

(1991) 05 AHC CK 0053

In the Allahabad High Court

Case No : Writ Petition No. 4777 of 1990, (with connected W.P. No. 5733 of 1990)

Brijendra Bahadur Singh

APPELLANT

Vs

District Magistrate, Gonda and others

RESPONDENT

Date of Decision : 30-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 87A(3)

Citation : (1991) 05 AHC CK 0053

Hon'ble Judges : S.C.Mathur, J and R.K.Agarwal, J

Final Decision : Dismissed

Judgement

S. C. Mathur, J.—These two writ petitions relate to motion of no confidence against Brijendra Bahadur Singh, President of the Municipal Board, Balrampur, District Gonda, for short, "Board". The petition involves consideration of Section 87A of the U.P. Municipalities Act, 1916 (U.P. Act No. III of 1916), for short, Act.

2 Brijendra Bahadur Singh, for short, Brijendra, was directly elected President of the Board in November, 1988, On 18th April, 1990 twelve Members of the Board presented motion of no confidence against him to the District Magistrate, Gonda. On behalf of the District Magistrate the Sub Divisional Officer issued notice on 1st May, 1990 notifying 24th May, 1990 at 11.00 A.M. as the date and time fixed for meeting convened for consideration of the motion. On 21st May Brijendra filed writ petition No. 4777 of 1990 challenging the validity of the said notice on various grounds including that the notice violated Section 87A (3) of the Act inasmuch as the date fixed thereby for the meeting crossed the outer limit of time prescribed therein, i.e. thirty five days from the date of delivery of motion of no confidence to the District Magistrate. On the same day a Division Bench of this Court issued notice to the Members who had presented the motion of no confidence and passed the following interim order:

?.....Since we are, prima facie, satisfied that the meeting for the consideration

of no confidence motion has been convened in violation of the provisions of Section 87A of the U. P. Municipalities Act, inasmuch as it has been convened after the expiry of 35 days (excluding 18.4.90 and 21.5.90), we direct that the meeting convened for 24.5.90 for consideration of no confidence motion against the petitioner shall not be held and in case the meeting for the consideration of no confidence motion is held and no confidence motion is carried through at the said meeting, then the decision taken in the said meeting shall not be implemented until further orders of this Court.

The meeting instead of being held on 24th May, 1990 was actually held on 22nd May, 1990 and the motion was carried through. Thereafter Brijendra along with five others filed writ petition No. 5733 of 1990. This petition was filed on 31st May, 1990. In respect of the prayer for interim relief the following observation was made in order dated 31st May, 1990:

So far as the question of interim relief is concerned, I am of the view that in view of the provisions of Section 87A of the U.P. Municipalities Act, which provides that if the President does not resign on a vote of no confidence being passed against him, he shall, on the expiry of three days from the date on which the result of the meeting is communicated to him, cease to be a President, it is not possible to grant any interim relief at this stage.

3. In the earlier petition Brijendra has impleaded the District Magistrate, Gonda and the State of U.P., through Collector as opposite parties 1 and 2 and the Members who presented the no confidence motion as opposite parties 3 to 14. No counter affidavit has been filed in this petition.

4. In the latter writ petition the opposite parties are the District Magistrate, Gonda, the State of U.P. through Collector, Gonda and the Executive Officer, Nagar Palika, Balrampur. In this petition Dr. Naeem who was not one of the signatories to the motion of no confidence has filed counter affidavit to which rejoinder affidavit has been filed by Abhai Pratap Singh, petitioner No. 1. It appears that originally the counter affidavit was intended to be filed in the earlier writ petition but thereafter it was actually filed in the latter petition although in the said petition Dr. Naeem is not a party.

5. The learned standing counsel as well as the learned counsel for Nagar Palika were directed to produce the relevant record before this Court so that the factual controversy could be checked and verified therefrom.

6. Before coming to the submissions of the learned counsel the facts emerging from the record may be stated. These facts are as follows.

