REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2019

(Arising out of SLP(Civil) No.36952 of 2017)

Seema Sarkar .....Appellant(s)

:Versus:

Executive Officer and Ors. ....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. Leave granted.

2. The conundrum in this appeal is about the inclusion or exclusion of the Member of the House of Parliament (for short "MP") representing the Union Territory of Andaman and Nicobar Islands, who is also an ex-officio member of the Panchayat Samiti, for reckoning the quorum of a special meeting regarding motion of no confidence against the Pramukh of the Little Andaman Panchayat Samiti (for short the "said Samiti") and also whether he/she can exercise

his/her vote on the 'No Confidence Motion' within the meaning of the provisions of Andaman and Nicobar Islands (Panchayats) Regulation, 1994 (for short "Regulation") and the Andaman and Nicobar Islands (Panchayats Administration Rules) 1997 (for short "the Rules").

3. A 'No Confidence Motion' dated 19th December, 2007 was moved by respondent No.6 against the appellant (Pramukh of the said Samiti). The said Samiti consisted of six members i.e. five directly elected members from territorial constituencies in the Panchayat area and one MP representing the Union Territory. A meeting for discussion of the 'No Confidence Motion' was scheduled on 2nd January, 2017 at 3.00 PM in the Conference Hall of the Panchayat Samiti. That notice was duly served to all the members. But only 3 elected members remained present at the scheduled time (3.00 PM) and place of the meeting. As the quorum was not complete, the members waited upto one hour i.e. upto 4.00 PM. Eventually, the meeting came to be dissolved by the Executive Officer for want of quorum of four members, in view of Section 107 of the

Regulation. The Executive Officer issued communication in that behalf on 2nd July, 2017 which reads thus:

"No.3-131/PS/HB/2016-17/535
OFFICE OF THE PANCHAYAT SAMITY
HUT BAY, LITTLE ANDAMAN
****

Hut Bay dated the 2nd Jan. 2017

To,

The Deputy Commissioner,
South Andaman, Port Blair.

Sub: Report on No Confidence Motion against Smt. Sima Sarkar, Pramukh, Panchayat Samiti, Little Andaman-Reg.

Sir,

The re-scheduled special meeting on No Confidence Motion was held on 02/01/2017 at 3:00 pm in the Conference hall of Panchayat Samiti. The notice was served to 5 elected members and a Member of Parliament, Andaman and Nicobar Administration. After serving notice to Member of Parliament as per Panchayat Regulation 1994 under chapter X at serial no.107 the members of the Panchayat Samiti, Hut Bay become six and 2/3rd majority is 4.

The meeting was fixed at 3:00 pm and waited upto 1 hour i.e., upto 4:00 pm but only 3 members were attended but to fulfill Quorum 4 member is must hence for want of Quorum meeting dissolved.

The extract of proceeding of the meeting is enclosed herewith for your kind reference.

Encl: A/A

Yours Faithfully

Executive Officer
Panchayat Samiti
Little Andaman"

4. The respondent No.6 assailed the said decision by way of Writ Petition No.14 of 2017 before the High Court at Calcutta, Civil Appellate Jurisdiction, Circuit Bench at Port Blair. Respondent No.6 asserted that the MP had no right to participate in the special meeting regarding a 'No Confidence Motion' nor was he entitled to vote thereat. Respondent No.6 prayed for the following reliefs in the said writ petition:

> "In the fact and circumstance mentioned herein above, your petitioner respectfully prays that YOUR LORDSHIP may be graciously pleased to issue:-
>
> A. A writ in the nature of certiorari quashing the proceedings dated 02.01.2017 wherein the Executive Officer, Panchayat Samiti, Little Andaman dated held that quorum required is four members and as such no confidence motion not be proceeded.
>
> B. A writ in the Mandamus directing the respondent no.1 to call for a meeting of moving the no confidence against the private respondent no.1 and further direct the Up-Pramukh i.e. the respondent no.4 to preside over the meeting to complete the process without casting to vote in the said meeting.
>
> C. A writ in the nature of the Certiorari directing the respondent authorities to transmit the case records before this Hon'ble Court so that after pursuing the same conscionable justice may be rendered your petitioner and directing the respondent no.1 to consider the case of the letter of the petitioner dated 19.12.2016 and 02.01.2017.
>
> D. Rule NISI in terms of prayer A&B above.
>
> E. Cost of the incidents to this writ application.
>
> F. Any other order/orders of further order/orders as your Lordship may deem fit and proper."

5. The writ petition was heard by the learned Single Judge of the High Court who negatived the stand of respondent No.6 and thus dismissed the writ petition. The learned Single Judge held that the quorum for a special meeting to consider the motion of no confidence against the Pramukh, being two-thirds of the "total membership", minimum four members of the Panchayat Samiti ought to have remained present. Presence of only three members at the meeting, therefore, did not constitute quorum. Further, the MP being the member of the said Samiti was entitled to participate in the special meeting to consider a no confidence motion and also vote on that motion. As a result, the writ petition came to be rejected.

