-operative Societies Act, 1960 for “no confidence motion.” The respondent no.5 acted as a statutory authority under Section 73-1D of the MCS Act and called a meeting. It is the case of the petitioners that the said meeting was called by requisition of 2/3rd members of the Managing Committee for seeking removal of the respondent nos.1 to 3 and was in compliance with Section 73-1D of the MCS Act and the other provisions of law and rules required to be followed for the purpose of moving “no confidence motion.” Out of 8 members of the Managing Committee, 5 members of the Managing Committee moved “no confidence motion” against the respondent nos.1 to 3. It is the case of the petitioners that the said “no confidence motion” was moved by 2/3rd majority of 8 members of the Managing Committee in compliance with Section 73-1D of the MCS Act.

7. On 2nd August 2016, the respondent no.5 passed an order rejecting the said “no confidence motion” holding that the committee ought to have consisted of 11 members and members voted in favour

of “no confidence motion” were less than $2/3^{\text{rd}}$ as contemplated under Section 73-1D of the MCS Act. This order passed by the respondent no.5 has been impugned in this petition filed under Article 227 of the Constitution of India.

8. Mr.Kanuga, learned counsel appearing for the petitioners invited my attention to various exhibits annexed to the petition and also to Section 73-1D of the MCS Act and also bye-laws 118 of the Bye-laws of the respondent no.4 society.

9. It is submitted that the finding of the learned Registrar that the total number of members of the Committee were 11 is ex facie perverse and also factually incorrect. The Managing Committee of the society consisted of 8 members and $2/3^{\text{rd}}$ members thereof was required for the purpose of passing “no confidence motion” under Section 73-1D of the MCS Act. It is submitted that the respondent no.5 has erroneously held that $2/3^{\text{rd}}$ majority would constitute 5.33 members. Since voting cast in favour of the resolution was 5 and 3 were against, the number 5.33 did not reach i.e. $2/3^{\text{rd}}$ majority and thus the said notice of motion was rejected on that ground.

10. It is submitted by the learned counsel that since the respondent no.4 has less than 100 members, number of members of Managing Committee that could be elected would be 8. There is provision of 3 members belonging to backward class. Since 3 members belonging to backward class were not elected, the Managing Committee consisted of only 8 members who were entitled to vote at the meeting for consideration of no confidence motion. In the meeting held by the respondent no.5, admittedly all 8 members were present. 5 members were voted in favour of “no confidence motion” and 3 members voted against the “no confidence motion.”

11. It is submitted by the learned counsel that the legislature has used in Sub-section (2) of Section 73-1D of the MCS Act the words “by not less than one-third” in contradistinction to Sub-section (1) of Section 73-1D of the MCS Act, the words used are “by two third majority.” The Rules of rounding of fraction into whole number are stated in Section 73AAA of ignoring the fraction while constituting Committee where $\frac{2}{3}$ rd members were reached in election process out of total number. Learned counsel also placed reliance on Rule 57A(7)(g)(iii) of the Maharashtra Co-operative Societies Rules, 1961 (for short “the said MCS Rules) in support of the submission that rule of rounding was applied for

determining the quorum at the commencement of meeting of no confidence motion and fraction was rounded to next numerical number.

12. It is submitted that there is no provision or explanation added to cover the situation where quotient of $1/3^{\text{rd}}$ or $2/3^{\text{rd}}$ comes in fractions along with number such as in this case where the quotient of $2/3^{\text{rd}}$ of number 8 voters present and voted comes to 5.33. It is submitted that in this situation, fraction of 0.33 shall be ignored and the fact that 5 members out of 8 members voted in favour of “no confidence motion” against the respondent nos.1 to 3 have to be considered as compliance with the provisions of Section 73-1D of the MCS Act. He submits that when members cast vote, it is single indivisible vote and it is not cast in fraction and therefore fraction of 0.33 be ignored. While determining quotient out of 8 members to arrive at $2/3^{\text{rd}}$ majority, greater number has to be taken into account.

13. It is submitted that in this case, on determination of majority, the greater number out of the total member is 5 against 3 and therefore “no confidence motion” ought to have been allowed. In support of this submission, learned counsel placed reliance on the judgment of full bench of the Allahabad High Court in the case of **Wahid Ullah Khan**

Vs. District Magistrate Nainital, AIR 1993 Allahabad 249 and in particular paragraphs 14, 16 and 19 to 23 thereof.

14. It is submitted that majority was spoken of in different context and not mathematical manner being counted in number. He submits that if the word majority is used in the manner as suggested by the respondent nos.1 to 3, it would follow that no confidence resolution can never be passed in the present situation where at least 5 members were voted in favour of no confidence motion against 3 members though the case was made out for passing such resolution against them. The learned counsel gave an illustration that if number of members of Committee are 21, the number of members required for passing of no confidence motion would be greater than 11, if argument of the learned counsel for the respondent nos.1 to 3 is accepted.

