
(2004) 04 AP CK 0070
In the Andhra Pradesh High Court
Case No : Writ Petition No. 19386 of 2003

K. Sujatha

APPELLANT

Vs

Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 345
Andhra Pradesh Panchayat Raj Rules, 1994 — Rule 2, 3

Citation : AIR 2004 AP 400 : (2004) 3 ALD 1 : (2004) 3 ALT 682 : (2004) 2 APLJ 330

Hon'ble Judges : Devinder Gupta, C.J.;G. Rohini, J;C.V. Ramulu, J

Bench : Full Bench

Advocate : O. Manohar Reddy, for the Appellant; Government Pleader for Panchayat Raj and K. Vinay Kumar, for the Respondent

Judgement

Devinder Gupta, C.J.—The writ petition is filed challenging the notice-dated 28.8.2003 issued by the Revenue Divisional officer, Peddapalli to the petitioner who is the elected President of Mandal Parishad, Sreerampur Mandal, Karimnagar District, intimating her that the meeting of the Mandal Parishad will be convened on 15.9.2003 at 11.00 a.m for considering the Motion of No-confidence moved against her.

2. At the time of hearing before the learned Single Judge, learned Counsel for the petitioner placed reliance upon the Judgment of this Court in W.A. Nos. 1755 and 1579 of 2003 (B. Ananda Reddy v. The Revenue Divisional Officer. Jagtial) dated 16.10.2003 wherein, interpreting Rule 3 of the Rules relating to Motion of No-Confidence in Upa-Sarpanch of Gram Panchayat or Vice-President/President of Mandal Parishad or Vice-Chairman/Chairman of Zilla Parishad as notified in G.O. Ms. No. 200 P.R.&R.D. (Mandal-I) (hereinafter referred to as "the Rules") dated 28.4.1998, it was held that service of notice of fifteen days clear notice as contemplated in Rule 3 of the Rules is mandatory and insufficiency of the notice in Form No. V annexed to the Rules shall make the meeting and the proceedings taken thereunder as nullity. It was further held that fifteen days clear notice

would mean that there shall be clear fifteen days time from the date of service of the notice till the date of meeting excluding the date of service of notice and the date of such proposed meeting of Motion and that issuance of such notice is mandatory. Learned Single Judge noticed that in *Shyabuddinsab Mohidinsab Akki Vs. The Gadag-betgeri Municipal Borough and Others*, and *K. Narasimhiah Vs. H.C. Singri Gowda*, . Supreme Court has held that unless it is shown that prejudice is caused by irregularities in service of notice, the proceedings cannot be interfered with and that the judgments of the Supreme Court were not brought to the notice of the Division Bench in *Anandareddy's* case. Learned Single Judge also referred to a Full Bench decision of the Orissa High Court in *Sarat Padhi Vs. State of Orissa and Others*, , wherein considering similar provisions of Orissa Gram Panchayat Act, 1964, it was held that requirement of giving the notice, fixing the margin of time between the date of the notice and the date of the meeting are mandatory, but the notice of service on the members is only directory and failure by any member to receive the notice at all or allowing him less than 15 clear days notice before the date of the meeting will not render the meeting invalid. Learned Single Judge also made reference to a decision of the Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan* (1997) 7 SCC 510, that mere issuance of notice u/s 138 of the Negotiable Instruments Act, 1881 is sufficient compliance irrespective of the fact it is received or not. Reference was also made to decisions of the Supreme Court in *State of Punjab Vs. Khemi Ram*, and *State of Punjab v. Balbir Singh* (1976) 3 SCC 342, for the proposition that once an order is issued and is sent to the concerned Government servant, it must be held to have been communicated to him and it does not matter when it is actually received by the recipient.