6. Respondent No.6 carried the matter before the Division Bench by way of writ appeal, being M.A. No.26 of 2017. The Division Bench reversed both the conclusions reached by the learned Single Judge and instead, opined that the MP representing the Union Territory was not eligible to participate in the special meeting and vote on a 'No Confidence Motion' for removal of the Pramukh or Up-Pramukh of the Panchayat

Samiti. For arriving at that conclusion, the Division Bench adverted to Sections 107(3), 112(1), 115 and 117 of the Regulation and Rules 9(3) and 21 of the Rules. Additionally, the Division Bench placed reliance on the decisions in ***Ramesh Mehta Vs. Sanwal Chand Singhvi and Ors.***[1] and ***State of Karnataka and Ors. Vs. Lakshmappa Kallappa Balaganur and Ors.***[2] The Division Bench also adverted to Articles 243(d), 243B and 243C, especially clauses (3), (4) and (5) of Article 243C of the Constitution of India and opined as follows:

> "....Panchayats have been included in the Constitution of the India by the Constitution (73rd amendment) Act, 1992. The purpose of amendment appears to be that it was felt that in every State there should be a panchayats at the village, intermediate and district levels as a part of self governance. Article 243 (d) of the Constitution defines Panchayat to mean an institution by whatever name called of self government constituted under Article 243 B for the rural areas. Article 243 C deals with composition of Panchayat. 243 C (3) permits the legislation of the State by law to provides for representation. Article 243 (C) (4) provides that the Chairperson of the Panchayat and other members of the Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the panchayats. The Chairperson of a Panchayat at the intermediate level or district level under Article 243 (C) (5)

[1] (2004) 5 SCC 409
[2] (2001) 3 KLJ 498

(b) shall be elected by and from amongst the elected members thereof. Article 243 (C) (4) is similar to Regulation 107 (3) (b) which provides that the member of the House of Parliament representing the Union Territory shall also be represented in the Panchayat Samiti with a right to vote in the meetings of the Panchayat Samiti. It has to be seen from the Regulations whether or not the Regulations intend to treat the Member of Parliament at par with the elected members of the Panchayat to participate in the proceedings initiated for removal of the Pramukh of the Panchayat.

Although the Regulations and the Rules do not appear to have made any distinction between "person" and "member" which appear to have been used at places interchangeably but regard must be had to the very object for which a member of Parliament is included in the Panchayat Samiti with a right to vote. The presence of the Member of Parliament is not required for the purpose of electing the Pramukh and Up-Pramukh as the Regulations clearly use the phrase "by and from amongst elected members of the Panchayat Samiti" and the Member of Parliament is not treated at par with the elected members for the purpose of election of such office bearers.

xxx xxx xxx xxx xxx

In view of the law laid down in the aforesaid decisions on interpretation on similar rules and/or regulations, we are of the opinion that the Member of Parliament cannot be treated at par with an elected member of the Panchayat Samity for the purpose of removal of Pramukh and Up-pramukh. In the relevant Rules and Regulations in relation to a motion of no confidence wherever the word 'member' is used, it would only mean elected members and not nominated members even though such nominated member may have a right to vote in other proceedings. All members who have selected Pramukh and Up-pramukh are all elected members of the Samiti unlike the nominated members and in matters concerning motion of no confidence in our view it is only those members who have been directly elected shall have the right to remove Pramukh and Up-Pramukh as the said office bearers have been elected by and from amongst the elected members of Panchayat Samiti. There is a clear distinction between the two classes of members and they

> cannot be treated at par in matters relating to no confidence motion to remove Pramukh or Up-Pramukh."

7. Having thus held, the Division Bench proceeded to allow the appeal filed by respondent No.6 and consequently granted relief as prayed for in the writ petition - of setting aside the decision of the Executive Officer dated 2nd January, 2017. The High Court also directed the Executive Officer, Panchayat Samiti, Little Andaman to proceed in accordance with law in light of the observations made in the said judgment.

8. Feeling aggrieved, the appellant has filed this appeal by special leave. The appellant moved the Court for urgent consideration of the matter on 22nd December, 2017 before the Vacation Bench of this Court when notice came to be issued. However, during the pendency of this appeal, the Deputy Commissioner, acting upon the directions issued by the Division Bench of the High Court not only proceeded to remove the appellant from the post of Pramukh of the Little Andaman Panchayat Samiti on 26th December, 2017 but also intended to proceed to fill up the vacancy arising from the removal of the

appellant, by scheduling a fresh election on 19th January, 2018. The appellant, therefore, urgently moved this Court for appropriate orders on 15th January, 2018, when the following order came to be passed:

> "Learned counsel who have entered appearance on behalf of the respondents, pray for a week's time to file the counter affidavit.
> Learned counsel appearing for the petitioner does not intend to file the rejoinder affidavit.
> As a pure question of law emerges, let the matter be listed on 29th January, 2018. **Any election held in the meantime, shall be subject to the result of this special leave petition.**"
>
> (emphasis supplied)

9. Resultantly, the meeting scheduled on 19th January, 2018, proceeded to elect respondent No.6 as Pramukh of Little Andaman Panchayat Samiti. As the matter also involved applicability of Articles 243C and 243R of the Constitution of India, this Court on 31st January, 2018, requested the learned Attorney General for India to assist the Court. Pursuant to the said request, the learned Attorney General for India appeared in the proceedings and is now represented by Mr. Aman Lekhi, Additional Solicitor General of India.