15. In his alternate submission, learned counsel submits that the number of figure 0.33 is impossible in view of the fact that when an individual member has single and indivisible vote and if Section 73-1D of the MCS Act is read in that manner, the whole object of exercise of rights of members of Committee in majority to vote out erring office bearers who act in concert and in defiance of Rules will be defeated

and the right of no confidence conferred on majority of Committee members will be rendered illusory. He submits that a fraction of vote can never in law be ever assumed as a rate of 0.33 as an individual being capable of casting vote and thus the fraction of 0.33 has to be ignored while computing 2/3rd majority under Section 73-1D of the MCS Act.

16. Learned counsel for the petitioners placed reliance on the following judgments in support of his submission to demonstrate as to when the Court can apply the principle of relaxation or rounding off while considering the marks.

(i) the judgment of Madras High Court in the case of ***The Chairman, Mahatma Gandhi Post Graduate, Institute of Dental Sciences, Gorimedu, Poducherry & Ors. Vs. Dr. B. Priakardiya & Ors.***, AIR 2016 ***Mad. 1*** in particular paragraphs 6 & 7.

(ii) the judgment of the Hon'ble Supreme Court in the case of ***State of U.P. & Anr. Vs. Pawan Kumar Tiwari & Ors.***, 2005 (2) SCC 1.

(iii) the judgment of the Hon'ble Supreme Court in the case of ***Bhanu Pratap Vs. State of Haryana & Ors.***, 2011 (15) SCC 304 and in particular paragraphs 17 and 18.

17. Learned counsel for the petitioners placed reliance on the judgment of House of Lords in the case of ***Gill Vs. Donald Humberstone & Co. Ltd., (1963) 1 W.L.R. 929*** and more particularly on pages 933, 934 and 937 in support of his submission that if the language is capable of more than one interpretation, this Court ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result. It is the duty of the courts in construing regulations of this kind not to be astute to find inconsistencies between them but to construe them in the light particularly of their various headings so as to make them sensibly workable. He submits that if the interpretation as canvassed by the respondent nos.1 to 3 is accepted that 2/3rd majority of 8 members having voted in favour of no confidence motion has to be considered as 6 and not 5, it would lead to absurd result and caused unreasonable reason and not practicable result.

18 It is submitted by the learned counsel for the petitioners that in none of the judgment of this Court, the provision identical to or pari materia with Section 71-1D of the MCS Act has been considered so far. Learned counsel for the petitioners placed reliance on Section 73AAA (5) (a) of the MCS Act and would submit that the said provision would also

clearly indicate that it was the legislative intent to ignore the fraction. He placed reliance on Rule 57A(7)(g)(iii) of the said MCS Rules and would submit that the requisite majority mentioned therein is contemplated for the commencement of a Managing Committee meeting and not for any other purposes.

19. Learned counsel for the petitioners also placed reliance on bye-law 118 of the Bye-Laws of the respondent no.4 society in support of the submission that even the said bye-law indicates that fraction of 0.33 has to be ignored while computing the $2/3^{\text{rd}}$ majority under Section 73-1D of the MCS Act.

20. Mr.Jamdar, learned counsel appearing for the respondent no.4, on the other hand, placed reliance on Section 73-1D, 73AAA(5) (a) of the MCS Act and the Rule 57A(7)(g)(iii) of the said MCS Rules. He submits that the petitioner no.4 is already declared disqualified subsequently. He submits that the legislative intent to provide $2/3^{\text{rd}}$ majority in Section 73-1D of the MCS Act read with the said MCS Rules is to safeguard the interest of the society. He submits that the provision of no confidence motion is a penal in nature and thus the provision has to be construed accordingly.

21. It is submitted by the learned counsel that 2/3rd majority out of 8 members would be admittedly voted in favour of no confidence motion would be more than 5 i.e. 5.33 whereas admittedly out of 8 members present in the Managing Committee meeting and only 5 members had voted in favour of “no confidence motion” which was less than 5.33. He submits that if the fraction of 0.33 is ignored, the same would be in violation of Section 73-1D of the MCS Act. Learned counsel for the respondent no.4 placed reliance on Section 73AAA(5) (a) of the MCS Act which provides for constitution of Managing Committee. He submits that a perusal of the said provision clearly indicates the legislative intent that wherever fraction has to be ignored, a specific provision in that regard is made specifically, however, since there is no such provision found in Section 73-1D for ignoring such fraction in Section 73-1D, interpretation of the petitioners if accepted for ignoring the fraction of 0.33, it would be in *ex facie* violation of the legislative intent and the provisions of Section 73-1D of the MCS Act.

