

(1998) 12 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 41946 of 1998

Narendra Bahadur Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 87A

Citation : (1999) 1 AWC 609 : (1999) 1 UPLBEC 184

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : R.K. Jain and L.P. Singh, for the Appellant; B.N. Mishra and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

R.S. Dhavan and V.P. God, JJ.—This petition has been filed by the President of the Nagar Panchayat, Sahatwar, district Ballia. He faces a no-confidence motion, but seeks a certiorari action that the intention of making a motion of no-confidence is not in conformity of the law, and it should be quashed. The meeting to consider a motion of no-confidence has been scheduled for 18th December, 1998.

2. Bringing in a motion of no-confidence has been provided in Section 87A of the U. P. Municipalities Act, 1916. By this writ petition, it is contended that, firstly, Section 87A of the Act is ultra vires to certain provisions of the Constitution (Seventy-fourth) Amendment Act, 1992 and secondly, that the motion of no-confidence as has been Initiated is irregular, illegal and suffers from jurisdictional errors and incompatible with the procedure prescribed.

3. In so far as the first aspect is concerned, i.e.. permitting submissions on the question whether Section 87A of the Act may be ultra vires to the Constitution or not. the Court is not examining this aspect of the matter, as in the circumstances of the present case, this academic is not necessary.

4. Now adverting to the second aspect : The intention to make a notice of no-confidence against the petitioner as a President is dated December 16, 1998. It is signed by twelve persons. At present, the circumstance on who moved the resolution to make a motion of no-confidence is not relevant. What is relevant is that the notice of intention to make a motion of no-confidence against the President, regard being had to the circumstances that it has been signed by the requisite and correct number of persons, ought to be present to and received by an authorised person. Section 87A of the Act refers to the manner of initiating a motion and its delivery to the authorised person. The authorised person is the District Magistrate, When his intention to make a motion of no-confidence is to be delivered, then there is an obligation that it is to be delivered in person together by any two of the members signing the notice. Simultaneously, it is implied that such a notice when presented, the District Magistrate is obliged to receive it. If this procedure has been followed correctly, then the District Magistrate in accordance with the time prescribed is obliged to convene a meeting for consideration of the motion to be held at the office of the Board of the local body.

5. In the present case, the meeting has yet to be held. The fact that the District Magistrate has convened a meeting on 18.12.1998 is not the subject-matter of issue in this petition. But, the written intention of making a motion of no-confidence against the President, and its delivery, receipt and response is questioned by this petition. This notice was received by a person who was an all time deputy acting for the District Magistrate as incharge local bodies" affairs. He is the Deputy Director of Consolidation. a functionary under the U. P. Consolidation of Holdings Act, 1953. The Court could ignore this aspect on the ground that it is irrelevant, as what ultimately does matter Is the consideration of the motion of no-confidence at the scheduled meeting where all the members of the local body will have an opportunity to have their say. But the consideration of the notice by members of the local body is not the issue. Its genesis and foundation in its presentation is in question. The Court cannot spell out an interpretation that the District Magistrate may not receive the notice or that he could delegate his functions. The Act has not provided it so and left the matter as simple as the plain text.

6. The Court has heard learned counsel for the petitioner. Mr. Ravi Kiran, Senior Advocate, instructed by Sri L. P. Singh. Advocate and the learned standing counsel, U. P., Mr. B. N. Mishra, learned standing counsel has fairly conceded that a deviation with the procedure as has been prescribed in the Act, on the delivery of the notice to the authority named does not permit delegation by the authority, in this context. On behalf of the petitioner, it is also accepted that in the absence of the District Magistrate from his posting, by leave, transfer or otherwise, the officer designated as District Magistrate for all his functions would for all purposes be the District Magistrate. Such is not the circumstance in the present case.

7. The State of Uttar Pradesh has already had a very long session of superseded local bodies, whether Municipalities or Panchayats. A generation of it's population grew without an experience of local-self government, the grassroot of democracy. Under our Constitution, the civil service is not disconnected with the functioning of democracy at all levels, which in its functioning must not be taken lightly but ensured. There ought not to be innovative procedures of shirking responsibility in the functioning of local-self government, more so when prescribed by the law. If the law had intended that a written notice of intention to make a motion of no-confidence in the President of the local body shall be delivered to the District Magistrate, then the necessary corollary is that there is an obligation on the District Magistrate to receive such a notice.

8. On the Constitution being amended with chapters on local-self government inserted these are the basic features provided by the Constitution of India. But it is easy to slip grassroot democracy, especially in a State where politicians arranged for it and administrators boasted of administering superseded local-self government institution, as corporations solo. The same administrators are today obliged, now under the Constitution to ensure that the experience of participating in the functioning of local-self government is not kept at bay from the citizens of this republic. The spirit of the civil service is needed and without, it may not be possible to mature local-self government as the Constitution has ordained it. A motion of no-confidence against the elected head is also an attribute of democracy, in situations like the present one, the District Magistrate is virtually the monitor, of the written notice of intention to make a motion of no, confidence, in its passage from beginning to end. This function cannot be delegated to delegates."

9. It is not necessary for the Court to examine the merits of the notice of intention to make a motion of no-confidence. This will be examined by those whose function it is to deal with it.

10. On the written notice of intention to make a motion of no-confidence, notwithstanding that it was received by a delegate of the District Magistrate, the meeting of members has been scheduled for 18 December next. The High Court ought not to postpone this meeting. But, of the jurisdictional defect in the processing of this meeting, the person affected, the President of the Nagar Panchayat, the petitioner, shall be entitled to address the meeting and raise the preliminary objections unless the District Magistrate on being addressed, reschedules the meeting, which would be sufficient compliance with the law, regard being had to the circumstances that the record is otherwise In order.

11. With the observations of the Court as above, the certiorari action on record as presented, succeeds in part.

12. The record of the petition is consigned.