7. The motion of no confidence was presented by twelve persons before the District Magistrate, Gonda on 18.4.1990. On 21st April, 1990 the District Magistrate himself fixed 24th May, 1990 at 11.00 A.M. as the date and time for the meeting. On the basis of this fixation, notice was issued to the Members by Sri C. K. Pandey, Sub Divisional Officer notifying the date, time and venue of

the meeting. On 14th May, 1990 an office note was put up before the District Magistrate in which it was stated that Sri Hanumant Singh, M.L.A., an exofficio Member of the Board, had pointed out that the date fixed for the meeting was legally incorrect. The office note pointed out that the date fixed was beyond the outer Statutory limit fixed in Section 87A (3) and suggested that the date of meeting may be advanced to 22nd May, 1990. The District Magistrate agreed with the suggestion of the office and directed action to be taken against the persons concerned. This order was passed by the District Magistrate on 14th May, 1990 itself. On the basis of this order the Deputy Collector issued notices on behalf of the District Magistrate to the Members of the Board informing them of the altered date. It was in pursuance of this notice that the meeting instead of taking place on 24th May, 1990 actually took place on 22nd May, 1990. One of the pleas raised on behalf of the petitioners is that they had no notice of this altered date on account of which they could not attend the meeting and exercise their franchise.

8. Dr. Naeem contests the claim of the petitioners and his learned counsel points out certain paragraphs of the writ petition for substantiating his plea that the petitioners had full knowledge of the date but they deliberately did not attend the meeting. He also points out that the notices had, in fact, been served in accordance with Section 303 of the Act.

9. From the record produced by the learned counsel for the opposite parties it appeared that somebody received notice on behalf of petitioner No. 1. Petitioners No. 2 and 3 appeared to have refused the notice. There is acknowledgement on behalf of petitioners 4, 5 and 6 also. On behalf of petitioner No. 6, Magan Behari has signed on the acknowledgement slip. The person who received notice on behalf of petitioner No. 1 has put down the date 18th May, 1991 as the date of receipt of notice.

10. Section 303 (1) which deals with service of notice reads as follows:

303 (1) Every notice or bill issued or prepared under any section of this Act or under any rule or byelaw shall, unless it is in such section or rule or byelaw otherwise expressly provided, be served or presented

(a) by giving or tendering the notice or bill, or sending it by post, to the person to whom it is addressed or

(b) if such person is not found, then by leaving the notice or bill at his last known place or abode, if within municipal Limits, or by giving or tendering the notice or bill to some adult male member or servant of his family, or by causing the notice or bill to be fixed on some conspicuous part of the building or land (if any) to which the notice or bill relates.

(2) ?????????????????????????????????

(3) ?????????????????????????????????

Under clause (b), leaving a notice at the residence of the notice is also sufficient service. In the present case the notice has not merely been left but has been received by some one at the residence of petitioners 1 and 4 to 6. On behalf of the petitioners the notice could be received by some adult male member or servant. In the circumstance it was for the petitioners to point out that the persons who received the notice on their behalf was not either a member of their family or servant of the family and, therefore, not authorised to receive the notice on their behalf. This none of the petitioners has done. The petitioners have only made a bald denial about receipt of notice. Such bald denial cannot be accepted. Sri Fasiul Rahman, local Member of Parliament was an ex officio member of the Board. On his behalf notice was received on 19th May, 1990 by Sri Mohd. Ghulam Munshi.

11. In paragraph 22 of the Subsequent writ petition it is stated ? The petitioner No. 1 and 6 from 17590 onwards were all along present in Lucknow till 20590 in connection with the writ petition and so were a couple of members. The petitioner No. 1 stayed on till 21590 in Lucknow along with a couple of members.?

12. The averment made in paragraph 22 has not been accepted in paragraph 23 of the counter affidavit wherein following statement has been made:

?23 That the contents of paragraph 22 of the writ petition are absolutely incorrect and denied. Petitioners were having full knowledge of the meeting dated 2251990 and they were duly served with the notice dated 1451990. So far the petitioner no6 is concerned notice was served upon him in person and his peon Sri Magan Bihari who was posted at his residence and is still working, was asked to put his signatures on the notice in token of service. It is further stated that since notice were served on 1451990 itself and all Members including the petitioner No. 6 were having full knowledge of the meeting of 2251990, therefore, the allegation that the petitioners no1 and 6 were present in Lucknow from 1751990 onwards 2051990 is of no relevance.?

