

(2000) 01 DEL CK 0076

In the Delhi High Court

Case No : C.W.P. No. 6426 and 4139 of 1999 21 January 2000

ANIL AGARWAL

APPELLANT

Vs

INSTITUTE OF CHARTERED ACCOUNTANTS

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Citation : (2000) 110 TAXMAN 89

Hon'ble Judges : C.M. Nayar, J

Bench : Division Bench

Advocate : Amit Khemka, for the Assessee C.S. Vaidyanathan, K.K. Jain, Shivram and Jayant Tripathi, for the Revenue, for the Appellant;

Judgement

Nayar,J.

This judgment will dispose of two writ petitions, C.W.P.No. 6426 of 1999 and C.W.P. No. 4139 of 1999 as common questions arise for consideration.

2. The petitions have been filed under article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the letter dated 20-5-1999 and subsequent communication dated 19-6-1999, respectively. By these communications The Institute of Chartered Accountants have rejected the plea of the petitioners to pass no-confidence motion against the Chairman of the Northern India regional council (NIRC) of The Institute of Chartered Accountants of India, The communications dated 20-5-1999 and 19-6-1999 may be reproduced as below :

"May 20,1999

Shri Praveen Kumar Bansal,

Secretary,

Northern India Regional Council of

The Institute of Chartered Accountants of India,

I.P. Marg,

New Delhi - 110 002

Dear Sir,

The Central Council in its meeting held from 15 to 17-5-1999 at Mumbai considered the matter related to "No Confidence Motion" against the office bearer/s of the Regional Councils and reconstitution of the Committee(s) of the Regional Councils before expiry of their term and decided to issue the following directions to the Regional Councils under Regulation 127(2) of the Chartered Accountants Regulations, 1988:

"Under the Chartered Accountants Regulations, 1988, the regional council has no power to remove any office bearer/s of the regional council elected under Regulation 137 of the said Regulations, before expiry of his/their term.

Further under the aforesaid regulations, the regional council has also no power to reconstitute the Committee/s constituted under Regulation 137 of the said Regulations before expiry of its/their term."

This is for your information and compliance.

Yours faithfully,

Sd/-

S.P. Chhajed"

June 19, 1999

Shri Praveen Kumar Bansal,

Secretary,

Northern India Regional Council of

The Institute of Chartered Accountants of India,

I.P. Marg,

New Delhi - 110 002

Dear Sir,

The President of the Institute vide his letter dated 20-5-1999 had already intimated to you the Directions of the Central Council to the effect that the regional council has no power to remove any elected office bearer(s) before expiry of his/their term and to reconstitute the various committees before expiry of their respective terms. Copies of the aforesaid letter were also sent to all the members of the NIRC which were duly received by them. Thereafter, the undersigned by his letter dated 11-6-1999 reiterated the above position and once again informed you about the contents of the aforesaid letter dated

20-5-1999 of the President.

In spite of the above Directions, we have received a copy of your notice dated 15-6-1999 and also your letter dated 18-6-1999 intimating about the passing of "No Confidence motion" against Shri Vijay Kumar Jhalani, Chairman, NIRC.

This is to inform you that the aforesaid Resolution passed by the regional council removing the Chairman is contrary to the Directions of the Central Council already communicated to you. Therefore, the said resolution is null and void and non est.

As stated above the Resolution, passed by the regional council is, contrary to the Direction of the Central Council already communicated to you, and, Therefore, should not be given any effect.

Yours faithfully,

Sd/-

(Ashok Haldia)

Secretary"

3. The pleas and contentions raised by the petitioners are incorporated in paragraphs 1 to 7 of the Writ Petition No. 6426 of 1999 which may be reproduced as below--

"1. The petitioners herein are practicing Chartered Accountant, Possessing a Certificate of Practice in accordance with the Chartered Accountants Act and the regulations thereunder. They are the six out of the total of nine Elected Regional Council Members of the council known as The Northern India Regional Council of The Institute of Chartered Accountants of India (hereinafter referred to as NIRC for the sake of brevity and convenience). They all are citizens of India and are entitled to all the rights enshrined in Constitution of India and the other enactment of the State.

