

(1997) 09 AHC CK 0220

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 2777, 27562, 27732, 27748, 28123 and 28149 etc. etc. of 1997

Ramashraya

APPELLANT

Vs

District Panchayat Raj Officer and Another

RESPONDENT

Date of Decision : 01-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj Act, 1947 — Section 14
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B

Citation : AIR 1998 All 87 : (1997) 3 UPLBEC 1872

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

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—Since in all the above mentioned writ petitions, the question, facts and law involved are common, thus, the same are being disposed of by a common judgment. However, writ petition No. 27562 of 1997 shall be the leading case.

2. According to an Old fable a "Jin" even if killed, takes another form and shape and lives for ever. One would have thought that after the decision in Haji Ghafoor Bux v. State of U.P., (1991) 1 UPLBEC 505, writ petition No. 6091 of 1990 and writ petition No. 2832 of 1990, decided on 19-2-1991 and similar writ petitions by the Division Bench of this Court, sitting at Lucknow, in which I was a member, finally set at rest the controversy, that the elected members of the Municipal Board may pass a vote of non- confidence against the President of the Board, who has been directly elected by the registered voters of the city and in that regard the vague concept of democracy that a person directly elected by the electorates could only be dislodged by the electorates, not by the members of the Board, would have no relevance. But the same argument which did not find

favour with the Court has been raked up again, in spite of the following observations :

"In the backdrop of the law discussed in the Statute that a motion of no confidence would be considered by the members of the Board even in respect of the President elected directly by the electorate. In these matters, a provision contained, in the Statute will be binding and legally hold good."

3. Against the said judgment passed in writ petition No. 2832 of 1990 and similar other writ petitions, decided on 19-2-1991, a SLP bearing No. 4165 of 1991 was filed by Mohan Lal Tripathi. The leave was granted, from which arose civil appeal No. 2425 of 1992, which was dismissed on 15-5-1992.

4. Speaking on behalf of the Bench Hon"ble Mr. Justice R.M. Sahai, in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, observed (Para 2) :

"Democracy is a concept, a political thrust an ideal practised by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But election representatives to govern is neither a "fundamental right" nor a "common law right" but a special right created by the statutes, or a "political right" or "privilege" and not a "natural", "absolute" or "vested right". Concept familiar to common law and equity must remain stranger to Election law unless statutorily recognised. 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 provisions of the Act and not as a matter of policy. The 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."

5. In Para 4 it was further observed : "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 for purpose of recall of an elected representative. Rather ensures removal by a responsible body. It cannot be criticised either as irrational or arbitrary or violative of any democratic norm. In fact construing the provision as suggested would render it unreasonable. A President of a Municipal Board of more than one Lakh Population would be removable by the Board comprising of elected representatives where as a President of smaller Board would virtually get immunity from removal. It would be contrary to scheme of the Act and against public interest."

6. In para 6 of the report, it was further held: "Whether a President should be elected by the people directly or by the Board was for the legislature to decide. These are matters of policy which cannot be examined by Court. Legislature being the best judge of the need of the people it is for the legislature to decide which system of electing representatives to the elective bodies and in what

manner they should be removed would be best suitable for governance of the State. So long the policy is not vitiated by any mala fide or extraneous consideration the courts have neither jurisdiction for adequately furnished with material to adjudicate upon its validity or correctness."

7. In Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, an argument was advanced that in Panchayat Raj Act a Pradhan is removable by the members of the Gaon Sabha and hence the President of the Board should also be removable by the registered voters of the Municipal Board. But this argument did not inspire confidence with the Bench and it was indicated:

"Comparison with provisions in Panchayat Raj Act where a Pradhan is removable by the Gaon Sabha was odious as a Gaon Sabha is a very small body as compared to a Municipality. The provision consequently cannot be held to be bad either because the Board is a smaller or different body. Nor it can be characterised as irrational or arbitrary. It would be unrealistic to say so. Any challenge founded on violation of democratic norm thus cannot be accepted."