13. In this paragraph in respect of President Brijendra, it has been stated that the notice was served upon him personally although acknowledgement was given by his peon Sri Magan Behari. Rejoinder affidavit has not been filed by Brijendra but has been filed by Abhai Pratap Singh. He has of course denied the averments made in paragraph 23 of the counter affidavit but that denial cannot cover petitioner no6. Accordingly it has to be held that upon Brijendra the notice was served personally.

14. In paragraph 22 all the petitioners in the subsequent petition are not claimed to have stayed at Lucknow from 17th May, 1990 to 21st May, 1990. Only petitioner no1 namely, Abhai Pratap Singh is claimed to have stayed at Lucknow upto 21st May, 1990 and petitioner no6 is claimed to have stayed only up to 20th May, 1990. Obviously, on return to Gonda on or after 20th May, 1990 there was every likelihood of these petitioners receiving notices from the persons who

had received the same on their behalf.

15. In paragraph 25 of the counter affidavit further facts have been given to charge the petitioners with knowledge of the date and time of the meeting. It is stated

?...that all Members including nonattending Members were having full knowledge of the meeting dated 22.5.1990 and all petitioners and other nonattending Members were staying adjacent the meeting hall and were watching the proceedings but they did not participate in the proceedings or enter the meeting hall but subsequently when the meeting was over and the voting has taken place and the result was announced the aforesaid two persons just to make out a case lodged a protest as mentioned in Annexure No. 5A and Annexure 5B to the writ petition.....?

Learned counsel for the opposite party points out that the knowledge stated in paragraph 25 of the counter affidavit finds support from petitioners' own averment in paragraph 24 of the writ petition. In this paragraph it is stated ?....it is relevant to mention that the petitioner no.5 and another member Abdul Hameed who had no knowledge of the meeting till 11 a.m. on 22.5.90 came to know of it around 12 a.m., that a meeting of no confidence is being held in Nagar Palika and they reached the Nagar Palika meeting hall around 12.15 p. m. to lodge their protest against the meeting. They accordingly lodged their protest.? Copies of protest notes have been filed as Annexures 5A and 5B to the amended writ petition. The averment made in paragraph 24 of the writ petition does lend support to the statement made in paragraph 25 of the counter affidavit.

16. Learned counsel for the petitioners, however, submits that the service relied upon by the opposite party is no service for the purpose of Section 87A as a special mode of service has been prescribed in that Section.

17. Section 303 (1) is subject to other Sections of the Act and to the rules and byelaws. Accordingly, if a different mode of service has been prescribed in any other provision of the Act, the mode of service prescribed in Section 303 will be of no avail. Section 87A (3) provides as follows:

?87A (3) The District Magistrate shall then convene a meeting for the consideration of the motion to be held at the office of the Board, on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty five days from the date on which the notice under subsection (2) was delivered to him. He shall send by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and on the date and time appointed therefor, to every member of the Board at his place of residence and shall at the same time cause such notice to be published in such manner as he may deem fit. Thereupon every member shall be deemed to have received the Notice.?

Under this provision it is indeed provided that the notice of date of meeting for

consideration of the motion of no confidence be served by registered post. If this provision is mandatory the meeting held on 22nd May 1990 will have to be held illegal. It has, therefore, to be seen whether this provision is mandatory or recommendatory.

18. Learned counsel for the opposite party has invited our attention to the decision rendered by a Full Bench comprising five

Judges in *Gyan Singh Vs. The District Magistrate, Bijnor, and others* AIR 1975 Allahabad 315 for submitting that the mode of service prescribed in Section 87A (3) is recommendatory and not mandatory.

19. Section 87A subsection (3) has been subject of interpretation by this Court. Certain provisions of this subsection have been held to be mandatory and some recommendatory. The petitioners' challenge against the validity of the meeting of 22nd May, 1990 is not confined to notice not having been given by registered post but embraces other facets also. Accordingly, before proceeding to consider whether it was obligatory to give notice by registered post, the petitioners' other challenges arising from alleged noncompliance of the provisions of Section 87A may also be noticed.