10. We have heard Mr. Purushaindra Kaurav, learned senior counsel appearing for the appellant, Mr. Aman Lekhi, learned Additional Solicitor General of India, Ms. G. Indira, learned counsel appearing for respondent No.1 and Mr. R. Chandrachud, learned counsel appearing for respondent No.6.

11. By the Constitution 73rd Amendment Act, 1992, which came into force from 24th April, 1993, Part-IX of the Constitution of India came to be amended. It envisaged a detailed mechanism for democratic decentralization of the self-Government on the principle of grass-root democracy. It may be useful to advert to the Statement of Objects and Reasons necessitating such amendment, which reads thus:

> "THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992
>
> Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1991 which was enacted as the Constitution (Seventy-third Amendment) Act, 1992
>
> Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Casts, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

> 2. Article 40 of the Constitution which enshrines one of the directive principles of State Policy lays down that the State shall take steps to organize Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj institutions to impart certainty, continuity and strength to them."

By virtue of this amendment, Panchayat has been defined to mean an institution (by whatever name called) of self-Government constituted under Article 243B for the rural areas. Article 243B reads thus:

> "**243B. Constitution of Panchayats.**-(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
> (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs."

It may be apposite to reproduce Article 243C which deals with composition of Panchayats. The same reads thus:

> "**243C. Composition of Panchayats.**-(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:
>
> Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation-

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of 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 a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within-

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) A Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area

shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of-
(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and
(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof."

12. In the present case, we are concerned with an intermediate level Panchayat. The composition of such Panchayat can be culled out from Article 243C. Clause (1) makes it amply clear that the legislature of a State is free to make a law with respect to the composition of Panchayat subject to the provisions of Part-IX of the Constitution. In the present case, we are not so much concerned about the composition of Panchayat, except to notice that clause (2) of the said Article makes it clear that all the seats in the Panchayat shall be filled up by persons chosen by direct election from the territorial constituencies in the Panchayat area. Clause (3) of the Article is an enabling clause permitting the legislature of a State to make a law to provide for the representation of other persons who are not directly elected

from the territorial constituencies in the Panchayat area. Clause (4) deals with the right to vote in the meetings of the chairperson of a Panchayat or other members of the Panchayat whether or not chosen by direct election from the territorial constituencies in the Panchayat area. Clause (5) deals with the manner in which the chairperson of a Panchayat is elected at the village level, intermediate level or district level, as the case may be.

13. The chairperson of a Panchayat at intermediate level is required to be elected by, and from amongst, the elected members thereof. On a conjoint reading of the provisions referred to above, it is crystal clear that there is marked distinction between the member of the Panchayat chosen by direct election from the territorial constituencies in the Panchayat area referred to in clause (2) vis-a-vis other persons referred to in sub-clauses (a) to (d) of clause (3) of Article 243C, who may also represent as per the law made by the State Legislature. Thus understood, there is little doubt that the election of chairperson is by the former category of the

members of the Panchayat, namely, directly elected from the territorial constituencies in the Panchayat area and one from amongst them is then elected as a chairperson. Notably, there is no express provision in the Constitution dealing with the removal of a chairperson of the Panchayat Samiti.

14. Taking cue from the absence of such a provision in the Constitution, it was argued by the learned ASG that it being a case of constitutional silence by interpretative process, the Court must hold that the MP, not being directly elected from the territorial constituencies in the Panchayat area and only a representative in the Panchayat Samiti by virtue of law made in terms of Article 243C(3), is neither entitled to participate in a special meeting concerning a 'No Confidence Motion' nor eligible to vote thereat. For, only the body of members directly elected from the territorial constituencies in the Panchayat area which had elected the Chairperson/Pramukh, would alone be competent to vote on a 'No Confidence Motion'. The concomitant is that the Member of Parliament (MP), though a member of the Panchayat Samiti, is not competent to

participate in the special meeting and vote on a 'No Confidence Motion'.

15. This argument is not wholly accurate. In our opinion, that approach may become necessary only if the legislature of the State also had chosen to remain silent by not enacting any law on the subject of removal of the Pramukh or Up-Pramukh of the Panchayat Samiti. Indisputably, however, a law on the said subject is already in place in the form of the Regulation as also the Rules concerning Panchayat administration. The Constitution itself enables the State Legislature to make a law on the subject of composition of Panchayats, including regarding election of the Pramukh, subject to the provisions contained in Part-IX of the Constitution. The law, as made in the form of the Regulation, is not the subject matter of challenge before us either on the ground of being in excess of legislative competence or transcending the sphere of matters referred to in Part-IX of the Constitution.