22. Learned counsel for the respondent no.4 placed reliance on the judgment of this Court in the case of ***Tanaji Bhauso Mane & Ors. Vs. Ushatai Balkrushna Mahe & Ors., 2013 (6) Mh.L.J. 467*** and

would submit that this Court construes an identical provision under the provision of the Maharashtra Village Panchayat Act, 1958 and has held that fraction cannot be ignored. There has to be a clear majority in case of no confidence motion as contemplated under Section 35 (3) of the said Maharashtra Village Panchayat Act, 1958.

23. It is submitted by the learned counsel for the respondent no.4 that there are 17 members of the respondent no.4 society. In the month of November 2015, election to the membership of the Managing Committee of the respondent no.4 was held. 8 members came to be elected to the Managing Committee in the said election. The respondent nos.1 to 3 were elected as Chairman, Secretary and Treasurer from amongst the members of the Committee. Admittedly 5 members out of 8 committee members voted in favour of “no confidence motion” and 3 members voted against the same. The authorised officer and the Assistant Registrar Co-operative Societies, H/W Ward by an order dated 2nd August 2016 held that 2/3rd majority would be 5.33 whereas only 5 members voted in no confidence motion and thus the same could not be considered as passed by 2/3rd majority.

24. Learned counsel for the respondent no.4 submits that what is

contemplated in Section 73-1D of the MCS Act is passing of no confidence motion by 2/3rd majority of the total number of committee members who are entitled to vote at the election of such post of the Managing Committee. It is not provided in the said provision that 2/3rd of the members who are present and entitled to vote but what is provided is members who are entitled to vote at such meeting. He submits that intention of the legislature is thus clear that 2/3rd majority was to be calculated by taking into consideration total number of Committee members who are entitled to vote. It is submitted that the provision of Section 73-1D is precise and unambiguous and it is therefore not necessary to read anything into a plain and unambiguous provision.

25. It is submitted by the learned counsel for the respondent no.4 that in the original scheme of Section 73-1D of the MCS Act, it is provided for 2/3rd majority which words were replaced by the words “simple majority” by an amendment by the amending Act Maharashtra 7 of 1997. By amending Act Maharashtra 4 of 2001, the word “simple majority” was substituted by the words “2/3rd majority.” He submits that the intention of the legislature is thus clear that no confidence motion is to be passed by 2/3rd majority of the total number of committee members who are entitled to vote at the meeting of “no confidence

motion.”

26. It is submitted by the learned counsel that if the contention of the petitioners is accepted, then the same will amount to reducing the required number of votes to less than $2/3^{\text{rd}}$ majority and thereby adding the words to Section 73-1D to the effect that while computing $2/3^{\text{rd}}$ majority, the fraction, if any, is to be ignored and the same should be the previous lower number. The said interpretation would be in complete violation of the provisions of Section 73-1D of the MCS Act and would be illegal.

27. Learned counsel for the respondent no.4 placed reliance on the judgment of this Court in the case of ***Sangita Bhaskar Ingale Vs. State of Maharashtra & Ors., 2015 (6) Mh.L.J. 957*** and in particular paragraphs 8 to 10 thereof in support of the submission that fraction of 0.33 cannot be ignored.

28. In so far as the duties and powers of the Court to interpret the provision of law are concerned, learned counsel for the respondent no.4 made the following submissions :-

(a) If the words of the statute are in themselves precise and

unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. He placed reliance on the judgment of the Supreme Court in the case of ***Union of India Vs. Hansoli Devi*, (2002) 7 SCC 280** (paragraph 9).

(b) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has been said. As a consequence, a construction which required for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. He placed reliance on the judgment of Supreme Court in the case of ***Harbhajan Singh Vs. Press Council of India & Ors.*, (2002) 3 SCC 722**.

(c) It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the

provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there.

(d) Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. He place reliance on the judgment of Supreme Court in the case of ***Union of India & Anr. Vs. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323*** (paragraph 14.).

(e) It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents.

(f) The object of the interpreting a statute is to ascertain the intention of legislature enacting it. The intention of the legislature is primarily to

be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. He placed reliance on the judgment of the Supreme Court in the case of ***Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti, (2008) 12 SCC 369*** (paragraphs 16 and 17).

(g) While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process. He placed reliance on the judgment of the Supreme Court in the case of ***Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti (2008) 12 SCC 370*** (paragraphs 20). He also placed reliance on the judgment of the Supreme Court in the case of ***Singareni Collieries Co. Ltd. Vs. Vemuganti Ramakrishan Rao, (2013) 8 SCC 789*** (paragraph 21).