20. It is submitted that the power to fix the date of meeting under Section 87A (3) could be exercised only once and in the present case that power had been exercised when notice of meeting for 24th May, 1990 was issued and thereafter there was no jurisdiction left in the District Magistrate to alter the said date. On this basis it is submitted that the date 22nd May, 1990 was illegally fixed with the consequence that the meeting held on the said day was illegal and the decisions taken at that meeting were also illegal and invalid.

21. Under Section 87A (3) the District Magistrate acts as person designate and the power conferred upon him under that provision can be exercised by him alone and by no one else. In the present case it is submitted that both the notices, notice for 24th May, 1990 as well as 22nd May, 1990 were not issued by the District Magistrate and both the notices were, therefore, invalid resulting in invalidation of the meeting held on 22nd May, 1990 and also of the decision taken thereat.

22. The third ground of challenge is that there was neither individual notice to the Members of the Board nor general notice as prescribed under subsection (3).

23. The last ground of challenge is that the requirement of seven days notice was also breached inasmuch as the notice for the meeting of 22nd May, 1990 was issued on 18th May, 1990 by the Deputy Collector.

24. In support of his aforesaid submissions the Learned counsel for the petitioners, Sri B. K. Singh, has cited

(1) AIR 1958 Allahabad 374 (FB) *Mahesh Chandra and another Vs. Tarn Chand Modi*,

(2) 1968 Allahabad Law Journal 704 Jugal Kishore Paliwal Vs. District Magistrate and others,

(3) 1970 Allahabad Law Journal 978 kishore Goswami Vs. District Magistrate and others,

(4) 1974 Allahabad Weekly Reporter 246 Racha Raman Dhavat Prasad Singh Vs. District Magistrate Aligarh and others

25. The submissions of the learned counsel for the petitioners are countered by Sri Pradeep Kant, learned counsel for Dr. Naeem. He submits that under Section 21 of the General Clauses Act, 1897 the power to issue an order includes the power to amend, vary or rescind the order and, accordingly, the District Magistrate could alter the date of meeting from 24th May, 1990 to 22nd May, 1990. For this submission he relies upon AIR 1974 Allahabad 211 Ravi Kiran Jain Vs. Bar Council of U. P. He next submits that the fixation of the date 24th May, 1990 was an obvious error could be corrected without rendering the correction illegal or ummari. For this he relies upon 1971 Allahabad Law Journal 1349 Shyam Lal Vs. Ram Saroop and others. It is also his submission that the provision of Section 87A (3) relating to service of notice are recommendatory in nature and their violation will not invalidate either the meeting or the decisions taken thereat. Apart from citing Gyan Singh Vs. The District Magistrate, Bijnor and others (Supra), the learned counsel has cited 1991 Lucknow Civil Decisions 186 Jivendra Nath Kaul Vs. State of U.P. and others and (1991)1 UPLBEC 238 Om Prakash Yadav Vs. Collector, Etah and others.

26. It is also submitted by the learned counsel that the presence of the petitioners would not have altered the ultimate result of the meeting and, therefore, this court may not interfere in the matter. The learned counsel points out that the total membership of the Board is 24 out of which 13 attended the meeting and they all voted in favour of the motion. 11 members including the petitioners did not attend the meeting. Under subsection (12) of Section 87A the motion is required to be carried by a majority of more than half of the total number of members of the Board. Total number of members of the Board being 24, half of the membership was constituted by 12. 13 members having voted in favour of the motion the requirement of subsection (12) was fulfilled. Even if the remaining 11 members including the petitioners had attended the meeting and voted against the motion the decision would not have been altered.

27. Since the decision in Gyan Singh's case (Supra) is by a Full Bench of five Judges obviously the dictum laid down in this case will have to be followed in the present case. Accordingly, we may immediately proceed to examine the law laid down in this case.

28. The Full Bench of five Judges was constituted in Cyan Singh's case as a Full Bench of three Judges doubted the correctness of the view taken by an earlier Full Bench of three Judges in Mahesh Chandra" case. The facts of Cyan Singh's case were as follows.