16. Concededly, the Regulation as well as the Rules specifically provided for the subject of motion of no confidence,

how such motion should be moved and the manner in which it is required to be carried forward. Section 106 of the Regulation speaks about the constitution of the Panchayat Samiti. The composition of the Panchayat Samiti has been predicated in Section 107. This provision is in four parts. The first clause [(clause (1)] is a general provision envisaging that every Panchayat Samiti shall consist of such number of seats as the administrator may by notification determine. Clause (2) postulates that the seats in the Panchayat Samiti as determined shall be filled up by persons chosen by direct election from the territorial constituencies in the manner prescribed. Clause (3) refers to the persons who shall also be represented in the Panchayat Samiti other than the persons chosen by direct election referred to in clause (2). This clause (3) is again split in two parts: the first referring to the proportion of the representation given to the representatives of the Gram Panchayat in the Panchayat Samiti; and the second referring to the member of the House of Parliament representing the Union Territory. As regards the latter, it has

been explicitly provided that such member shall have the right to vote in the meeting of the Panchayat Samiti. The fourth clause is not significant for dealing with the issue on hand. Section 107 of the Regulation reads thus:

> "**107.** (1) Every Panchayat Samiti shall consist of such number of seats as the Administrator may by notification determine.
>
> (2) The seats in the Panchayat Samiti shall be filled by person chosen by direct election from the Territorial Constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall so far as practicable be the same throughout the Panchayat Samiti area.
>
> (3) The following persons shall also be represented in the Panchayat Samiti, namely:-
>
> > (a) a proportion of the Pradhans of the Gram Panchayat in the Panchayat Samiti to be determined by order of the Administrator and by rotation for such period as may be prescribed: Provided that while nominating the Pradhans by rotation the Administrator shall ensure that as far as possible all the Pradhans are given the opportunity or being represented in the Panchayat Samiti atleast once during its duration: and
> >
> > **(b) the member of the House of Parliament representing the Union Territory.**
> >
> > **Who shall have the right to vote in the meeting of the Panchayat Samiti.**
>
> (4) The provisions of sub-sections (5),(6),(7) and (8) of section 11 shall so far as may be apply to the Panchayat Samiti as

> they apply to a Gram Panchayat subject to the modification that for the words 'Gram Panchayat' wherever they occur, the words 'Panchayat Samiti' had been substituted."

(emphasis supplied)

17. The other relevant provision in the Regulation is Section 112, which deals with election of Pramukh and Up-Pramukh. The same reads thus:

> "**112.** (1) On the constitution of a Panchayat Samiti for the first time under this Regulation or on the expiry of the term of a Panchayat Samiti or on its reconstitution, a meeting shall be called on the date fixed by the Deputy Commissioner for the election of the Pramukh and the Up-Pramukh by and from amongst the elected members of the Panchayat Samiti.
>
> (2) The Deputy Commissioner shall preside at such meeting but not have the right to vote.
>
> (3) No business other than the election of the Pramukh and Up-Pramukh shall be transacted at such meeting.
>
> (4) In case of equality of votes, the result of the election shall be decided by lots drawn in the presence of the Deputy Commissioner in such manner as he may determine.
>
> (5) Subject to any general or special order of the Administrator, the Deputy Commissioner shall reserve.
>
> (a) the number of offices of Pramukhs in the Panchayat Samitis for the Scheduled Tribes which shall bear as nearly as may be, the same proportion to the total number of such offices in the Panchayat Simitis as the population of the Scheduled Tribes in the area of the Union Territory to which this Regulation applies bears to the total population of such area;
>
> (b) not less than one-third of the total number of offices of Pramukh in the Panchayat Samitis for women;
>
> Provided that the offices reserved under this sub-section shall be allotted by the Election Commission by

> rotation different Panchayat Samitis in such manner as may be prescribed."

18. Even this provision seems to be in conformity with the letter and spirit of Article 243C. On a plain reading of this provision, it is noticed that the election of the Pramukh and Up-Pramukh is "by" the elected members of the Panchayat Samiti and the one who is elected as such, is "from amongst them". Even the expression used in Article 243C(5)(b) is "elected by, and from amongst, the elected members thereof". This dispensation is in consonance with the constitutional scheme of democratic decentralization and self-Government on the principle of grass-root democracy. In that sense, the other members of the Panchayat Samiti (other than those chosen by direct election from the territorial constituencies in the Panchayat area) referred to in Article 243C(3) have no say in the matter of electing the Pramukh or Up-Pramukh of the Panchayat Samiti, though they may generally have the right to vote in the meeting of the Panchayat Samiti on other matters.