(h) As provision of Section 73-1D of the Act is very clear and unambiguous and which provides that the motion of no confidence is to be passed by 2/3rd majority of the total number of committee members

who are entitled to vote and therefore the said section cannot be interpreted in a manner which will reduce this required $2/3^{\text{rd}}$ majority to less than that.

(i) It is submitted that Rule 57A(7)(g) is to be read in the light of Section 73-1D and in aid of Section 73-1D and to further the intention and object of Section 73-1D. It is significant to note that Section 73-1D provides that the no confidence motion should be passed by $2/3^{\text{rd}}$ majority of the total number of Committee Members who are entitled to vote at the election of the officer of the Society. Thus the said Rule provide minimum quorum of $2/3^{\text{rd}}$ members and further provides that if $2/3^{\text{rd}}$ is fraction, it shall be rounded to next higher number. Therefore what is contemplated is that quorum should be minimum $2/3^{\text{rd}}$ as minimum requirement is that the no confidence motion is required to be passed by $2/3^{\text{rd}}$ majority.

(j) It is submitted that it is very clear that the Rule 57A(7)(g) is only applicable to the strength of the quorum of meeting to consider the no confidence motion and has nothing to do with the determining the $2/3^{\text{rd}}$ majority required for passing no-confidence motion. In any case, this also indicates that the quorum should be minimum $2/3^{\text{rd}}$ as the resolution is to be passed by minimum $2/3^{\text{rd}}$ majority.

29. Learned counsel for the respondent no.4 distinguishes the judgment relied upon by Mr.Kanuga, learned counsel for the petitioners on the ground that in all those judgments, issue involved and the facts were totally different. In none of those judgments, the provisions which are under consideration of this Court or the provisions in para materia therewith had been considered. It is submitted that since consequence of “no confidence motion” would cast stigma, such provision has been interpreted strictly and not liberally.

30. Mr.Rayrikar, learned AGP for the respondent no.6 adopts the submissions made by Mr.Jamdar, learned counsel for the respondent no.4.

31. Mr.Kanuga, learned counsel for the petitioners in rejoinder made an attempt to distinguish the judgments relied upon by Mr.Jamdar, learned counsel for the respondent no.4 and would submit that the Court has to interpret the provisions referred to aforesaid in such a way that it should not lead to an unreasonable result and shall lead to a reasonable practical result with a view to advance justice in favour of the parties.

REASONS AND CONCLUSIONS :-

32. A question that arises for consideration of this Court is whether under Section 73-1D of the MCS Act while computing the 2/3rd

majority of the total number of managing committee members for the purpose of declaring “no confidence motion” against the officer of the society passed, a fraction in such voting by 2/3rd members of the committee having voted in favour of “no confidence motion” can be rounded off or relaxed.

33. Learned counsel appearing for both the parties have relied upon the following provisions of the MCS Act, MCS Rules and the relevant Model Bye-Laws of the Co-operative Housing Society framed under the MCS Act which are extracted as under :-

“Section 73-1D -Motion of no-confidence against officers of societies-

(1) A President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatever designation called who holds office by virtue of his election to that office shall cease to be such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer, as the case may be, if a motion of no-confidence is passed at a meeting of the committee by two-third majority of the total number of committee members who are entitled to vote at the election of such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer and the office of such President, vice-President, Chairman, Vice-chairman, Secretary, Treasurer or any other officer, as the case may be, shall thereupon be deemed to be vacant.

Section 73AAA – Constitution of Committee -

(1) to (4)

(5)(a) – If, at any general election of members of the committee, the committee could not be constituted after declaration of results, then notwithstanding anything contained in this Act or the Rules or the bye-laws of the society, the Returning Officer or any other officer or authority conducting such election shall, within seven days of the

declaration of two-thirds or more number of members, forward their names together with their permanent addresses to the Registrar, who shall, within fifteen days from the date of receipt thereof by him, publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon such publication, the Committee of the Society shall be deemed to be duly constituted. In determining two-thirds of the number of Members, a fraction shall be ignored.

Rule 57A --Motion of no-confidence against the officers of the society-

(1) to (6)

(7) The Registrar or the officer authorised to preside over the meeting shall,—

(a) to (f)

(g) Declare the motion or motions as rejected and take a note to that effect with reasons in the minute book under the following circumstances-

(i) if no member of the committee present,

(ii) none of the members of the committee, who are present refuse to sign the requisition,

(iii) 2/3rd members are not present at the commencement of the meeting (if 2/3rd is fraction, it shall be rounded to next higher number);

Bye Law No.118 -

In a General Election of Members of the Committee of a Society, on the election of two-thirds or more number of Members, the Returning Officer or any other Officer or Authority conducting such election shall within seven days after the declaration of results of the election of such Members, the Committee has, for whatever reason, has not been so far constituted, forward their names together with their permanent address to the Registrar, who shall, within fifteen days from the date of receipt thereof by him, publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon Constitution of the Committee such publication, the Committee of the Society shall be deemed to be duly constituted. In determining two-thirds of the number of Members, a fraction shall be ignored.