3. On consideration of the material placed before the Court and the aforesaid decisions, learned Single Judge was of the view that the issue, whether service of notice with clear fifteen days on every member of Gram Panchayat or Mandal Parishad or Zilla Parishad, as the case may be, is mandatory or only directory has to be reconsidered and accordingly by order dated 24.2.2004 directed the writ petition to be placed before the Chief Justice for appropriate orders.

4. When the writ petition came up before the 1st Division Bench, considering the importance of the question, the Bench opined that the decision of this Court in *Anandareddy's* case needs reconsideration on the interpretation of Rule 3 of the Rules relating to Motion of No-confidence and accordingly directed that the matter be placed before a Full Bench. This is how the question has been referred to this Bench.

5. We heard the learned Counsel for the parties and have also gone through the material on record.

6. The Rules have been framed in exercise of the powers conferred by subsections (1) and (2) of Section 245 read with Sub-section (1) of Section 268 of A.P. Panchayat Raj Act, 1994 (Act No. 13 of 1994) (hereinafter referred to as "the Act"). Section 245 is the substantive provision as regards the Motion of No-

confidence in Upa-Sarpanch or President or Vice-President or Chairperson or Vice-Chairperson of Gram Panchayat, Mandal Parishad and Zilla Parishad respectively and it provides that such a Motion expressing No-confidence may be made by giving a written notice of intention to move the Motion in such form and to such authority, as may be prescribed and signed by not less than one half of total members of Mandal Parishad and further action on such notice shall be taken in accordance with the procedure prescribed. The first proviso prohibits that no notice of Motion shall be made within two years of the date of assumption of office by the person against whom the Motion is sought to be made and the second proviso further stipulates that no such notice shall be made against the same person more than once during his term of office, Sub-section (2) of Section 245 says that if the Motion is carried with the support of two thirds of the total number of members, notification will be issued by the competent authority removing the person concerned from office and that resultant vacancy shall be filled in the same manner as a casual vacancy.

7. Rules prescribe the manner and method of moving of Motion and the details of further action to be taken on such notice. Rule 2 of the Rules inter alia states that the notice of the intention to make the Motion shall be in the prescribed form annexed to the rules and such notice together with a copy of the proposed Motion shall be delivered in person by any two of the members who signed such notice to the Revenue Divisional Officer or Assistant Collector, as the case may be. The follow up action, which is required to be taken on the notice of Motion by the officer concerned, is laid down in Rule 3.

8. Rule 3 of the Rules says that the concerned officer shall convene and preside over a meeting for consideration of the Motion on a date appointed by him, which shall not be later than 30 days from the date on which notice under Rule 2 was delivered to him. Rule further stipulates that the officer shall give to every member of the Gram Panchayat, Mandal Parishad or Zilla Parishad, as the case may be, notice of not less than fifteen clear days excluding the date of notice and date of proposed meeting in the prescribed form annexed to the rules. Sub-clauses (a) to (d) of Rule 3 prescribe various modes of delivery of notice. The proviso to Rule 3 stipulates that where the holding of such meeting is stayed by an order of a Court, it shall be adjourned, and the said officer shall hold the adjourned meeting on a date not later than thirty days from the date of which he received the intimation about the vacation of stay and after giving to the members, a notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of such adjourned meeting.

9. In order to fully appreciate the submissions made at the bar, it is necessary to examine the true purpose of Rule 3 of the Rules which is quoted below:

3. The concerned officer specified in Rule 2 (hereinafter in this rule referred to as said officer) shall then convene and preside over a meeting for the consideration of the office of a Gram Panchayat, or at the Mandal Parishad or at the Zilla Parishad, as the case may be, on a date appointed by him which shall not be

later than thirty days from the date on which the notice under Rule 2 was delivered to him He shall give to every member of Gram Panchayat, Mandal Parishad or Zilla Parishad, as the case may be, the notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of such meeting in Form IV, or in Form V or in Form VI annexed to these rules either" in English or in Telugu or in Urdu language, whichever is applicable. Every such notice shall be delivered in as specified below, namely:

- (a) by giving or tendering such notice to such member, or
- (b) if such member is not found, by leaving such notice at his last known place of residence or business or by giving or tendering the same to some adult member or servant of his family; or
- (c) if such member does not reside in the Gram Panchayat area or Mandal Parishad area, or within the District and if his address is known to the District Panchayat Officer/Chief Executive authority/Collector or the Sarpanch of the Gram Panchayat to be elsewhere, by sending the same to him through registered post with acknowledgement due; or
- (d) if none of the means aforesaid is available or if the persons referred to in clauses (a) and (b) refuse to receive the notice, by affixing the same at some conspicuous part of his place of residence or business:

Provided that where the holding of such meeting is stayed by an order of a Court, it shall be adjourned and the said officer shall hold the adjourned meeting on a date not later than thirty days from the date on which he received the intimation about the vacation of stay and after giving to the members, a notice of not less than fifteen clear days excluding the date of the notice and the date of the proposed meeting of such adjourned meeting.

10. Other important rules to be noticed are Rules 4 to 9. Rule 4 says that a meeting convened for the purpose of considering a Motion shall not be adjourned for any reason. Rule 5 says that the meeting shall not be convened on a holiday. Rule 6 prescribes that two thirds of total number of members shall be the quorum for such meeting. In case within one-hour after the time appointed for the meeting there is no quorum, as per Rule 7, the meeting shall stand dissolved and the notice given under Rule 2 shall lapse. Rules 8 and 9 deal with the actual procedure to be followed at the meeting. Rule 8 says that as soon as the meeting is convened, the Officer shall read to the members present in the meeting the Motion for the consideration of which the meeting has been convened and shall put it to vote without any debate and voting shall be by show of hands. Rule 9 prohibits the Officer to speak on merits of the Motion and that the Officer shall not be entitled to vote thereon.

11. In Anandareddy's case, the decision of the Supreme Court and of the Full Bench decision of the Orissa High Court were not brought to the notice of the Division Bench. The Division Bench, however, placed reliance upon the Full Bench

decision of the Karnataka High Court in C. Puttaswamy, etc. Vs. Smt. Prema, etc., and the decision of the Supreme Court in Babu Verghese and Others Vs. Bar Council of Kerala and Others, . The Division Bench has also noticed the stand taken by the official respondents and the decision relied upon by them in Jai Charan Lal Vs. State of U.P. and Others, and of this Court in Ch. Venkata Rao v. R.D.O. 1997 (6) ALD 514, and Yenireddy Raghava Reddy Vs. Government of A.P., Secretary, Panchayat Raj Department Secretariat, Hyderabad and others, . Two of us viz., Chief Justice and C.V. Ramulu, J comprised the Division Bench. Counter-affidavit had been filed in the said case on behalf of the Government. There was a short fall in the period of fifteen clear days notice. The reasons which were assigned by the Division Bench on a literal interpretation of Rule 3 are that the purport of the fifteen days clear notice seems to make up one's own mind by critically analysing the situation and to participate in the No-confidence Motion with clear mind. It was further held that fifteen days clear notice would mean that there shall be clear 15 days time from the date of service of the notice till the date of meeting excluding the date of service of notice and the date of such proposed meeting of Motion. On such literal interpretation, it was held that since rules provide for fifteen days clear notice, which is the only rule on the subject, it must be held that it is mandatory and shortfall in notice will render the proceedings and the meeting a nullity.

12. We may now consider the decisions cited before us. Though the decision in Shyabuddinsab's case may not be relevant to the controversy in question inasmuch as the provisions of the Bombay Municipal Boroughs Act were not similarly worded and the question involved therein is slightly different, but the decision of the Supreme Court in Narasimhaiah's case and the Full Bench decision of the Orissa High Court in Sarat Padhi's case are apt and the provisions of law dealt with therein are quite near to the provisions under consideration by us.