2. The respondent No. 1 is the body established under the Chartered Accountants Act for the purposes of regulation of profession of Chartered Accountants in India and is regulated by the said Act. The respondent No. 2 is one of the five regional councils established u/s 23 of the Chartered Accountants Act in order to advise and assist the Central Council of the respondent No. 1 under the Regulations called the Chartered Accountants Regulations, 1998. The establishment, functions, duties, jurisdiction, constitution, elections and all other matters in respect of respondent No. 2 are regulated by Chapter VII of the Chartered Accountants Regulations, 1998. The respondents 1 and 2 are State within the definition of article 12 of the Constitution of India having been established under the Act of Parliament & performing statutory functions.

3. The general membership of NIRC consists of the Chartered Accountants enrolled & practicing/ working in the States of Haryana, Himachal Pradesh,

Jammu & Kashmir, Delhi & Punjab and the Union Territory of Chandigarh. These general members elect members/representatives to the council for their region (in the present case of Northern Region Nine Members). These nine elected members are entrusted with the duty to manage and perform the duties as per the provisions of Chapter VII of the Chartered Accountants Regulations, 1988. As per the provisions of Regulation 137 of the said regulations, the regional council has been empowered to elect out of its members a Chairman, Vice-Chairman, a Secretary, Treasurer thereof. It is further provided that vacancy to any of such offices has to be filled by election alone.

4. That although as per the regulations the functions of the regional council are subject to the control, supervision and direction of the Central Council but under the scheme of the Chartered Accountants Act and the Regulations made there under and as per the practice prevalent, it has become the sole prerogative of the 9 elected members of the regional council to elect its office bearers. That it will not be out of place to mention here that presently there are 18 council members, in total, of the respondent No. 2 comprising of nine members directly elected by the member Chartered Accountants as detailed herein above, five members of Central Council of the Institute of Chartered Accountants who have been elected from Northern Region in the Central Council of respondent No. 1 and four members nominated by the Central Government as ex officio members to the Central Council of the respondent No. 1 and by virtue of their belonging to the region covered by the respondent No. 2, they also are the council members of the respondent No. 2. As a matter of practice which has now become customary, the government nominated members and the Central Council Members do not exercise their vote in any of the elections or related matters, Therefore, in sum and substance the electoral college for electing the office bearers consists of nine directly elected members only.

5. As per the Chartered Accountants Regulations, 1988 (hereinafter referred to as Regulations) in the elections held in December 1997 a nine member council of the respondent No. 2 was constituted for a term of three years. Immediately after the constitution of the said council, the office bearers thereof were elected in January 1998 itself. Upon completion of the one year term of the first set of office bearers, the office bearers of the council of the respondent No. 2 for the second year were elected in the meeting of the regional council held on 19-1-1999 in accordance with Regulation 137 of C.A. Regulations. The office bearers so elected were Shri Vijay Jhalani Chairman (hereinafter referred to as the respondent No. 3); Shri Anil Agarwal Vice Chairman (hereinafter referred to as the Petitioner No. 1); Shri Praveen K. Bansal - Secretary (hereinafter referred to as the Petitioner No. 2); Shri C. S. Nanda - Treasurer.

6. Just after the election of the respondent No. 3 as Chairman of the regional council, the respondent No. 3 not only started acting in an autocratic fashion but has been involving himself in the acts which are prejudicial to the interests of the respondent No. 2 and thousands of Chartered Accountants whose interests are to

be vouched by the respondent No. 2. The respondent No. 3 completely stopped taking the secretary and other council members into confidence upon issues of vital importance. He has also been engaging in the acts which amount to self-promotion at the cost and expense of the respondent No. 2. He has even refused to implement the decisions taken unanimously by the regional council in order to satisfy his own autocratic ways. For the sake of brevity, the specific instances of the undemocratic, illegal and arbitrary actions which are considered prejudicial to the general interests of the member Chartered Accountants and the council by the petitioners are not bearing reproduced herein. It is, however, submitted that the continuance of respondent No. 3 in the office of the chairman had become very dangerous for the reputation and future of the whole community.

