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RAEES AHMAD

v.

STATE OF U.P. AND ORS.

DECEMBER 10, 1999

B

[S.P. BHARUCHA AND SYED SHAH MOHAMMED QUADRI, JJ.]

*U.P. Municipalities Act, 1916 :*

C

*Ss.9(D), 87-A—Nagar Panchayat—President—Motion of no confidence—To be passed by “a majority of two third of total number of members”—Nominated Members—Held, have to be taken into account in determining whether or not a motion of no-confidence against the President has been carried—That nominated members may not vote does not imply that they cease to be members of the Municipality or that their number should be ignored in determining whether the President has lost the confidence of the two-third of the members—So calculated, the vote of no-confidence against the President had not been carried as required.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7182 of 1999.

E

From the Judgment and Order dated 4.12.98 of the Allahabad High Court in C.M.W.P. No. 35246 of 1998.

B.L. Yadav and Shakeel Ahmed for the Appellant.

F

Mrs. M. Qamaruddin, Mir Akhtar Hussain, Ms. Tamina Punvai, Joseph Pookkatt and Prashant Kumar for the Respondents.

The following Order of the Court was delivered :

Leave granted.

G

At the relevant time the Nagar Panchayat, Jalalabad (the municipality) consisted of 21 members, thus: one President and fifteen elected, two ex-officio and three nominated members. A no-confidence motion was moved against the President, the appellant, and thirteen members voted in support. The motion was held to have been carried on 14th October, 1998 and this was challenged by the appellant in a writ petition before the High Court at

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Allahabad. The writ petition was dismissed on the basis that since the three nominated members could not vote, their number could not be taken into consideration for the purposes of the no-confidence motion and the two third majority there on had to be calculated excluding them. A

Section 87-A of the U.P. Municipalities Act, 1916 deals with a motion of no-confidence against the President. Sub-section (12) thereof reads : B

“(12) The motion shall be deemed to have been carried only when it has been passed by a majority of two third of the total number of members of the municipality.”

Section 9 (D) of the said Act deals with the composition of a municipality and states that it shall consist of a President, elected members, ex-officio members and nominated members. Nominated members are mentioned in sub-clause (d) thereof and the proviso thereto states : C

“Provided that the persons referred to in clause (d) shall not have the right to vote in the meetings of the Municipality”. D

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 had to be taken into account in determining whether or not a motion of no-confidence against the President has been carried. E F

On behalf of the respondents emphasis is laid upon the proviso quoted above which states that nominated members shall not have the right to vote in the meetings of the municipality. It is contended that inasmuch as the nominated members do not have the right to vote in the meetings of the municipality, they should not be counted as part of the total number of the members of the municipality, two third of whose vote in favour is requisite for the passage of the motion of no-confidence. We find it difficult to accept this submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be members of the Municipality or that their number should be ignored in determining whether the President has lost the confidence of two-third of the H

A members. So calculated, the vote of confidence against the President had not been carried as required.

The appeal is allowed and the judgment and order under appeal is set aside. The writ petition filed by the appellant is allowed in terms of the prayer (a) thereof.

B

No order as to costs.

R.P.

Appeal allowed.