8. In spite of the verdict of Hon''ble Supreme Court in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, that such matters pertaining to legislative policy, cannot be examined by the court and legislature is the best judge to decide in what manner the elective bodies are elected and in what, manner they should be removed, there was an influx of hundreds of writ petitions in this Court challenging the vires of Section 14 of the U.P. Panchayat Raj Act and Rule 33B of the Rules, framed thereunder, and assailing the removal of the Pradhan of the Gram Panchayat by way of vote of no confidence by the elected members of the panchayat, in which interim orders were granted and its effect was stayed by this court.

9. Against the judgment and order passed in writ petition No. 8639 of 1997 by Hon''ble single Judge, special appeals bearing Nos. 423 of 1997, 424 of 1997 and 425 of 1997 were filed. A Division Bench of this Court relying upon the observations of Hon''ble Supreme Court in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, upheld the vires of Section 14 of the Panchayat Raj Act and Rule 33 B framed thereunder, and the Division Bench observed that the ratio of this authority (Mohan Lal Tripathi) is fully applicable to the present cases.

10. Even after the decision of this Court in Special Appeal No. 423 of 1997 Bankey Lal v. State of U.P. decided on 15th July, 1997, the marathon still continues. More or less similar arguments were advanced in the present writ petitions. Nobody knows that even after the decision in these writ petitions, the controversy which had been set at rest finally by this Court would ever come to an end.

11. Taking a cue from the observations of Hon''ble Supreme Court in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, that comparison with provision in Panchayat Raj Act where the Pradhan is removable by the Gaon

Sabha was odious as the Gaon Sabha is very small body as compared to municipality, it was argued that decision in Mohan Lal Tripathi (supra) cannot be made applicable and the observations of the Hon''ble Supreme Court in Mohan Lal Tripathi are not applicable to the present writ petitions as the Gaon Sabha is a small body as compared to the municipality. It was vehemently argued that since the last more than 50 years the Pradhan could be removed only by the registered members of the gram panchayat and not by an elected members of the panchayat and the recent amendment in the U.P. Panchayat Raj Act and the Rules framed thereunder amounts to the destruction of the basic structures of the Constitution, the preamble of which provides a democratic system.

12. It was submitted that panchayat means "an institution of self government" constituted under Article 243B of the constitution and the object of the U.P. Panchayat Raj Act is to revitalise the village corporate life and instill in the people the spirit of self reliance and common endeavour to ameliorate their conditions without depending too much on the government. The contention appears to be is that as panchayats are instrument of self government and since the last 50 years the Pradhan enjoyed immunity from being removed by way of no confidence motion by the elected members of the panchayat and was removable only by the electorate, hence amended provisions are repugnant to the concept of democracy and amounts to destruction of the aim and object and the preamble of the U.P. Panchayat Raj Act as well.

13. I need not delve into that question as the same argument was repelled in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, . The Pradhans of the panchayat, suffice to say are the elected representatives, they neither have a "fundamental right" nor a "common law right" but right created by statute. The right to be elected or to be removed stems out of the statute and in that regard the legislature is competent to enact a law, indicating the manner of their elections and their removal. The validity of such an election or removal can be adjudged on the basis of the provisions of the Act only.

14. The observations, in the last portion of para 5 of the report related to a period when there existed a provision in the U.P. Panchayat Raj Act for the removal of the Pradhan by way of a vote of no confidence by the registered voters of the Gaon Sabha. That provision was later on amended and it was provided that gram panchayat may at a meeting specially convened for the purposes and of which at least 15 days previous notice was given can remove the Pradhan by a majority of 2/3rd of the members present and voting. The observation of the Hon''ble Supreme Court cannot mean that in a smaller body like Gram Panchayat, the Pradhan cannot be removed by the elected members of the panchayat by passing a vote of no confidence.

15. The validity of the amended provision can be adjudged on the basis of the provision of the Act only, because how and in what manner the Pradhan can be removed by the vote of no confidence, falls within the domain of the legislative power and that legislative policy or the power cannot be subjected to judicial

review, and it cannot be challenged on the abstract or vague concept or notion of democracy.

16. It is well settled proposition of law that although a preamble of a statute is a key to interpretation of the provisions of the Act, but the intention of legislature is not necessarily to be gathered from the preamble taken by itself, but to be gathered from the provisions of the Act. Where the language of the Act is clear, the preamble cannot be a guide, but where the object or meaning of the provisions of the Act is not clear then and aid from the preamble can be taken into consideration, for the purpose of explaining the provisions of the Act.