29. The petitioner before this Court was the President of Municipal Board which consisted of sixteen elected members and the President. The President was not an elected member; he was an exofficio member of the Board. On 24th October, 1973 two members of the Board presented a notice of intention to move motion of no confidence to the district Magistrate. On 8th November, 1973 the District Magistrate convened meeting of the Board for consideration of the motion of no confidence to be held in the office of the Board on 24th November, 1973. The District Magistrate sent notices by registered post to all the members of the Board informing them about the date, time and place of the meeting but no registered notice of the meeting was, however, sent to the President at his place of residence. Instead, a copy of the notice was endorsed to the President by his designation for information and necessary action. This notice instead of being sent by registered post was sent by ordinary post and it was received in the office of the Nagar Palika on 14th November, 1973. The District Magistrate directed publication of the notice in two local Newspapers. He further directed the pasting of a copy of the notice on the Notice Board of the Municipal Board as well as the notice board of the Tahsil and Collectorate. The notices were published in the newspapers and they were also pasted on the notice board as directed. On these facts the plea of the petitioner was that the provisions of Section 87A (3) were mandatory and their noncompliance vitiated the motion of no confidence. It was contended on his behalf that since no registered notice was sent to him at his place of residence the mandatory provision of Subsection (3) of Section 87A of the Act was disregarded and consequently the motion of no confidence was rendered void. On behalf of the respondents it was pleaded that the provisions of Section 87A (3) were recommendatory in nature and they had been sufficiently complied with. In paragraph 9 of the report at page 319 the purpose of service of notice by registered post and publication of the notice has been dealt with. It has been observed as follows:

?9. The purpose of service of notice by registered post and publication of the notice otherwise is to ensure that members should get adequate notice of the meeting to enable them to participate in the debate over the noconfidence motion at the meeting. That purpose is not defeated if the notice is sent to the members not by registered post but by other methods and seven clear days are given to the members. The Legislature never intended that unless notice is sent by registered post to the members the proceedings of the meeting would be vitiated. The Legislature, no doubt, stressed that if the two steps as laid down in the subsection are taken by the District Magistrate, i.e., notice of the meeting is sent to members by registered post at their place of residence and further if it is published in the manner directed by the District Magistrate, a presumption would arise and every member shall be deemed to have received the notice of the meeting?..... The purpose of sending notice can be achieved even without sending the same by registered post?.....?

According to these observations, the purpose of prescribing the mode of service of notice is to raise a presumption of service. Once the prescribed mode has

been adopted, presumption of service will arise but the service otherwise made or knowledge otherwise acquired is not to be ignored by insisting upon the mode of service prescribed in the Act. Disagreeing with the decision of a learned Single Judge of this court in 1968 Allahabad Weekly Reporter 114 Vishwanath Tripathi v. State of U.P., the learned Judges observed in paragraph 15 at page 321 as follows:

¶15. We, however, do not agree with the observations of the learned Judge that the actual service of the notice of the meeting should be proved. It would be sufficient compliance with the provisions of section 87A (3) if notice is sent to the members and the members acquire knowledge about the time, date and place of the meeting.?

30. After reviewing several decisions of this Court the Full Bench finally makes the following observation in paragraph 18 regarding the scope of section 87A(3):

¶18. The above discussion shows that the preponderance of the Judicial opinion is that the second part of subsection (3) of Section 87A is directory, its literal compliance is not necessary. A substantial compliance in regard to service of notice of the meeting for consideration of the motion of noconfidence on the members will be sufficient and any literal noncompliance of the said provision will not invalidate the meeting or the motion of noconfidence which may be adopted at the said meeting. In view of the above discussion I am of the opinion that the second part of subsection (3) of S. 87A of the Act laying down manner for sending the notice to the members of the Board is directory while the first part of the said subsection requiring the District Magistrate to convene a meeting and to send notices to the members is mandatory. It would be sufficient compliance of the directory provision of this subsection if notice is served on the members not by registered post but by any other mode and in that situation the motion of noconfidence which may be carried at the said meeting cannot be nullified on the ground of any literal noncompliance of service of notice by registered post?.