13. In Narasimhaiah 's case, the appellant was elected as President of Municipality on 11th September, 1962 and at a special general meeting of the Council held on 14.10.1963, a resolution was passed expressing No-confidence in him. He approached the High Court of Mysore seeking quashing of the notice of the meeting. Municipality had 20 Councillors. Thirteen out of them sent a request to the President to convene a special general meeting to discuss the resolution expressing No-confidence in him as President. Request was handed over to the President on 25th September, 1963. President did not act on the notice, but the Vice-President acted and called meeting of the Council to discuss the resolution. A notice under the Vice-President's signature proposing to hold a special general body meeting on 14.10.1963 was sent to the Councillors. A copy of notice was also pasted on the notice board of the Municipal Office as per provisions of Mysore Town Municipalities Act, 1951. It bore the date 10th October, 1963. Notice was personally served on fifteen Councillors on 10.10.1963. On three Councillors, notice was served on 13th October and on the other two it was served on 11th and 12th October, 1963. When meeting was held on 14.10.1963,

19 out of 20 Councillors were present. President was amongst them, He claimed to preside over the meeting but ultimately he appears to have left the meeting. Meeting was presided over by the Vice-President and the No-confidence Motion was carried. Challenge to the legality of the proceedings, inter alia, was on the ground that the requisite three days notice was not served on all members and so the meeting was not validly held. We need not take notice of the other grounds. The High Court considered the question, whether failure to serve three days notice of the meeting on all Councillors would render the proceedings invalid. Following an earlier decision in a writ petition, the High Court rejected the contention of the petitioner therein, but took the view that as the notices were sent on 10th October, therefore, they must be held to have been served on the same date even though they were actually served on 11th, 12th and 13th October. Apart from this, the High Court also opined that provision about three days notice is only directory and not mandatory and so the omission to give notice would not affect the validity of the resolution. The matter was carried to the Supreme Court. The main contention urged before the Supreme Court was that three days notice of the special general meeting was not given and so the meeting was invalid. Supreme Court disagreed with the view taken by the High Court that sending of the notice amounts to giving the notice. The Supreme Court held:

11. "Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th October. In our opinion, the notice given to five of the Councillors was of less than three clear days.

14. After holding that the opinion of the High Court was wrong in thinking that the notices were sent on 10th October to all the members, Supreme Court held that notice given to five Councillors was of less than three clear days. The Supreme Court held that requirement of the rule was to give notice, which ordinarily would mean that it must reach the hands of the person to whom it has to be given. But the question, which the Supreme Court then considered, was as to whether the provision of three clear days notice is mandatory, namely, does the failure to give such notice make the proceedings of the meeting and the resolution passed therein invalid. On that the Supreme Court observed:

"The question then is: Is the provision of three clear days" notice mandatory i.e., does the failure to give such notice make the proceedings of the meeting and the

resolution passed, there invalid? The use of the word "shall" is not conclusive on the question. As in all other matters of statutory construction the decision of this question depends on the ascertainment of the legislature's intention. Was it the Legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what is done invalid in law? That is the question to be answered, To ascertain the intention the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part. In *State of U.P. v. Manmohan Lal Srivastava* where the question arose whether the provisions of Article 320(3)(c) of the Constitution are mandatory (which provides that the Union Public Service Commission or the State Public Service Commission shall be consulted on certain disciplinary matters), this Court laid stress on the fact that the proviso to the article contemplates that the President or the Governor as the case may be make regulations specifying the matters in which either in general or in any particular class or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted. Speaking for the Court Sinha, J., observed:

"If the provisions of Article 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Excessive Government to undo those provisions by making regulations to the contrary."