7. The petitioner Nos. 2 to 6 who constitute the majority amongst the elected nine members in the regional council of the respondent No. 2 namely Shri Praveen Kumar Bansal, Shri Raman Mangla, Shri Dushyant Tyagi, Shri G.S. Pannu, Shri G.P. Aggarwal and another council member Shri M. K. Aggarwal requisitioned an extraordinary meeting of the respondent No. 2 through vide notice dated 15-4-1999 of NIRC Secretary NIRC. The said meeting which was proposed to be held on 3-5-1999 in the office of the respondent No. 2 was requisitioned under the provisions of regulations 142 of the regulations and one of the proposed resolutions in the said meeting was the removal of the respondent No. 3 from the post of chairman by expressing "no confidence in his working and functioning."

4. On the above basis it is contended that the petitioners who are the elected representatives of NIRC of The Institute of Chartered Accountants of India have powers to pass a no-confidence motion against an elected office bearer and such an action is within the framework of the Chartered Accountants Act, 1949 (hereinafter referred to as the 'the Act') and the regulations framed thereunder. This plea was rejected by the impugned letter dated 20-5-1999 which has already been reproduced in the earlier part of the judgment which states that the regional council has no power to remove any office bearer of the regional council elected under regulation 137 of the Chartered Accountants Regulations, 1988 (hereinafter referred to as the Regulations) before expiry of his/their term.

5. Counter-affidavit has been filed on behalf of respondent No. 1. The Institute of Chartered Accountants of India (ICAI) where preliminary objections have been taken and necessary provisions of law have been stated. Paragraph 2 of the counter-affidavit may be reproduced as below:

"2. Before giving paradise reply to the paragraphs on merits the deponent desires to make the following submissions :

(i) The Institute of Chartered Accountants of India hereinafter referred to as "Institute") is a body corporate incorporated under the Chartered Accountants Act, 1949 (hereinafter referred to as "the Act") for carrying out the object of regulating the profession of Chartered Accountants under the provisions of the

said Act. To carry out the objects of the Act,, the Chartered Accountants Regulations, 1988 hereinafter referred to as the "Regulations") have been made and are in force.

(ii) u/s 9 of the Act, council of the institute is constituted for the management of the affairs of the institute and for discharging the functions assigned to it under this Act. The council is composed of twenty-four persons elected by members of the institute from amongst the fellows of the institute chosen in such manner and from such Regional Constituencies as may be specified in this behalf by the Central Government by notification in the Official Gazette and six persons are nominated by the Central Government.

(iii) section 15 of the Act enumerates the functions of the council. u/s 15(1), the duty of carrying out the provisions of the said Act shall be vested in the council. Section 17 of the Act provides that the council shall constitute from amongst its members the various standing and non-standing committees for the purpose of carrying out the provisions of the Act. In exercise of the power conferred under section 17 of the Act, the council has constituted three standing committees namely : (1) Executive Committee, (2) Examination Committee, (3) Disciplinary Committee. The said executive committee is empowered to carry out the functions assigned to it.

(iv) section 23 of the Act provides for constitution and functions of regional council. It provides:

(1) For the purpose of advising and assisting it on matters concerning its function, the council may constitute such regional councils as and when it deems fit for one or more of the Regional Constituencies that maybe specified by the Central Government under clause (a) of sub-section 2 of section 9.

(2) The regional councils shall be constituted in such manner and exercise such functions as may be prescribed.

Section 30 of the Act, empowers the council to make regulations. Section 30(2) provide :

In particular, and without prejudice to the generality of the forgoing power, such regulations may provides for:

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(i) the functions of regional councils.

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(v) Chapter VII of the regulations deals with the regional councils regulations 127(2) enumerates that-

The regional councils shall at all times function subject to the control, supervision and direction of the council and or any of its committees.

Regulation 128 provides for names of regional councils. There are five regional councils, namely:

Western India Regional Council, Southern India Regional Council, Eastern India Regional Council, Central India Regional Council and Northern India Regional Council.

Duties and functions of the regional councils have been enumerated under regulation 130. Regulation 130(1) provides that subject to such directions as may be issued by the council from time to time, it shall be the duty of each regional council to carry out the provisions of this Chapter.