19. Sections 107 and 112 are a facsimile of Article 243C and also within the framework provided therein. Although the

other member(s) who have been given representation in the Panchayat Samiti have no say in the election of the Pramukh or Up-Pramukh of the Panchayat Samiti, it does not follow that they are not eligible to remain present and vote in the special meeting regarding the motion of no confidence against the Pramukh or Up-Pramukh of the Panchayat Samiti. As aforementioned, the Constitution is completely silent on the subject of removal of the Pramukh or the Up-Pramukh of the Panchayat Samiti, including regarding the manner in which a 'Motion of No Confidence' against them could be moved and carried forward. That subject has been articulated in the form of Section 117 of the Regulation, which reads thus:

> "**117** (1) A motion of no confidence may be moved by any member of a Panchayat Samiti against the Pramukh or the Upa-Pramukh after such notice thereof as may be prescribed.
>
> (2) If the motion is carried by a majority of **not less than two thirds of the total number of members of the Panchayat Samiti,** the Pramukh or Upa-pramukh, 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.
>
> (3) Notwithstanding anything contained in this Regulation, the Pramukh or Upa-Pramukh shall not preside over a meeting in which a motion of no confidence is discuss

> against him but he shall have the right to speak or otherwise take part in the proceedings of such meeting."

(emphasis supplied)

20. Thus, an unambiguous provision has been made in the Regulation regarding the 'No Confidence Motion' against the Pramukh or Up-Pramukh of the Panchayat Samiti. The validity of the said provision is not the subject matter of this appeal. As a result, we do not wish to dilate on the argument which may indirectly, if not directly, question the validity of the provision. Suffice is to observe that we are not dealing with a case where the Regulation made by the State legislature is also silent on the subject of motion of no confidence or removal of Pramukh or Up-Pramukh of the Panchayat Samiti. The provision is explicit as to who can move the motion and the manner in which the same is required to be carried forward to its logical end. As per this provision, the other members having representation on the Panchayat Samiti, who are not directly elected from the territorial constituencies in the Panchayat area have no right to vote during the election of the Pramukh or Up-Pramukh of the Panchayat Samiti, it does

not follow that they are not or cease to be members of the Panchayat Samiti. Whereas, in terms of Section 107 which specifies the composition of the Panchayat Samiti, they are plainly recognized as members of the Panchayat Samiti during the relevant period. Those persons may not be directly elected from the territorial constituencies in the Panchayat area but nevertheless, are people's representatives, being elected as Pradhans of the concerned Gram Panchayat within the area of the Panchayat Samiti, or as the Member of the House of Parliament representing the Union Territory. It would have been a different matter if Section 117 had constricted the right to vote on a motion of no confidence only to the members directly elected from the territorial constituencies in the Gram Panchayat area, referred to in Section 107(2) of the Regulation. To put it differently, merely because the law permits only the directly elected members to vote during the election of Pramukh, that *ipso facto* would not follow that the other members (other than the elected members) of the Panchayat Samiti are ineligible to vote on a 'No Confidence Motion'.

21. Besides the explicit provisions in the Regulation, even the statutory Rules make it unstintingly intelligible that the other (ex-officio) member(s) of the Panchayat Samiti can also remain present and participate in the special meeting to consider a motion of no confidence against the Pramukh. The stated Rules are framed in exercise of the power to make rules in terms of Section 202. Clause (ak) of Section 202 (2) enables the Administrator to frame rules in respect of the notice for moving a motion of no confidence against the Pramukh or Up-Pramukh as per Section 117(1) of the Regulation. Further, clause (al) permits framing of rules regarding the time and place of meetings of the Panchayat Samitis and the procedure for such meetings under sub-section (1) of Section 121; and clause (am) deals with the manner in which a member of Panchayat Samiti may move resolution(s) and put question(s) to the Pramukh and Up-Pramukh under sub-section (2) of Section 121. The statutory rules framed under Section 202 expressly provide for the quorum of the meetings of the

Panchayat Samiti. Rule 9 as applicable to Panchayat Samiti reads thus:

> "**9. Quorum**.- The following shall be the quorum required for meetings of Gram Sabha, Gram Panchayat, Panchayat Samiti, Zilla Parishad for the kinds of meetings in each Panchayat:
> xxx xxx xxx xxx xxx
>
> (3) **Panchayat Samiti.-** (a) **Two-thirds of the total membership of a Panchayat Samiti** shall be sufficient quorum for an **ordinary meeting** of a Panchayat Samiti-,
> (b) **Not less than two-thirds of the total membership** is necessary for a **special meeting** called for the purpose under sub-section (1) of section 117 of the Regulation to move a motion of no confidence against the Pramukh and Up-Pramukh. However, to carry the motion under sub-section (2) of section 117, a majority of not less than two-thirds of the membership of the Panchayat Samiti present and voting is necessary.
> xxx xxx xxx xxx xxx"

(emphasis supplied)

It will be useful to advert to Rule 10, which reads thus:

> "**10. Adjournment of meeting for want of quorum**. -(1) If, within one hour from the time appointed for holding a meeting of a Panchayat quorum is not present, the meeting may be adjourned and may be held on another date to be fixed by the Chairperson or the Vice-Chairperson of the Presiding member as the case may be. The members shall be informed of the date, place and time of the adjourned meeting by a fresh three day's notice in Form-2. No quorum shall be necessary for such adjourned meeting. No business other than that included in the list of business for transaction at the original meeting shall be brought before an adjourned meeting.

(2). In determining the quorum, fraction of one half and above be counted one, and less than half shall be ignored."