Bye Law No.125 – At the first meeting New Committee to Elect New Office Bearers : -

(a) Every Committee, at its first meeting , after its election shall elect a Chairman, Secretary and Treasurer from amongst the Members of the Committee.

(b) The Officer of the Society shall hold office for the period of 5 years from the date on which he is elected to be the Chairman as the case may be the Secretary and Treasurer but not beyond the expiry of term of the Committee.

Motion of no confidence against the office bearers

Provided that he shall cease to be the officer, if the motion of 'No Confidence' is moved in the special meeting of the Committee called and presided by the Registrar or such officer not below the rank of a Assistant Registrar upon the notice given by 1/3rd Members of the Committee and the motion of 'No Confidence' is passed by the 2/3rd Members present at such meeting, who are entitled to vote at the election of such Chairman, Secretary or Treasurer.

Provided further that another motion of 'No Confidence' shall not be brought against the Chairman or as the case may be the Secretary or Treasurer of the Society unless the period of 6 months has elapsed from the date of preceding motion of the 'No Confidence.'

34. It is not in dispute that 8 members were elected to the managing committee of the respondent no.4 society. The total number of members of the respondent no.4 society are 17. It is also not in dispute that 5 committee members out of 8 committee members had moved the said “no confidence motion” against the remaining 3 members of the managing committee who are impleaded as the respondent nos.1, 2 and 3 in the writ petition holding the posts of Chairperson, Honorary Secretary

and Treasurer of the respondent no.4 society respectively. The said requisition for calling a special meeting was submitted under Section 73-1D (2) of the MCS Act duly signed by 5 committee members out of 8 committee members.

35. There is no dispute that the said requisition was in compliance of Section 73-1D (2) of the MCS Act before the concerned authority for requisitioning a meeting. There is also no dispute that out of 8 managing committee members who were present and were entitled to vote in the said special meeting, 5 members had voted in favour of “no confidence motion” and remaining 3 members have voted against the “no confidence motion” moved by the 5 committee members.

36. On 2nd August 2016, the respondent no.5 i.e. Assistant Registrar of Co-operative Societies rejected the said no confidence motion moved by 5 members of the committee on the ground that 2/3rd majority out of 8 members would be 5.33 whereas only 5 members had voted in favour of “no confidence motion” against the remaining 3 members of the committee. The petitioner impugned the said order passed by the Assistant Registrar on 2nd August 2016 in this petition on various grounds.

37. It is vehemently urged by Mr.Kanuga, learned counsel for the petitioners that a fraction of 0.33 while computing 2/3rd majority required for passing a “no confidence motion” under Section 73-1D(1) has to be ignored and thus 5 members of the managing committee having voted in favour of the “no confidence motion” against the respondent nos.1 to 3 ought to have been declared as passed by declaring their posts as vacant. It is the case of the petitioners that the respondent no.5, however, has not ignored the said fraction of 0.33 and has taken a hyper technical view in the matter while rejecting the said no confidence motion moved by the petitioners.

38. It is also the case of the petitioners that each members of the managing committee was admittedly entitled to cast one vote and thus voting could not have been in fraction and thus if the majority of 5 members of the committee had voted in favour of “no confidence motion,” the same was required to be declared as validly passed. It is the case of the petitioners that by the impugned order, the Assistant Registrar has considered 2/3rd majority at 5.33 and if the same was rounded off to next higher figure i.e. 6 out of 8 that would amount to 3/4th majority.

39. In so far as the judgment of full bench of the Allahabad High Court in the case of ***Wahid Ullah Khan (supra)*** relied upon by the learned counsel for the petitioners is concerned, in the said matter, the total strength of the members of the Board was 15. In the meeting held for considering such no confidence motion, 9 members participated out of whom 8 members voted in favour of motion of no confidence. The provision under consideration before the Allahabad High Court i.e. 47A of the U. P. Municipalities Act provided that if a Board has passed, by a majority consisting of not less than one-half of the members of the Board for the time being a vote of no-confidence in its hairman (not being an ex-officio Chairman) and at any subsequent meeting, held not less than three weeks nor more than three months, subsequent thereto, has by a majority consisting as mentioned therein, adopted a resolution calling upon him to resign, such Chairman shall, within three days of receipt of notice that such resolution has been adopted, submit his resignation in the manner prescribed by Section 47.