15. On making the aforementioned observations, the Supreme Court noticed that while the Mysore Town Municipalities Act do provide three days clear notice of special general meeting to be given to Councillors, it was also provided therein that in case of great urgency notice of such shorter period as is reasonable should be given to the Councillors of the special general meeting. It was also found that Section 36 of the said Act also laid down that no resolution of a municipal Council or any committee shall be deemed invalid on account of irregularity in service of notice upon any Councillor or member provided that the proceedings were not prejudicially affected by such irregularity. In the light of these provisions, the Supreme Court held:

"It is reasonable to think that the service of notice mentioned in this provision refers to the giving of notice to the Councillors. Quite clearly, any irregularity in the manner of giving the notice would be covered by the words "irregularity in the service of the notice upon any Councillor". It appears to us however reasonable to think that in making such a provision in Section 36 the legislature was not thinking only of irregularity of the mode of service but also of the omission to give notice of the full period as required.

16. The Supreme Court thus noticed that existence of provisions of Section 36 as also of the provision that in case of greater urgency notice of shorter period as is reasonable could be given would show the intention of the legislature that if some of the members have been given less than three clear days notice that itself would not make the proceedings of the meeting or resolution passed

therein invalid. The proceedings would be invalid only when the proceedings were prejudicially affected by any irregularity. The Supreme Court also found that since out of 20 Councillors 19 attended the meeting and out of them fifteen Councillors have voted in favour of the resolution, therefore, there was absolutely no reason to conclude that the proceedings were prejudicially affected.

17. A Full Bench of Karnataka High Court in C. Puttaswamy's case (supra) also considered the question that whether the provision u/s 47(3) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 requiring the Deputy Commissioner to give to members of a Mandal Panchayat notice of a meeting for consideration of a Motion of No-confidence against the Pradhan or Upa-Pradhan of not less than 15 clear days of such meeting is mandatory or directory. Provisions in the Karnataka Act as regards conduct of meeting are almost *pari materia* the provisions of the A.P. Panchayat Raj Act. The Full Bench of Karnataka High Court considered the legal proposition as regards the difference between a mandatory rule and directory rule and then interpreted Section 47 of the Karnataka Act holding that it is a complete code in itself providing for the period of notice, having regard to the importance of the elective office of the Pradhan and Upa-Pradhan needing to ensure their stability in office and that the high elective office ought not to be easily disturbed so that the functioning of the Mandal Panchayat is not disrupted easily. The Full Bench in Para 14 of the judgment noticed that though Section 47 itself does not specify the penal consequence of a notice of shorter period than the period stated therein, but that alone would not make any difference. Relying upon the ratio of the decision of the Supreme Court in *Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others*, , the Full Bench of Karnataka High Court held that the wording of any provision was not determinative of whether it was absolute or directory. Even the absence of a penal provision for non-compliance would not lead to the inference that it was only directory. The Court had to get to the underlying idea and ascertain the purpose to be achieved, notwithstanding the text of the provision. Thus, it was held that the provisions of Section 47(3) of the Karnataka Act of serving notice of not less than fifteen clear days is mandatory.

18. The Full Bench of the Orissa High Court in *Sarat Padhi's case* (supra) also examined the question, whether the period of at least fifteen clear days fixed for covering a meeting by giving a notice for consideration of the resolution of want of confidence in Sarpanch/Naib-Sarpanch, as the case may be, as provided u/s 24(2)(c) of the Orissa Grama Panchayat Act, 1964 is mandatory in nature. Section 24 of the Orissa Act also contained similar provision as regards giving of notice. It also simultaneously provided that the proceedings of the meeting shall not be invalid merely on the ground that notice has not been received by any member. Sub-clause (e) of Sub-section (2) of Section 24 enjoins upon the Sub-Divisional Officer to give notice of Motion of No-confidence to all the members holding office on the date of such notice along with a copy of the requisition and of the proposed resolution, at least fifteen clear days before the date so fixed.