Regulation 133 provides for constitution of regional councils. It reads as follows :

"A regional council shall consist of :

(i) all the elected and nominated members of the council in its region; and

(ii) such members as may be elected by the members in the region."

(vi) Regulation 137 provides for election of the office bearers and committees:

Regulation 137(5) provides:

"(5) The said office bearers shall hold office until the meeting of the regional council as contemplated in clause (i) of sub-regulation (1) above has been held in the next year:

Provided that if for any reason the regional council is unable to meet as above the office bearers shall continue in office for the purpose of holding a meeting and electing the new office bearers.

(vii) To carry out the functions of the regional councils, the regional councils constitute various standing committees and non-standing committees under sub-Regulations 7 to 13 of Regulation 137.

Regulation 137(11) provides: A member of a committee shall hold office until the meeting of the regional council, in the next year to be held in the latter half of January, as provided hereinafter, but he shall be eligible for re-election or co-option, as the case may be:

Provided that if he is an elected member of the committee, he shall be eligible for re-election only if he is a member of the regional council at the time of re-election.

(viii) Amongst 5 regional councils, the present Northern India regional council is constituted of 18 members. Amongst them 9 are elected members from the Northern Region, 5 are elected members of the Central Council in the said region and 4 are nominated members of the Central Council in the said region. The election of the office bearers of Northern India Regional Council for the year 1999-2000 was held in January 1999.

Without prejudice to the above mentioned preliminary submissions" paradise reply to the affidavit of the petitioner is as under:"

6. The learned counsel for the petitioners has vehemently contended that the elected representatives of NIRC have a legal right to remove the resident and any other office bearer of the NIRC whereas it is argued on behalf of the respondent ICAI that this power is not vested in the NIRC and reference can only be made to ICAI for contemplated action as no elected representative of NIRC can be removed before the expiry of his/their term.

7. There is no doubt that the provisions of law do not contain any specific power of removal of the President or any elected member of the NIRC though it is contended by the petitioners that the power to appoint will include the power to remove as well. Strong reliance is placed on the Division Bench judgment of this court as Mohan Chandra v. Institute of Chartered Accountants of India AIR 1972 Del 91 and particular reference is made to paragraphs 40, 41, 42 and 43 which may be reproduced as below:-

"40, Whatever may be the duties of the institute or its council or its President they cannot be characterised as public duties. Those duties may be important in themselves but they have no reference to the administration of the country, whether municipal or national. In our opinion, the office of the President of the institute is in no way different from that of a manager of a company or at any rate, from that of a managing agent (which office has since been abolished). We find it difficult to accede to the submission made by the petitioners that the President is not removable by the council once he is elected or that the council has no power to consider or pass a motion of no-confidence against the President. The office of the President is an honorary office and there is no provision which makes it incumbent that a person chosen as President has necessarily to bear the burden for a full period of one year. The provision of section 12(3) that the President and the Vice President shall hold office for one year merely indicates that the office should not be held for more than the specified period. It cannot be construed to mean that the incumbent as per force to continue in that office even if he is unwilling to continue in that position.

41. One of the arguments that was strongly pressed by the counsel for the petitioners was that while there is no provision in the Act or regulations for resignation of office by the President, there is a provision in section 13 of the Act which enables any member of the council to resign his membership. The argument was that the absence of such a provision shows that a member of the

council can submit his resignation but the President cannot do so. The only manner in which the office of the President can fall vacant before the expiry of the period is that the member holding that office should also resign his membership of the council. He may also lose that office if he has been found guilty of professional misconduct, but so long as he remains a member of the council, he cannot throw his office before the expiry of the period.

42. We do not think the absence of any provision regarding resignation will render the President irremovable from his office. A person may like to retain his seat in the council and yet he may not want to bear the burden of the office of the President. There are detailed provisions in the regulations for election to the council but there is no provision relating to election to the office of the President except u/s 12(1) where the council is required at its first meeting to elect two of its members to be respectively the President and the Vice-President thereof. When the office of a member of the council falls vacant as a result of his resignation, such resignation is notified in the Official Gazette. But there is no provision for publication in the Official Gazette when the office of the President falls vacant. When a member of the council is elected President, he is so elected because the council wants him to hold that office. The council is thus the appointing authority in the case of the President and it is well recognised that the power to appoint includes the power to suspend or dismiss (see section 16 of the General Clauses Act, 1897). If the council as the appointing authority could, Therefore, suspend or remove the President from his office, the holder of that office could also tender his resignation and the fact that there is no provision in section 12 which provides for any such resignation will in no way preclude the council from accepting such resignation.