40. The said provision was amended by Section 87A which 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 Board. The Allahabad High Court has held that the

figure 8 cannot numerically be deemed to be half of the figure 15. However, figure 8 is obviously more than half of the figure 15. In such circumstances, if the total number of the votes cast in favour of the resolution of motion of no confidence against a President of the Board which has 15 members will be deemed to have been carried through as the figure 8 will represent, the majority of more than half of the total number of the members of the Board. Figure 8 can represent the half of the total number of the members of the Board of 15 members only by artificially increasing the numerical figure which would be representing the half. It is held that this does not appear to have been made permissible as it will have a wholly unwarranted effect of providing unmerited period of term to a person against whom a motion of no confidence has been carried through by such number of members which number by itself is more than half of the total number of members of the Board.

41. It is held in the said judgment that carrying through or falling of a portion of no confidence under the provisions of the Act has to be determined on the basis of the numbers of votes cast in favour of or against the resolution and this number can be arrived at without artificially increasing the numbers in case the total number of the members of the Board happens to be in an odd figure.

42. The Allahabad High Court has held that it is impossible to approve the view where under when the total number of members of the Board is 15, the number of half of the member is taken to be 8. This will require a strained reasoning which is wholly unwarranted. Obviously half of 15 and 16 cannot be the same figure. In my view, the judgment of the Allahabad High Court would not assist the case of the petitioners. The provisions under consideration of the Allahabad High Court were different than the provisions under consideration of this Court.

43. In so far as the judgment of the Hon'ble Supreme Court in the case of *State of U.P. & Anr. Vs. Pawan Kumar Tiwari & Ors. (supra)* relied upon by the learned counsel for the petitioners is concerned, the Hon'ble Supreme Court has held that the rule of rounding off based on logic and common sense is if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. It is held that the figure 46.50 should have been rounded off to 47 and not to 46 as has been done by the High Court. In my view the said judgment of the Hon'ble Supreme Court would not assist the case of the petitioners but would assist the case of the respondent nos.1 to 4.

44. In so far as the judgment of the Hon'ble Supreme Court in the case of *Bhanu Pratap Vs. State of Haryana & Ors. (supra)* relied upon by the learned counsel for the petitioners is concerned, the Hon'ble Supreme Court after considering the Rules 7(1), 7 (2) and 8(1) of Haryana Civil Services (Judicial Branch) Rules has held that there was no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. It was accordingly held that no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation. The Rule under consideration of the Hon'ble Supreme Court provided that no candidate shall be called for the viva-voce test unless he obtains at least fifty per cent qualifying marks in the aggregate of all the written papers. The petitioner had secured 49.8% in aggregate in all the tests including viva-voce. The Hon'ble Supreme Court rejected the arguments of the candidate that the said marks secured by the said candidate at 49.8% in aggregate ought to have been rounded off to 50%. In my view, the said judgment of the Hon'ble Supreme Court would assist the case of the respondent nos.1 to 4 and not the petitioners.

45. A plain reading of Section 73-1D clearly indicates that the said provision neither provided any relaxation for rounding off of fraction on lower side or higher side, as the case may be. In my view, if the interpretation of the learned counsel for the petitioners that $2/3^{\text{rd}}$ majority which comes to 5.33 has to be read as 5 is accepted, $2/3^{\text{rd}}$ majority of the members for passing “no confidence motion” against the managing committee members would be below the $2/3^{\text{rd}}$ majority and thus would be in clear violation of Section 73-1D(1) of the MCS Act. In my view, no words can be thus added in Section 73-1D by this Court for providing any relaxation or rounding off the fraction.

46. In so far as the judgment of the Madras High Court in the case of *The Chairman, Mahatma Gandhi Post Graduate, Institute of Dental Sciences, Gorimedu, Poducherry & Ors. (supra)* relied upon by the learned counsel for the petitioners is concerned, a perusal of the said judgment indicates that the candidate had secured 39.5% marks as against the minimum required qualifying marks for admission at 40%. The Madras High Court has considered the judgment of the Hon'ble Supreme Court in the case of *Rajiv Gandhi University of Health Sciences, Bangalore Vs. G.Hemlatha and others, (2012) 8 SCC 568* in

which it was held by the Hon'ble Supreme Court that no provision of any statute or any rules framed thereunder have been shown to the Hon'ble Supreme Court, which permitted rounding off of eligibility criteria prescribed for the qualifying examination for admission to the Post Graduate course. It is held that when the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates.