22. Rule 21 specifically deals with the motion of no confidence against the Pramukh or Up-Pramukh. The same reads thus:

"**21. Pramukh and Up-Pramukh**: (1) A motion of no confidence against the Pramukh or the Up-Pramukh may be moved by any member of a Panchayat Samiti, after giving 7 days notice. The notice shall be in Form 4. The notice shall be addressed to the Pramukh and shall be delivered to him and in his absence to the Up-Pramukh or in the absence of both, to the Executive Officer. The Pramukh or in his absence the Up-Pramukh or in the absence of both, the Executive Officer shall call a special meeting of the Panchayat Samiti within 15 days from the date of moving the notice of no confidence by serving notice to the Pramukh, Up-Pramukh and all the members of the Panchayat Samiti, in Form 1-A enclosing therewith a copy of the no confidence motion moved by the member.

(2) The Pramukh or the Up-Pramukh shall not preside over the meeting but shall have a right to speak or otherwise take part in the proceedings of the meeting. The meeting shall be presided over by the Pramukh if the motion is against the Up-Pramukh and if the motion is against the Pramukh the meeting will be presided over by the Up-Pramukh. In the absence of both the Pramukh and Up-Pramukh, the members assembled shall elect one from among themselves to preside over the meeting. **A quorum of not less than two-thirds of the total membership of the Panchayat Samiti is necessary for the meeting.** Within one hour from the appointed time, if there is no quorum, the no confidence motion shall deemed to have not been carried and the meeting shall be dissolved. The Executive Officer shall send the report of the dissolution of the meeting for want of quorum to the concerned Assistant Commissioner, the Deputy Commissioner (Director of

> Panchayat Elections), the Chief Executive Officer of the Zilla Parishad and also the Secretary (Panchayat) of the Administration.
> (3) If the motion is carried by a majority of **not less than two-thirds of the total membership of the Panchayat Samiti present and voting,** the Pramukh or the Up-Pramukh or both, 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 the Pramukh or the Up-Pramukh or both, as the case may be, have resigned earlier."

(emphasis supplied)

23. To put it differently, the provisions in the Regulation and the Rules distinctly deal with the manner in which a motion of 'No Confidence' should be moved and carried forward to its logical end. In that sense, the central issue is about the purport of the mechanism provided in the Regulation and the Rules on the subject of 'No Confidence Motion'. From the legislative scheme it is noticed that as and when the special meeting to consider the 'No Confidence Motion' proceeds, Section 117(2) mandates that the motion may be treated as carried out only if a majority of not less than two-thirds of the "total number" of members of the Panchayat Samiti vote in favour of removal of the Pramukh or Up-Pramukh, as the case may be. A similar position is restated in Rule 21 of the Rules.

24. Indeed, the provisions in the Regulation do not provide for the quorum of the special meeting. That is, however, prescribed in the form of Rule 9. Rule 9(3)(b) stipulates that two-thirds of the "total membership" of a Panchayat Samiti shall be a sufficient quorum for a special meeting of the Panchayat Samiti in reference to Section 117(1) of the Regulation to move a motion of no confidence against the Pramukh or Up-Pramukh. Thus, the quorum specified is not less than two-thirds of the "total membership". The emphasis is on the expression "total membership", which includes the other (ex-officio) member(s) referred to in Section 107(3) of the Regulation having representation on the Panchayat Samiti and not limited to members chosen by direct election from territorial constituencies in the Panchayat area as referred to in Section 107(2) of the Regulation. Thus understood, all members of the Panchayat Samiti are expected to remain present and participate in the special meeting and the quorum of the meeting is to be determined on the basis of "total number" of members in the Panchayat Samiti.

25. The question as to whether the other member(s) (other than directly elected) who can participate in the special meeting, have the right to vote on the 'No Confidence Motion'. That would depend on the legislative scheme and intent manifest from the express provisions permitting them to do so. The usefulness of their presence at such a special meeting, to consider the motion of no confidence, cannot and need not be speculated. The governing provisions predicate that the special meeting must be attended by not less than two-thirds of the "total membership" of the Panchayat Samiti and the 'No Confidence Motion' must be carried out by not less than two-thirds of the "total number" of members of the Panchayat Samiti present and voting. This is the twin requirement. If so, the 'No Confidence Motion' is required to be considered in the special meeting of the Panchayat Samiti as a whole and not limited to members directly elected from the territorial constituencies in the Panchayat area. Thus understood, the total membership of the Little Andaman Samiti being six, two-thirds thereof would be four. If the members present at the

scheduled place and time of the meeting were only three, obviously the Executive Officer was justified in dissolving the meeting for want of quorum.