43. In this connection our attention was drawn to the letter received by the President from the department of Company Affairs wherein it was stated that there was no statutory provision to support the motion of no confidence to remove the President. The opinion of the Company Law Board is in no way binding on this court. In our opinion, the absence of any such statutory provision either in the Act or in the regulations does not at all preclude the members of the council to bring forth and support any motion of no-confidence to remove the President. The council being the authority to appoint the President also had the power to suspend or dismiss him and the act of bringing forth a motion of no-confidence and supporting it is merely one of the ways in which the power of dismissal or removal could be effectuated by the council." (p. 97)

8. The learned counsel for the respondents, on the other hand, has contended that unless the statute provides a power of removal, it is not possible to treat the same as an implied and inherent power. Reference is made to the judgments as *Lakshmi Narain Misra v. Municipal Board* 1962 All LJ 113, *Veeramachaneni Venkata Narayana v. Deputy Registrar of Co-operative Societies* 1975 (AP) 242 and *Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others*, .

9. The following paragraph from the judgment in the case of Lakshmi Narain Misra (supra) reads as follows :

"The question then is : Does the Act contemplate the passing of a resolution of no-confidence in or of removal of the Vice-President ?

Section 40 of the Act expressly provides for the removal of a member of the Municipal Board. Section 48 also expressly provides for the removal of the President from his office. Section 104(1)(b) provides for the election of members to the various committees of the Municipal Board and clause (c) thereof provides for the removal of a member elected to a Committee. These provisions demonstrate that the Legislature deliberately refrained from providing for the removal of a Vice-President. No resolution removing a Vice-President can, Therefore, be passed.

It may appear at first sight that the Municipal Board is not prohibited from passing a resolution of no-confidence in the Vice-President, but that is not the fact. A no-confidence resolution against the President by itself has no force; it is only because of section 47A that a President is compelled either to resign or ask for dissolution of the Board. But for section 47-A the no-confidence resolution would have had no teeth. The power to pass a non-confidence resolution in the President may be necessarily implied in section 47-A. The absence of a similar provision with respect to the Vice-President showing that the Legislature did not envisage a non-confidence motion against the Vice-President.

Section 54(2) gives to the Vice-President a fixed term of office. That term cannot be cut down by any device or method. Consequently, the Municipal Board could not cancel the resolution electing the appellant as Vice-President.

We are, hesitant to fall back upon the general law of Corporations as stated in Halsubry's Laws of England. We think we ought to go ordinarily by the provisions of the Act. The Municipal Board is a creature of statute and it can have only such powers as are conferred upon it by the Statute either expressly or by necessary implication. (See Hira Devi v. District Board, Saharanpur).

Further, it appears to us that the statement of law in Halsbury's Laws of England, which has been relied upon by the learned Judge, has little relevance in the context of section 54(2). The Vice-President does not hold office at the will of the Municipal Board. Once elected, he gets into office for a specified period, and is irremovable during that period. The office not being held at will, he is not removable at will."

10. Similarly, it has been held in the case of Veeramachaneni Venkata Narayana (supra) that there is no implied power in the Committee Members to express want of confidence in the President and replace him. Paragraph 12 of this judgment reads as below :

"12, In Hira Devi v. District Board, Saharanpur , the Supreme Court has warned that lacuna could not be supplied by any liberal construction by the High Courts.

In the words of N.H. Bhagwati, J.,

"No doubt it is the duty of the court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act."