The section also provides the mode of giving the notice. It was provided that notice shall be sent by post under certificate of posting and a copy thereof shall be published at least seven days prior to the date fixed for the meeting in the notice Board of the Samiti. The Full Bench then noticed the scheme of the notice contemplated u/s 24(2)(c) and divided it into three parts, namely, (a) requirement of giving the notice (b) fixing the margin of time between the date of the notice and the date of the meeting and (c) service of notice on the members. The Full Bench held that the first two parts, namely (a) duty to issue the notice and (b) margin of clear 15 days between date of notice and date of meeting are mandatory and held if there is any breach of these two conditions the meeting will be invalid without any question of prejudice. The Court then proceeded to examine the third question i.e., mode of service or failure of any member to receive the notice at all or allowing him notice of less than 15 clear days before the date of meeting and held that the same will not render the meeting invalid. This requirement was held to be only directory. The basis for coming to the conclusion being a sound public policy as in that event any delinquent Sarpanch or Naib-Sarpanch can frustrate the consideration of the resolution of No-confidence against him by tactfully dealing or avoiding the service of the notice on him and thus frustrate the holding of the meeting and also took aid of Sub-clause (e) of Sub-section (2) of Section 24 wherein the Legislature had expressed its opinion that the proceedings of the meeting shall not be invalid merely on the ground that the notice has not been received by any member.

19. A learned Single Judge of this Court in *Sri Challapureddy Venkata Rao v. Revenue Divisional Officer, Vizaianagaram and Anr.*, 1997 (6) ALD 514, also examined Rule 3 of the Rules and also the four modes of effecting of service. As regards the three modes of serving notice, first by giving or tendering of notice to the member and second tendering to an adult member of the family and third by fixing at the residence of the member, learned Single Judge observed that, it is possible to ensure that notices are served on the same day on all the members by giving them on that very date i.e., by serving on the member himself or on the adult member of the family or the servant if he is available or even by affixing at the residence if no one is available. But in case notice is sent by registered post, it is not possible to ensure that all notices are served on the same day on all members. A situation will, therefore, arise in case of despatch by post, that even though on the date of issue or despatch of the notice, there will be more than 15 clear days till the date of the meeting, but the period will be considerably reduced if there is postal delay in the service of the notice. Reference was then made to the decision of the Supreme Court in *Jai Charanlal's* case wherein it was held that the word "sent" shows the critical date of the despatch of notice and the fact that it was delivered subsequently thereby reducing the period of 30 clear days required did not vitiate the meeting. Therefore, where notice of meeting is despatched, the notice can be deemed to have been served on the day after the date of its posting. On this analogy, learned Single Judge observed

that when in the case of service of notice by registered post, the postal delay is to be disregarded and the period of fifteen clear days of notice is to be counted from the date of sending the notice until the date of the meeting, can the situation be different where notices are sent by hand delivery? In that view of the matter, the learned Single Judge held that when postal delay is disregarded, the same manner of counting should also be applied in the case of hand delivery. Requirement of fifteen clear days notice thus was held as not mandatory and simultaneously he proceeded to hold that unless real prejudice is demonstrated, the meeting is not vitiated by any inadequacy in the period of notice. Learned Judge also concluded that the period of notice has to be taken from the date of despatch when either of the modes are resorted to and it is immaterial when it is served upon the members. In case there is shortfall in the period of service of notice unless prejudice is demonstrated proceedings are not vitiated.

20. A Division Bench of this Court in *Yeni Reddy Raghava Reddy Vs. Government of A.P., Secretary, Panchayat Raj Department Secretariat, Hyderabad and others*, , also considered the question relating to sending of copy of Motion in Form No. III as provided in Rule 3 of the rules and that whether serving of notice is directory or mandatory and observed that Legislature has not provided that non-compliance of procedural provisions of service of notice or the form of notice would render the vote of No-confidence invalid and opined that the object of procedural law is to apprise the member that vote of No-confidence would be held on a particular date and at a particular time for consideration of Motion of No-confidence. It is only the intention of the proposer, which has to be notified to the members. It was also observed that in an election, the right of the elected person is neither a fundamental right nor an equitable right. It is a statutory right and can be exercised or taken away strictly in terms of the statute and since the object of the statute is only to notify to the members of the time and place of the meeting for consideration of the proposal unless prejudice is shown to have been caused, Motion will not become invalid. In that case proceedings of the meeting had already taken place. Out of twelve members eight members voted in favour of Motion of No-confidence. Court thus held that notice being only directory mere use of the word "shall" cannot give rise to it being a mandatory in the facts and circumstances of the case especially when no consequence of non-compliance has been provided by the Legislature.