From the above observations it is apparent that according to the Full Bench, Section 87A (3) is divisible into two parts. The first part deals with convening of meeting and sending of notices to the members, and the second part deals with the manner of sending the notice to the members. The first part has been held to be mandatory and the latter directory. The record produced before us has shown that the meeting was convened by the District Magistrate himself and he had himself fixed the date and time of notice. The record has further shown that the notices were issued to the members. Thus there was complete compliance of the mandatory provision. Regarding the manner of service of notice the record shows that the notices were not issued in the manner prescribed in Section 87A (3) but the notices actually issued were served on the members either personally or through someone at their residences. The record further shows that the petitioners had knowledge of the date and time of the meeting. Thus there was sufficient compliance of Section 87A (3) of the Act. Accordingly the meeting at which the motion of noconfidence was adopted cannot be said to be illegal.

Consequently the motion of noconfidence also cannot be said to be illegal or invalid.

31. In Gyan Singh's case (Supra) the scope of sub section (3) of Section 87A directly arose for consideration, In Mahesh Chandra's Case (Supra) upon which reliance has been placed by the learned counsel for the petitioner the question was neither raised nor discussed or decided as observed by the Full Bench in paragraph 10 of the Report in Gyan Singh's Case In view of this observation no detailed examination is required of the judgment of the Full Bench in Mahesh Chandra's case. It may only be pointed out that in that case the question primarily involved was whether there had been compliance of subsections (7) and (11) of section 87A or not.

32. Other authorities cited by the learned counsel for the petitioners may also be noticed at this very stage.

33. In Jugal Kishore Paliwal's case (Supra) it was held that the President despite knowledge of date and time of meeting was under no obligation to attend the meeting if no notice of the meeting was sent to him. This proposition has not been approved by the Full Bench in Gyan Singh's case (Supra). Specifically disagreeing with the observation the Full Bench says:

??...With great respect to the learned Judge I do not agree. In my opinion even if a member or the President of the Board may not be under a duty to attend the meeting convened for considering the motion of noconfidence in the President, in the absence of service of notice on him but in that event such a member or President will not be entitled to discretionary relief from this Court under Article 226 of the Constitution. It is well settled principle that a petitioner is not entitled to issue of writ as of right under Article 226 of the Constitution. The conduct of a petitioner is a relevant consideration in exercising the discretionary power of this Court under the said Article. In a case where the petitioner is found to have acquired knowledge of the meeting and if he voluntarily abstained from participating in that meeting it would not be sound exercise of jurisdiction under Article 226 of the Constitution to grant relief to the petitioner for nullifying the resolution of noconfidence which may have been passed by the majority of the members of the Board.?

The authority relied upon by the petitioner's learned counsel stands overruled by this observation. Reliance placed on the said authority is, therefore, misconceived.

34. Kishore Goswami (Supra) has been relied upon for the proposition that the function of fixing date and time of meeting and of determining the manner of publication of notice has to be performed by the District Magistrate himself and that the same cannot be delegated to anyone else. We agree that the date and time of the meeting has to be fixed by the District Magistrate himself as laid down by the five Judge Full Bench. However, there is no noncompliance of this mandatory requirement in the present case, as already observed hereinabove.

35. The purpose of publication of notice is the same as of sending notice by registered post viz. to ensure communication of the date and time of meeting. Since the requirement of sending notice by registered post is not mandatory, the requirement of publication of notice also cannot be held to be mandatory. Accordingly, nonpublication of the notice of meeting has not rendered the meeting and the noconfidence motion illegal.

26. It was stressed on behalf of the petitioners that seven days' time must intervene between the date of notice and the date of meeting. It is pointed out that the notice of the meeting held on 22nd May, 1990 was issued on 18th May, 1990 and thus only five days intervened, inclusive of the date of notice and the date of meeting. The period of seven days has been fixed for sending the notice by registered post. It has not been fixed for service of notice. It is very rarely that a notice sent by registered post is served on the addressee the day it is delivered to the postal authorities. Service of notice by registered post is bound to take two or three days. It is, therefore, not possible to hold that Section 87A (3) requires that a period of seven days must mandatory intervene between the date of notice and the date of meeting even when the notice is not sent by registered post. In the present case the notice was not sent by registered post and accordingly the reliance placed on the period of seven days by the learned counsel for the petitioner is misconceived. At any rate, the requirement of seven days falls in the latter part of Section 87A(3) and is directory. Accordingly, the notice dated 18th May, 1990 sent in pursuance of District Magistrate's order dated 14th May, 1990 cannot be faulted on the ground that it was given less than seven days prior to the date of meeting.