26. That takes us to the question as to who can vote on the 'No Confidence Motion'. Indubitably, the language of Section 117 of the Regulation envisages that the motion is required to be carried by a majority of not less two-thirds of the "total number" of members of the Panchayat Samiti present and voting. A similar mandate flows from Rule 9 read with Rule 21 of the Rules. The question is whether the law as enacted in the form of Section 117 of the Regulation, in any way, deviates from the scheme of Part-IX of the Constitution. Our answer is an emphatic "NO". The fact that Article 243C(5)(b) postulates that the chairperson of the Panchayat Samiti at the intermediate level shall be elected by, and from amongst, the elected members thereof, it does not follow that the process of removal of such chairperson should be limited to voting by the elected members. The law on the removal of the Pramukh or Up-Pramukh by means of 'No Confidence Motion' has been

enacted by the State Legislature. That permits “all” the members of the Panchayat Samiti to participate in the discussion and vote on the motion of no confidence. On conjoint reading of Section 117, Rule 9(3)(b) and also Rule 21 of the Rules, in our opinion, they, in no way, exclude any member of the Panchayat Samiti muchless the members referred to in Section 107(3) of the Regulation. Not even by necessary implication. Taking any other view would result in re-writing of the provisions to read as - the motion of no confidence must be carried out by a majority of not less than two-thirds of the total number of “directly elected” members of the Panchayat Samiti mentioned in Section 107(2), present and voting. We must presume that the State Legislature was conscious of the marked distinction between the category of members constituting the Panchayat Samiti. As is evident from Section 107(2), it refers to a category of persons chosen by direct election from the territorial constituencies, in contradistinction to the other category of persons mentioned in Section 107(3), the constituent of the Panchayat Samiti. If

the legislature had intended to exclude the latter category from the process of 'No Confidence Motion', it would have expressly limited it to only the elected members [former category ascribable to Section 107(2)] of the Panchayat Samiti, as is done at the stage of election of the chairperson. Whereas, the provision makes it incumbent that not less than two-thirds of the "total number" of members of the Panchayat Samiti must participate and vote. This is the legislative intent which cannot be whittled down by some overstretched interpretative process including by relying on the common law principle that only the body of persons, who had elected the Pramukh or Up-Pramukh, alone can initiate such a process.

27. The Division Bench of the High Court relied upon the decision in ***Ramesh Mehta*** (supra). In that case, this Court was called upon to answer whether, in counting the "whole number of members" on the Municipal Board in terms of Rule 3(9) of the Rajasthan Municipalities (Motion of No-confidence against the Chairman or Vice-Chairman) Rules, 1974, "nominated members" have to be taken into consideration.

For answering that question, the Court adverted to Article 243R, which deals with the composition of municipalities. The dispensation prescribed with regard to Panchayats in Article 243C is somewhat different from the one specified in Article 243R for Municipalities. As regards the Panchayats, in terms of Article 243C(3), only persons referred to in sub-clauses (a) to (d) thereof, can represent in the Panchayat Samiti as per the law made by the State Legislature in that behalf. The category of persons referred to in the said sub-clauses are all directly elected at different levels - be it Panchayat or the House of the People and the members of the legislative assembly of the State or the Council of States and the members of the legislative council of the State. Whereas, in the composition of Municipalities, persons having special knowledge or experience in municipal administration can also be nominated, who obviously may not be elected people's representatives. The latter, therefore, has been expressly denuded of a right to vote in the meetings of the Municipalities, as per the proviso to Article 243R(2). Similar

exclusion is not made in respect of the other categories of members of the Municipality referred to in sub-clauses (ii) to (iv) of Article 243R(2)(a). In short, the question considered in the said case was very specific as to whether the voting rights of the "nominated members" in a Municipal Board can be reckoned for computing a majority required for a motion of no confidence against the Chairman or Vice-Chairman of the Board. The Court considered the statutory provisions as applicable to that case i.e., Section 9 of the Rajasthan Municipalities Act, 1959, as amended. It then concluded that there was no indication therein that a right to vote is created in the "nominated members". In other words, they cannot exercise voting rights.

28. In the present case, neither Article 243C nor the Regulation made by the State Legislature or the Rules framed thereunder expressly exclude the other members of the Panchayat Samiti referred to in Section 107(3) of the Regulation from exercising their vote on a 'Motion of No Confidence'. It is a well established position that the right to

elect, and including the right to be elected and continue on the elected post, is a statutory right. Further, the mode and manner of election to any post could be different from the scheme for removal of a person from that post, as restated in paragraph 10 of the same reported decision. It reads thus:

> "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.** xxx xxx xxx"

(emphasis supplied)

29. The High Court had also adverted to the decision of the Karnataka High Court in ***State of Karnataka and Ors.*** (supra). Even this decision will be of no avail. For, the High Court considered the specific provisions contained in the Karnataka Panchayat Raj Act, 1993 and construed them to mean that they expressly exclude the right to participate in the proceedings and vote on a 'No Confidence Motion' against the Adhyaksha or Up-Adhyaksha. The observations in the said decision, therefore, are contextual and in reference to the express provision in the Karnataka Panchayat Raj Act in the

form of Sections 120(2), 140(3), 159(2) and 179(3). As aforesaid, the provisions in the Regulation under consideration in no way exclude the MP, muchless expressly, from participating in the special meeting and vote on the 'No Confidence Motion'. As a matter of fact, the provision in the Regulation under consideration is an inclusive one and explicitly permits all (total) members to participate in the special meeting and vote on the 'No Confidence Motion' against the Pramukh or Up-Pramukh, as the case may be.