In the case of *Hindurao Balwant Patil (supra)* the court was examining the power of removal of Chairman or Vice-Chairman by a vote of no confidence under the Maharashtra Cooperative Societies Act, 1960 and also dealt with the doctrine of implied and inherent powers. Paragraphs 9 and 18 of this judgment may be referred to as below :

"9. As observed by the Full Bench of the Delhi High Court in *Suraj Prakash v. State of Punjab* AIR 1968 Del 30 :

Being presumably conscious of the subtle corrupting effect of power, the Legislature has fixed this time-limit of three years with a desire to insulate the democratic set-up from power intoxication. History all over the world shows that, again and again, men put in power for temporarily periods seek for some new reasons to retain it. Craving for power is an appetite which grows most with what it feeds upon. It is for this very reason that democracy has in its practical wisdom sought to make its own tenure of power temporary and to hedge its exercise with limitations and restrictions. These elements seem to constitute the essential prerequisites of a true democratic set up. The limitation placed on the life of the members of a Municipal Committee seems to be inspired by this democratic instinctive foresight on the part of the Legislature.

It cannot be forgotten that the Cooperative Societies Act has been enacted having regard to the directive principles of the State policy as enshrined in the Constitution of India. Cooperative movement is a socio-economic and moral movement. To say the least it is a part of the scheme of decentralisation and de-concentration of power. Collective power intoxication cannot be so equated with cooperation. In the very nature of the said movement it must not be only self-regulated but the constraints and restraints are inherent in the movement itself. The rights conferred or created by the statute are coupled with duty. Fixity of tenure helps proper administration and management of the society. Cooperative movement cannot be permitted to be polluted or choked by internal or individual strike nor it can be permitted to be polluted by party politics. Cooperative capitalism despotism is not cooperation. On the other hand, cooperation is a substitute for self-interest of an individual or a group of individuals for the benefit of whole community. Therefore, if the society itself while framing and adopting its own code of conduct in the form of bye-laws, which are to be duly approved by the Registrar, has not made any provision for removal of the Chairman and Vice-Chairman by passing a vote of no-confidence, it cannot be said that the step taken by the Society or Registrar in that behalf is not a regulatory one nor is in the interest of the society or the general public.

The so-called mandate theory cannot be pushed to ridiculous extremes to convert cooperative movement into an arena or akhada of power politics. Whenever the Legislature thought that a person is not fit to continue as a member of the Board, specific provisions are made for his removal. A person is elected as Chairman or Vice-Chairman for a particular term. His office is controlled by the provisions of the Act. It is not an office at will and, Therefore, to such an office section 16 of the General Clauses Act cannot apply. It is not necessary to deal with this aspect of the matter in detail in view of the decision of this court in *Jehangir Bhikaji v. Corporation of City of Nagpur* 1960 Nag. LJ 99. A similar view seems to have been taken by the Rajasthan High Court in *Kanta Devi and Another Vs. State of Rajasthan and Others*,

18. In this context it cannot be forgotten that the Chairman and the Vice-Chairman, though elected by the members of the Board, become office bearers of the society as a whole after their election. They have a right to continue in office for five years which term is co-extensive with the term of the committee or the Board of Directors. The enactment itself provides for the removal of the members under certain circumstances only. When law has made specific provision in this behalf, it will not be open to adopt some other procedure to achieve the same object. By importing the doctrine of implied and inherent power or right to recall, the members of the Board cannot be permitted to do indirectly what they are not permitted to do directly under any of the provisions of the Act, rules or the bye-laws. Power to recall is not inherent in the electorate. Therefore, in the absence of such a power it was not open to the members of the Board of Directors to remove the Chairman or the Vice-Chairman by passing a mere resolution of vote of no-confidence. In the result, Therefore, the resolution of no-confidence passed against the petitioners is set aside as being ultra vires the power of the members of the Board. As a necessary consequence of this, the Chairman and the Vice-Chairman are entitled to continue in office for the unexpired period of their tenure, obviously subject to the other provisions of the Act, rules and the bye-laws."