37. The mandatory requirements of Section 87A (3) may now be summarized as follows:

- (1) The meeting for consideration of the motion of noconfidence must be convened by the District Magistrate himself;
- (2) The District Magistrate must himself fix the date and time of meeting. However, fixation of date and time will not be vitiated merely because they were suggested by some other officer or official;
- (3) The date fixed must not be earlier than thirty days and not less than thirty five days from the date of delivery of motion of noconfidence to the District Magistrate;
- (4) Having fixed the date and time the District Magistrate must take steps which will ensure communication of the date and time to members. These steps need not be identical to the steps mentioned in Section 87A (3). Other modes of communication are not barred; and
- (5) The meeting must be held in the office of the Board.

38. The only question that now services for consideration is whether the District Magistrate had the jurisdiction to alter the date of meeting.

As already noticed, the date initially fixed was 24th May, 1990 and the same was subsequently altered to 22nd May, 1990. It was at the meeting held on the altered date that the motion of noconfidence was carried through,

39. Unlike a judicial or a quasi-judicial authority, an administrative authority exercising administrative powers can always alter, amend and review its earlier orders, especially to correct mistakes. Such a power has been specifically reserved under Section 21 of the U.P. General Clauses Act, 1904. If any authority is needed I may only cite 1971 Allahabad Law Journal 1349 Shyam Lal Vs. Ram Saroop and others and AIR 1974 Allahabad 311 Ravi Kiran Jain Vs. Bar Council of U P. and others. In the former case it has been observed in paragraph 10 of the report

"10?.....But an Administrative Authority exercising administrative powers has full jurisdiction to correct mistakes committed by it suo motu or at the instance of any party. Besides, that whenever a mistake is committed by an administrative authority, it would be in public interest to correct the same as expeditiously as possible in order to avoid perpetration of injustice.""

In the case on hand, the petitioner's own case is that the date originally fixed for consideration of motion of noconfidence was not correct in view of the provision contained in Section 87A (3). Thus the alteration of date of the meeting by the District Magistrate was to correct a mistake. By application of this authority the District Magistrate did not commit any illegality in advancing the date of meeting. In the latter case it has been observed in paragraph 8 of the report

"?.....It is well accepted principle of legislation that whenever power is conferred on an authority to issue an order or notification that power would include power to amend, vary or rescind its order subject to the like sanctions and conditions if any?.....?"

40. Faced with the above situation, learned counsel for the petitioners tried to argue that while fixing date and time of meeting the District Magistrate exercises quasi-judicial powers. The learned counsel has not been able to satisfy us that the exercise of power is quasi-judicial. While fixing the date and time the District Magistrate does not decide disputes between two persons. The exercise of power would be judicial or quasi-judicial when some dispute is required to be decided. In the present case while fixing the date the District Magistrate does not decide any dispute. Accordingly we are unable to hold that the exercise of power by the District Magistrate was quasi-judicial and, therefore, the date and time of meeting could not be altered.

41. Article 226 of the Constitution confers equity jurisdiction upon this Court. In exercise of this jurisdiction this Court does not interfere where substantial justice has been done or where the conduct of a party has not been fair. In the present case the conduct of the petitioners disentitles them to reliefs as they, despite knowledge of date and time of the meeting, did not attend the same. The motion of noconfidence has been carried through by the requisite majority. This factor

too disentitled the petitioners to relief. The scope of equity jurisdiction of this Court in granting relief has been discussed in Gyan Singh's case (Supra) as also in 1991 Lucknow Civil Decisions 186 Jivendra Nath Kaul Vs. State of U.P. and others and (1991) U.P.L.B.E.C. 238 Om Prakash Yadav Vs. Collector, Etah and others. We are in complete agreement with the view taken in these cases. By application of the law laid down in these cases also the petitioners are not entitled to any relief.

42. In view of the above the petitions are dismissed. The parties shall bear their own costs. Interim order, if any, shall stand discharged.

(Petition dismissed)