30. A priori, the argument of Mr. Lekhi that the interpretation will offend the principle of *ut res magis valeat quam pereat* and make Article 243C(5)(b) unworkable, does not commend us. As aforesaid, Article 243C makes no mention about the manner and mode by which the Chairperson of the Panchayat Samiti can be removed by way of a 'No Confidence Motion'. Whereas, the State Legislature has been empowered to make a law on that subject. As is noticed from the stated Regulation, the same explicitly deals with the mechanism for moving a 'No Confidence Motion'

against the Pramukh or Up-Pramukh, as the case may be; and more particularly, as per the rules framed under the said Regulation. The validity of the said provisions has not been put in issue. In such a situation, the argument regarding constitutional silence or its efficacy need not detain us. For the same reason, we do not wish to dilate on the exposition in ***Justice K.S. Puttaswamy and Anr. Vs. Union of India and Ors.***[3], ***Bhanumati and Ors. Vs. State of Uttar Pradesh through its Principal Secretary and Ors.***[4], ***Usha Bharti Vs. State of Uttar Pradesh and Ors.***[5] and ***Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Ors.***[6]

31. Learned ASG has invited our attention also to the decision in ***Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Limited and Ors.***[7], dealing with the question of permissibility of removal of the Chairperson/elected office bearers by motion of no confidence. The exposition in the said decision, that if a person has been

[3] (2017) 10 SCC 1 (page 516-519)
[4] (2010) 12 SCC 1 (para 51)
[5] (2014) 7 SCC 663 (para 34)
[6] (1991) Supp.(1) SCC 600 (para 255)
[7] (2015) 8 SCC 1 (para 20)

elected to an office through democratic process and when such person loses the confidence of the representatives who elected him, then those representatives should necessarily have a democratic right to remove such an office bearer in whom they do not have confidence, will not take the matter any further in the wake of express provisions contained in the Regulation of 1994 and the Rules of 1997, to which we have elaborately adverted hitherto.

32. For the same reason, even the decision in ***Pratap Chandra Mehta Vs. State Bar Council of Madhya Pradesh and Ors.***[8], will be of no avail for interpreting or applying the provisions in the Regulation and the Rules under consideration. Our attention was also invited to the decision in ***Mohan Lal Tripathi Vs. District Magistrate, Rai Bareilly and Ors.***[9] Emphasis was placed on the observations in paragraph 4 of this decision. As a matter of fact, the dictum in this decision would reinforce the view that we have taken, as it is observed in the said paragraph that a provision in the

[8] (2011) 9 SCC 573 (para 22, 26, 46)
[9] (1992) 4 SCC 80 (para 4)

statute for recall of an elected representative has to be tested not on general or vague notions but on practical possibility and electoral feasibility of entrusting the power of recall to a body which is representative in character and is capable to projecting the views of the electorate. We have already noted that the category of persons referred to in Section 107(3) of the Regulation are also, in one sense, elected representatives (though not by direct election from territorial constituencies in the Panchayat area) and, therefore, their participation and voting on the 'No Confidence Motion' has been expressly permitted by the Regulation and the Rules. That cannot be undermined on the basis of the common law principle, so long as the governing statutory provisions are in the field.

33. For the above reasons, we conclude that the Division Bench committed manifest error in setting aside the decision of the Executive Officer dated 2nd January, 2017 declaring that the meeting stood dissolved for want of quorum. Instead, we uphold the said decision of the Executive Officer having held that the quorum of the special meeting ought to be of not less

than two-thirds of the "total number of membership of the Panchayat Samiti" which includes all the members of the Panchayat Samiti - be it directly elected or ex-officio members, as the case may be. So understood, the quorum of the special meeting has been justly recorded as four members. However, as only three members had remained present at the scheduled time and place, the Executive Officer had no option except to dissolve the meeting convened on 2nd January, 2017. For the same reason, the motion of no confidence against the appellant, in law, could not have proceeded further.

34. Resultantly, the follow up action taken against the appellant, asking him to step down, therefore, also would be *non est* in law. This Court, vide order dated 15th January, 2018, had made it clear that the consequential election to fill in the vacancy arisen due to removal of the appellant, would be subject to the outcome of this petition. Accordingly, we hold that all steps taken after the order of the Executive Officer dated 2nd January, 2017 be treated as *non est* in terms of this order.

35. As a result, we allow this appeal, set aside the impugned judgment and order passed by the High Court in M.A. No.26 of 2017, and instead, we dismiss the writ petition filed by respondent No.6, and to do complete justice, we direct restitution of the appellant to the post of Pramukh of the Little Andaman Panchayat Samiti as his tenure would otherwise have expired in September, 2020. The District Administration shall take follow up steps forthwith and ensure compliance of the directions not later than one week from the date of receipt of a copy of this order and submit compliance report in the Registry of this Court.

36. The appeal is allowed in the above terms. No order as to costs. All pending applications stand disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Ajay Rastogi)

New Delhi;
May 01, 2019.