11. The Full Bench judgment of the Punjab & Haryana High Court in *Jagdev Singh Vs. The Registrar, Co-operative Societies, Haryana and others*, reiterates the proposition that no-confidence motion is permissible in the absence of any provisions in the Act or the rules and office bearers can only be removed in accordance with the provisions of law and the rules framed thereunder. The Supreme Court in *Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others*, also considered the question of removal of elected representative in paragraph 2 of the judgment which reads as below :

"2. Democracy is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But electing representatives to govern is neither a "fundamental right" nor a "common law right" but a special right created by the statute, or a "political right" or

"privilege" and not a "natural", "absolute" or "vested right". "Concepts familiar to common law and equity must remain stranger to Election Law unless statutorily embodied. Right to remove an elected representative, too, must stem out of the statute as" in the absence of a constitutional restriction it is within the power of a Legislature to enact a law for the recall of officers". Its existence or validity can be decided on the provision of the Act and not, as a matter of policy. In the American Political Dictionary the right of recall is defined as, "a provision enabling voters to remove an elected official from office before his or her term expired". American Jurisprudence explains it thus," Recall is a procedure by which an elected officer may be removed at any time during his term or after a specified time by vote of the people at an election called for such purpose by a specified number of citizens. It was urged that" recall gives dissatisfied electors the right to propose between elections that their representatives be removed and replaced by another more in accordance with popular will, Therefore, the appellant could have been recalled by the same body, namely, the people who elected him. Urged Shri Sunil Gupta, learned counsel, that since, "a" referendum involves a decision by the electorate without the intermediary of representatives and, Therefore, exhibits form of direct democracy", the removal of the appellant by a vote of no-confidence by the Board which did not elect him was subversive of basic concept of democracy. Academically the submission appeared attractive but applied as a matter of law it appears to have little merit. None of the political theorists, on whom reliance was placed, have gone to suggest that an elected representative can be recalled only by the persons or body that elected him. Recall expresses the idea that a "public officer is indeed a servant of the people" and can, Therefore, be dismissed by them". In modern political set-up direct popular check by recall of elected representative has been universally acknowledged in any civilised system. Efficacy of such a device can hardly admit of any doubt. But how it should be initiated, what should be the procedure, who should exercise it within ambit of constitutionally permissible limits falls in the domain of legislative power. "Under a constitutional provision authorizing municipalities of a certain population to frame a charter for their own government consistent with and subject to the Constitution and laws of the State, and a statutory provision that in certain municipalities the Mayor and members of the municipal council shall be elected at the time, in the manner, and for the term prescribed in the charter, a municipal corporation has authority to enact a recall provision". Therefore, the validity or otherwise of a no confidence motion for removal of a President would have to be examined on applicability of statutory provision and not on political philosophy. The Municipality Act provides in detail the provisions for election of President, his qualifications, resignation, removal, etc. Constitutional validity of these provisions was not challenged, and rightly, as they do not militate, either, against the concept of democracy or the method of electing or removing the representatives. The recall of an elected representative, Therefore, so long it is in accordance with law, cannot be assailed on abstract notions of democracy."

12. In *Ram Beti Vs. District Panchayat Raj Adhikari and Others*, the court considered the power of removal of Pradhan of Gram Sabha by Members of Gram Panchayat under the U.P. Panchayat Raj Act, 1947. Paragraphs 3 and 4 of this judgment which deal with the question make the following reading :

"3. The appellants in the appeals and the petitioners in the special leave petitions and writ petitions (hereinafter referred to as "the petitioners") were duly elected as Pradhans of Gram Sabhas. Action for the removal was initiated before the Gram Panchayat concerned u/s 14 of the Act. Feeling aggrieved by the proposed move for their removal as Pradhan by the members of the respective Gram Panchayats, they approached the Allahabad High Court by filing writ petitions under article 226 of the Constitution wherein they challenged the validity of section 14 of the Act. It was urged that since a Pradhan is elected by all the members of the Gram Sabha, he could be removed only if he had lost the confidence of the members who had elected him and section 14 of" the Act which provides for removal of a Pradhan by members of the Gram Panchayat is unconstitutional and void since it is destructive of the democratic functioning of the Panchayats which are part of the local administration of the village community and runs counter to the concept of democracy which is a basic feature of the Constitution. The said contention was, however, rejected by a learned Single Judge of the High Court in *Ram Beti v. District Panchayat Raj Adhikari* as well as by a Division Bench of the High Court in *Bankey Lal v. State of UP*. The judgment of the Division Bench of the High Court has been followed by the High Court in other Judgments dismissing the writ petitions filed by the petitioners. The said judgments of the High Court are under challenge before this court in the appeals and special leave petitions. Some of the Pradhans who were sought to be removed u/s 14 of the Act have filed writ petitions under article 32 of the Constitution.