47. The Hon'ble Supreme Court also adverted to the earlier judgment of the Supreme Court in the case of ***State of U.P. & Anr. Vs. Pawan Kumar Tiwari & Ors.(supra)*** and held that the authorities have no jurisdiction to dilute the minimum marks for eligibility for admission by applying the principle of rounding off in professional colleges, wherein the hallmark is excellence and quality in education. In my view, the principles of law laid down by the Madras High Court in the said judgment after adverting to the several judgments of the Hon'ble Supreme Court would assist the case of the respondent nos.1 to 4 and not the petitioners. In my view, since neither Section 73-1D nor any other provisions of the MCS Act or the MCS Rules or the Bye-Laws empowers the authority to relax the condition providing for 2/3rd majority for passing a “no confidence motion” against the committee member or

providing for rounding off of the votes cast, the said provision of Section 73-1D has to be construed strictly on its plain reading.

48. Mr.Kanuga, learned counsel for the petitioners could not point out any provisions under the said MCS Act or the MCS Rules or the Bye-Laws empowering the authority either to relax the said condition prescribed for computing of 2/3rd majority or for rounding off in case of any alleged injustice caused to the petitioners. In my view, the said Section 73-1D did not provide for a simple majority but specifically provided for 2/3rd majority and thus no violence to such provision providing for a particular majority is permissible. There is no merit in the submission of the learned counsel for the petitioners that 5 committee members voted in favour of “no confidence motion” against these members, the said no confidence motion ought to have been declared as passed.

49. In so far as the judgment of House of Lords in the case of ***Gill Vs. Donald Humberstone & Co. Ltd.(supra)*** relied upon by the learned counsel for the petitioners is concerned, it has been held that in a statute, if the language is capable of more than one interpretation, the Court ought to discard the more natural meaning if it leads to an

unreasonable result and adopt that interpretation which leads to a reasonably practicable result. There is no dispute about the propositions of law laid down by the House of Lords in the said judgment in the case of ***Gill Vs. Donald Humberstone & Co. Ltd.(supra)***. In my view, the language of Section 73-1D of the MCS Act is not capable of more than one interpretation on the plain and simple reading. It is clear that for passing of “no confidence motion,” 2/3rd majority of the members of managing committee voting in favour of “no confidence motion” was mandatory and thus 2/3rd majority which admittedly came to 5.33 could not have been rounded off as 6 as canvassed by the learned counsel for the petitioners.

50. This court in case of **Tanaji Bhauso Mane & Ors. (supra)** has considered the provisions of section 35(3) of the Bombay Village Panchayat Act, 1958 which deals with the procedure prescribed for no confidence motion in case of woman Sarpanch. The said provision required no confidence motion to be passed by majority of not less than 3/4th of the number of members of the Village Panchayat. This court held that the rule of rounding off cannot be applied for removal of a Sarpanch if the majority required for the removal falls short by a fraction. In that matter, 5 out of the 7 members of the Panchayat have voted in favour of the motion.

3/4th of the 7 members who had voted in the said meeting in favour of 'no confidence motion' would be 5 1/4th. This court upheld the decision of the Tahsildar holding that the motion of no confidence was failed as it was not passed by 3/4th majority. This court in the said judgment adverted to the judgment of Full Bench of this court in case of **Ashok Maniklal Harkut vs. Collector, Amravati & Others, 1988 Mh.L.J.378** and held that while considering the provisions of Maharashtra Municipalities Act, the provision of carrying the motion by not less than a particular majority is mandatory and a fraction cannot be ignored and if the fraction is ignored, the majority will be less than the prescribed majority.

51. This court in case of **Sangita Bhaskar Ingale (supra)** has followed the principles laid down by this court in case of **Tanaji Bhauso Mane & Ors. (supra)**. Though in this case section 73-1D(1) of the MCS Act does not provide for passing a 'no confidence motion' by not less than a particular number, the said provision clearly provides that the motion of no confidence if passed at a meeting of the committee by 2/3rd majority of the total number of committee members who are entitled to vote at the election of such officer, office of such member against whom such 'no confidence motion' was passed shall thereupon be deemed to be vacant. This court thus cannot read any additional words in section 73-1D(1) for

the purpose of rounding of the fraction or to relax the provision so as to give benefit of such alleged relaxation and to treat the 'no confidence motion' moved by five members against three members passed by the two-third majority.

52. A perusal of section 73-1D(2) clearly provides that the requisition for convening such special meeting or presenting no confidence motion has to be signed by not less than 1/3rd of the total number of members of the committee who are entitled to elect the officer of the committee. Similarly under section 73AAA (5) which provides for 'constitution of committee' under the MCS Act clearly indicates that there is a specific provision for ignoring the fraction for determining 2/3rd of the number of members. It is thus clear that when the legislature intended to provide for ignoring the fraction while determining the 2/3rd of the number of members under the provisions of section 73AAA, the same has been specifically provided in the provision itself whereas admittedly no such words are inserted in section 73-1D providing to ignore the fraction in determining the 2/3rd majority of number of members.