21. We need not examine the other cases cited at the bar, which do not at all support the submissions made on either side for or against the propositions addressed.

22. Having analysed the rules we find that the scheme of issuing notice of meeting to every member provided when notice of Motion of No-confidence is submitted, can be divided into separate parts. After the notice of intention to move Motion has been submitted in the requisite form to the concerned authority under Rule 2, the said Officer thereafter under Rule 3 is required to convene and preside over a meeting for consideration of the Motion. He is required to convene

and preside over the meeting, which shall not be later than thirty days from the date on which the Motion of notice was delivered to him. We are not concerned with this part of Rule 3 of the Rules. We are concerned only with the later part of Rule 3, which enjoins upon him to give to every member notice of not less than fifteen clear days and about the consequences of non-compliance of this provision. First requirement of this part of Rule 3 is of giving notice to every member. The second requirement is the period of notice of not less than fifteen clear days excluding the date of notice and the date of proposed meeting. The third portion of the rule is about the different modes of delivery or effecting of service of notice. Insofar as the first portion is concerned, there is no dispute and it must be held that the Officer concerned must give and is bound to give notice of Motion to every member in requisite form annexed to the Rules, which requirement is mandatory. There is also no dispute as regards the second portion that there should be fifteen clear days available between the two relevant dates i.e., the date of notice and the date of proposed meeting. This portion of Rule 3 is also mandatory inasmuch as the concerned officer cannot act in a manner of even issuing notice of a period of less than fifteen clear days. Both the portions being mandatory in nature, breach of these two conditions would make the meeting as well as the proceedings taken therein invalid.

23. The crucial question to be answered is about the delivery of the notice. The concerned Officer as per Rule 3 is required to give notice in the prescribed form and "shall be delivered to the member," as specified in the said rule namely, (a) by giving or tendering such notice to such member, or (b) if such member is not found, by leaving such notice at his last known place of residence or business or by giving or tendering the same to some adult member or servant of his family; or (c) if such member does not reside in the Gram Panchayat area or Mandal Parishad area, or within the District and if his address is known to the District Panchayat Officer/ Chief Executive Authority/Collector or the Sarpanch of the Gram Panchayat to be elsewhere, by sending the same to him through registered post with acknowledgment due; or (d) if none of the means aforesaid is available or if the persons referred to clauses (a) and (b) refuse to receive the notice, by affixing the same at some conspicuous part of his place of residence or business.

24. The first mode of delivery is personal delivery to the member by tendering notice to him. The second mode being that in case such member is not found by the person who has been deputed to deliver the notice, the said person is required to leave that notice at his last known place of residence or business or even by giving or tendering it to some adult member or servant of the family. The third mode of delivery of notice is by sending it by registered post with acknowledgement due. Such mode can be resorted to only when the member does not reside in the Gram Panchayat area or Mandal Parishad or within the District and if his address is known to District Panchayat Officer or Chief Executive Authority/Collector or Sarpanch of the Gram Panchayat. In case service by the first two modes is not permissible and third mode of service by post can also not be resorted to, there is the mode of serving the notice by affixing it at

some conspicuous part of his place of residence. This mode of affixation can be resorted to only if the member or any adult member or servant of the family of the member though available at the time of tendering notice but refuses to receive the notice. The notice can be affixed as indicated above. This mode need not be adopted in case member is not residing in the concerned area.