4. In the impugned judgment the High Court has placed reliance on the decision of this court in *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly* wherein this court was dealing with the provisions contained in sub-section (2) of section 87-A of the U.P. Municipalities Act, 1916 which empowered the members of a Municipal Board to remove the President who was directly elected by the electorate by moving a motion of no confidence. The validity of the said provision was challenged before this court on the ground that it was violative of the democratic concept since it provided for removal or recall of an elected representative by a smaller and different body than the one that elected him. The said contention was, however, rejected by this court. It was observed: (SCC PP 84-85, 88 and 89, paras 2, 4 and 5).

Democracy is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But electing representatives to govern is neither a "fundamental right" nor a "common right" but a special right created by the statutes, or a "political right" or "privilege" and

not a "natural", "absolute" or "vested right". "Concepts familiar to common law and equity must remain strangers to Election Law unless statutory embodied". Right to remove an elected representative, too, must stem out of the statute as "in the absence of a constitutional restriction it is within the power of a Legislature to enact a law for the recall of officers". Its existence or validity can be decided on the provision of the Act and not, as a matter of policy.

An elected representative is accountable to its electorate. That is the inherent philosophy in the policy of recall. For the President his electorate to exercise this right, is the Board as it comprises representatives of the same constituency from which the President is elected. Purpose of section 87-A of the Act is to remove elected representative who has lost confidence of the body which elected him. It may be by people themselves or they may entrust their power through legislation to their representatives. In the Act it is the latter. Members of the Board are elected from smaller constituencies. They represent the entire electorate as they are representatives of the people although smaller in body. A President who is elected by the entire electorate when removed by such members of the Board who have also been elected by the people is in fact removal by the electorate itself. Such provision neither violates the spirit nor purpose of recall of an elected representative. Rather it ensures removal by a responsible body. It cannot be criticised either as irrational or arbitrary or vocative of any democratic norm.

The Board is thus visualised as a body entrusted with responsibility, to keep a watch on the President, whether elected by it or the electorate. Any arbitrary functioning by the President or disregard of provision of the statute or acting contrary to the interest of the electorate could be known to the Board only. Therefore, it was not proper but necessary to manpower the Board to take action, if necessary."

13. On the basis of the settled law as stated above, it is not in dispute that elected representatives can be removed by using implied and inherent powers which do not spell out from the statute or the rules named there under. The office holders of NIRC are elected for a particular period and it is stated in section 12 of the Act that the President or the Vice-President shall hold office for a period of one year from the date on which he is chosen. The period of tenure of the office is provided in the Act and no provision is stated in the regulations or the Act to show that the President or any other office holder can be removed by passing a motion of no-confidence. This power seems to be vested in the council as will be evident from reading of the provisions of Regulation 127. Sub-regulation (2) of Regulation 127 states that "The regional councils shall at all times functions subject to the control, supervision and direction of the council and or any of its committees." Regulation 130 prescribes the duties and functions of regional councils which also does not contain any power to remove or pass a motion of no-confidence against the office holders of NIRC. The office bearers of the regional council are expected to hold office until the meeting of

the regional council as contemplated in Regulation 137 has been held in the next year in terms of sub-regulation (5), A perusal of the Act as well as the regulations framed there under has not vested any power in NIRC to remove the office holder who is validly elected for a period of one year. The remedy which is contemplated is by making the reference to the ICAI for appropriate action. In the absence of clear statutory powers the inherent and implied power cannot be inferred in the facts and circumstances of the present case. The judgment, in the case of Mohan Chandra (supra) as relied upon by learned counsel for the petitioner, only relates to a case of resignation wherein it was held that the office of the President is an honorary office and there is no provision which makes it incumbent that a person chosen as President has necessary to bear the burden for a full period of one year.

14. In view of the aforesaid reasons, the present petitions are devoid of merit and are dismissed accordingly. There will be no order as to costs.