53. Rule 57A of the MCS Rules and more particularly Rule 57A(7)(g) clearly indicates that the Registrar is empowered to declare the

motion or motions as rejected and take a note to that effect with reasons, in the minute book in the circumstances set out in the said provision. Rule 57A(7)(g)(iii) clearly provides that if $\frac{2}{3}$ rd members are not present at the commencement of the meeting and if $\frac{2}{3}$ rd is fraction, it shall be rounded to next higher number. On plain reading of the said rules indicates that the legislative intent is clear in the said rule that in case there were no $\frac{2}{3}$ rd members present at the commencement of the meeting for passing no confidence motion, if the $\frac{2}{3}$ rd is fraction, it shall be rounded to next higher number. There are however no similar words inserted in section 73-1D of the MCS Act thereby empowering the authority to round of if the $\frac{2}{3}$ rd was a fraction to earlier lower number.

54. In my view Mr.Jamdar, learned counsel for the respondent nos. 1 to 4 is right in his submission that whenever the legislature has intended to insert a specific provision empowering the authority to relax the provision or round of a fraction for the purpose of computing $\frac{2}{3}$ rd or for passing no confidence motion, such power has been specifically provided in the section itself and thus no additional words can be read by this court if the legislative intent is clear and legislature has not provided any such power of relaxation or for rounding of in case of fraction.

55. I am thus not inclined to accept the submission of Mr.Kanuga, learned counsel for the petitioners that if the fraction is not rounded off to five in this case though $\frac{2}{3}$ rd majority would be 5.33, the majority members of the managing committee would not be able to pass any resolution of 'no confidence motion' against the erring minority members of the managing committee who have been allegedly acting prejudicial to the interest of the society and its members. In the given case, it may be that out of 8 members of the managing committee though 5 members have voted in favour of 'no confidence motion' against the three members, in view of the provision of section 73-1D being silent and not empowering the authority to relax the said condition or to round off the fraction, such 'no confidence motion' failed. However, the petitioners are not precluded from adopting any other remedy available in law against such erring members of the managing committee under other provisions of the MCS Act and MCS Rules. The said provision does not provide for simple majority but two third majority. In my view passing of no confidence motion against any managing committee member of a society may amount to stigma against such member and thus section 73-1D has to be construed strictly.

56. Mr.Jamdar, learned counsel for the respondent nos. 1 to 4 placed reliance on the following judgments which provides the guidelines to be considered by a court while interpreting a statute :-

- (a) ***Union of India vs. Hansoli Devi*** (supra),
- (b) ***Harbhajan Singh Vs. Press Council of India & Ors.***, (supra)
- (c) ***Union of India & Anr. Vs. Deoki Nandan Aggarwal*** (supra),
- (d) ***Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti***, (supra),
- (e) ***CIT vs. National Taj Traders***, AIR 1980 SC 485,
- (f) ***Singareni Collieries Co. Ltd. Vs. Vemuganti Ramakrishan Rao*** (supra),
- (g) ***Padma Sundara Rao (Dead) and others vs. State of Tamil Nadu and others***, 2002(3) SCC 533.

57. The following principles of law can be culled out from the aforesaid judgments referred to and relied upon by the learned counsel for the respondent nos. 1 to 4 :-

- (a) It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

(b) As a consequence, a construction which required for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.

(c) It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts.

(d) The object of interpreting a statute is to ascertain the intention of legislature enacting it. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.

(e) While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

58. In my view, Mr.Jamdar, learned counsel for the respondent nos. 1 to 4 is right in his submission that this court cannot read the additional words in section 73-1D of the MCS Act though on a plain and simple reading of the said provision, the legislative intent is very clear not providing any power to the authority to relax any of the conditions while computing 2/3rd for passing no confidence motion or providing a power for rounding of fraction while computing such 2/3rd majority.

59. A perusal of the bye-law nos.118 and 125 which are applicable to the respondent no.4 society also indicates that no such power of relaxation or rounding of fraction is provided while computing 2/3rd majority for the purpose of passing no confidence motion.

60. I do not find any infirmity with the order passed by the respondent no.5 rejecting the application moved by the five members of the managing committee against three members section 73-1D of the MCS Act. The findings rendered by the respondent no.5 being not perverse cannot be interfered with by this court under Article 227 of the Constitution of India.

61. I therefore pass the following order :-

- (i) Writ Petition No.10670 of 2016 is dismissed.
- (ii) Ad-interim relief granted by this court to stand vacated.
- (iii) No order as to costs.

R.D. DHANUKA, J.