
(1998) 03 AHC CK 0107
In the Allahabad High Court
Case No : C.M.W.P. No. 37929 of 1997

Biraj Mistri

APPELLANT

Vs

District Panchayat Raj Officer, Pilibhit and others

RESPONDENT

Date of Decision : 24-03-1998

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 14, 14(1)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B(5)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 14, 14(1)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B(5)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 14, 14(1)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B(5)

Citation : (1998) 2 AWC 1517 : (1998) RD 569

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : Pradeep Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

S. H. A. Raza, J.—The crux of the controversy involved in this writ petition is as to whether out of 14. 9 members constitute two-third majority or not for the purposes of passing a vote of no-confidence against the petitioner in accordance with the provisions contained in Section 14 of the U. P. Panchayat Raj Act (hereinafter referred to as the Act) read with Rule 33-B (5) (viii) of the Rules framed under the Act which provides that a Pradhan or Up-Pradhan can be removed by a majority of two-third of the members present and voting in a meeting called for passing a vote of no-confidence against the Pradhan.

2. In the present case, out of 14 members who were present. 9 voted in favour of the motion. From an arithmetical calculation two-third of 14 comes of 9.33. A voter cannot be divided into fraction or pieces. Hence, 9.33 is to be rounded off either to 9 or to 10. If rounding off is done to 9, it will not be a majority of two-third. Section 14 (1) of the Act read with Rule 33B (5) (viii) of the Rules provides that the motion of no-confidence should be carried out by a majority of two-third

of the members present in voting. In view of this, rounding off the two-third majority would be 10 and unless 10 members vote in favour of the no-confidence motion, it cannot be said that the motion has been carried out because it does not make up the required two-third majority. A Full Bench of this Court in the case of Wahid Ullah Khan v. District Magistrate, Nainital and others (1993) 2 UPLBEC 1107, has held that out of 15 members, 8 and not 9 constitute a majority. There was a motion of no-confidence against the President of the Municipal Board in which 15 members had voted.

3. The view which I have taken is supported by two decisions of this Court : (1) in Smt. Meera Devi v. State of U. P. and others. Writ Petition No. 40873 of 1997, decided by an Hon'ble single Judge on 7.1.1998 and (2) in Arunandra Singh v. District Panchayat Raj Officer, Unnao and others. 1997 (3) AWC 1662, decided on 16.5.1997 by an Hon'ble Single Judge of this Court.

4. The learned counsel for the petitioner relied upon a decision of this Court in Rajan Seth v. State of U. P. and others. (1992) 1 UPLBEC 636 . In this case, the matter pertained to 5 per cent quota for admission of the students of other colleges. Therefore, 5 per cent was read in favour of the candidates Inasmuch as the fraction was worked out to 0.55 and rounded off to 1. The same proposition was laid down by a Division Bench of the Andhra Pradesh High Court in Koneru Ramakrishna Vs. The Director of Medical Service and Others, , wherein 14% of four seats were reserved for Scheduled Caste in post-graduate courses in medical colleges in the State. The Court took the view that 14% of four seats cannot be worked out to mathematical precision. 14% of 4 seats is less than 1 but as it was more than half it was held that it should be rounded off to 1 otherwise it would be defeating the very purpose of reservation provided for in sub-clause (a) of Rule 2 (1).

5. The learned counsel for the petitioner has drawn the attention of this Court towards the rounding off the decimal numbers in a book of Mathematics which provides that out of the omitted digits if, the first digit is 5 or more than 5, Increase the last retained digit by one, otherwise no change is made. No doubt, where the legislative Intent is to accord some benefit to a person like admission or reservation. It should be read liberally, but as far as the matter pertaining to vote of no-confidence is concerned, it involves civil consequences, as a person elected by the electorates of a village can be removed by the elected members of the Gram Panchayat.

6. In view of the aforesaid position, the words "two-third majority" should be read strictly. In the present case the fraction should be rounded off to one. As stated hereinabove, out of 14 members 9 voted in favour of the motion. According to the mathematical calculations, two-third comes to 9.33. Hence the fraction should be rounded off to one, meaning thereby that two-third majority out of 14 would be 10 and if 10 would have not voted in favour of the motion, the motion would have lost. The District Panchayat Raj Officer rightly passed the order that the motion had lost.

7. In view of the aforesaid reasons, the writ petition is dismissed. However, there would be no orders as to costs considering the facts and circumstances of the case.