25. In Narasimhaiah's case (supra), the Supreme Court clearly held that giving of anything is not complete unless it reaches the hand of the person to whom it is given and in the eye of law giving is complete in many matters once it has been offered. Delivery of notice in the present case would be by various modes as provided in Rule 3. But there is neither any authority nor any principle for the proposition that insofar as the modes provided in clauses (a), (b) and (d) are concerned that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. Notice is required to be given in the mode and manner provided in the rule. The date of despatch when either of the modes provided in clauses (a), (b) and (d) is resorted to would not be relevant. The date of despatch would be relevant only in case of mode as provided in Clause (c) of Rule 3 is resorted to. Clause (c) authorises the Officer concerned to "send" the notice through registered post, if such member does not reside in the Gram Panchayat area or Mandal Parishad area or within the District and his address is known. As regards the mode of sending the notice by post the date of despatch is relevant. We are concerned with the question of shortfall in the days available to the member from the date notice is received by him.

26. Whether the rule is mandatory or not the use of the word "shall" in the rule cannot be considered to be conclusive. The Supreme Court in Narasimhaiah's case (supra) held that to ascertain the intention of the Legislature or the rule making authority, the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part.

27. The ordinary meaning of the word "notice" is knowledge, information or announcement. Therefore, the purpose and object of issuing the notice is to give due intimation of the proposed meeting of No-confidence motion to all the members of the Panchayat or Mandal Parishad or Zilla Parishad and to make it possible for the members to adjust their work in such a manner so as to enable them to attend the proposed meeting of No-confidence Motion. Once the member receives intimation, he is not required to make any further preparation for the purpose of meeting except by making himself available in the meeting. Rule 8 says that the proposed Motion will be put to vote without any debate and voting would be by show of hands. In case no preparation is required to be made by the member for the meeting except by presenting himself in the meeting, whether the member gets shorter period of time than fifteen days or not is irrelevant and meaningless. Had some discussion to take place or debate to

follow, the matter would have been slightly different. Even the submission that holding the rule to be mandatory might lead to a situation of certain members interested scuttling the purpose is of no relevance inasmuch as in case a section of members is interested to scuttle the Motion, the purpose can be served differently. Mere causing delay in accepting the notice within the requisite period of fifteen days is not the only mode of scuttling the meeting. Such section of the members can , conveniently avoid attending the meeting so as to ensure that quorum is not complete when meeting is called to order, because as per Rule 7 of the rules if within two hours there is no quorum, the notice shall stand lapsed.

28. The purpose and object of giving notice of consideration of No-confidence Motion is only to give due intimation to the members or information of the proposed meeting. Therefore, the fact that a member has got a shorter period of notice than fifteen clear days from the date of receipt of the notice would not matter. When notice is sent by post and the law permits the date of sending of notice to be treated as the date of delivery in that case obviously the period available to the member will be shorter than fifteen clear days from delivery to meeting, therefore, there is no reason why the Rule 3 be held to be mandatory as regards the service of notice. Unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken thereunder would be said to be invalid. It is only in the eventuality of prejudice being shown that the meeting or the proceedings taken thereunder can said to be invalid. The Legislature has rightly not provided in the rule that non-compliance of any shortfall in the notice would render the meeting or the proceedings taken thereunder to be invalid. Had that been the intention, the Legislature, obviously, would have provided since the law had been clearly settled by the time the Act was enacted and the Rules were framed by the judgment in Narasimhaiah's case (supra). In that view of the matter, we are of the opinion that the ratio of the judgment of the Division Bench of this Court laid down in Anandareddy's case (supra) that non-service of notice of fifteen clear days would make the meeting and the proceedings taken thereunder null and void cannot be said to be the correct law.

29. We answer the reference accordingly.

30. The matter may be placed before the appropriate Bench for disposal on merits and in the light of the answer to the reference.