17. The Greek concept of "basic democracy" or "city democracy" cannot be made applicable in modern democracies, particularly, in a country like India, having population of more than 85 crores of people. The removal of a Pradhan by way of no confidence motion by the elected members of a panchayat cannot amount to be a destruction of the concept of democracy, but as held by Hon''ble Supreme Court in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, , such a provision neither violates the spirit nor purpose of recall of elected representatives, rather ensures removal by a responsible body and it cannot be criticised either as irrational or arbitrary or violative of democratic form. In view of the aforesaid reason the argument that the provisions of Section 14 of the U.P. Panchayat Raj Act and Rule 33-B of the Rules framed thereunder are in any way violative of the principle of democracy, the preamble of the U.P. Panchayat Raj Act, 1947 is totally mis-conceived. The Hon''ble Supreme Court in Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, did not observe that a Pradhan of Gram Panchayat elected directly by electorate cannot be removed by the elected representatives of the Gram Panchayat.

18. In some of the writ petitions the previous notice of 15 days was challenged on the ground that earlier similar notices were cancelled, hence a second notice for the removal of the Pradhan by way of no confidence cannot take place within a year.

19. Before dealing with the question it is necessary to have a look over the provisions of Section 14 of the U.P. Panchayat Raj Act and Rule 33B of the Rules framed thereunder, amended on Aug. 28, 1996 which are reproduced below :

14. "Removal; of Pradhan or Up-Pradhan :--

(1) The Gram Panchayat may at a meeting specially convened for the purpose and of which at least 15 days previous notice shall be given remove the Pradhan by a majority of two thirds of the members present and voting.

(2) A meeting for the removal of a Pradhan shall not be convened within one year of his election.

(3) If the motion is. not taken up for want of quorum or fails for lack of requisite majority at the meeting no subsequent meeting for the removal of the same Pradhan shall be convened within a year of the date of the previous meeting.

(4) Subject to the provisions of this section, the procedure for the removal of a Pradhan including that to be followed at such meeting , shall be such as may be prescribed."

33-B (1) Procedure for removal of Pradhan or Up-Pradhan A written notice of the intention to move a motion for removal of the Pradhan or Up Pradhan u/s 14 of the Act shall be necessary. It shall be signed by not less than one half of the total number of the members of the Gram Panchayat and shall state the reasons for moving the motion and it shall be delivered in person by at least three members signing the notice to the District Panchayat Raj Officer. Before proceeding further on the notice, the District Panchayat Raj Officer shall satisfy himself regarding genuineness of signatures of the members signing the notice.

(2) The District Panchayat Raj Officer shall convene a meeting of the Gram Panchayat u/s 14 of the Act, on a date to be fixed by him which shall not be later than thirty days from the date of receipt of the notice. The meeting so convened shall be presided over by the District Panchayat Raj Officer or the person authorised by him in writing in this behalf. The Presiding Officer may take such clerical assistance for conducting the proceedings of the meeting for the consideration of the motion as he may deem necessary.

(3) The Presiding Officer shall read to Gram Panchayat the notice received by him. He shall then allow the motion to be moved and discussed. Such discussion shall terminate on the expiry of two hours appointed for the commencement of the meeting unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of said period of two hours, as the case may be, the motion shall be put to vote. Voting shall be by secret ballot.

(4) The Presiding Officer shall not speak on the merit of the motion, nor shall he be entitled to vote thereon.

(5) to (8) xxxxx

20. A perusal of Section 14 (3) of the Act indicates that if the motion is not taken up for want of quorum or fails for the lack of requisite majority at the meeting, no subsequent meeting for the removal of same Pradhan shall be convened within a year from the date of the previous meeting. In none of the cases before me, on the basis of the previous notices, which were concealed and impugned notices were issued, the meeting of the gram panchayat was ever held to take up the motion for consideration. Only if a motion is taken up in the meeting and for want of quorum or for lack of requisite majority it fails no subsequent meeting for the removal of the same Pradhan would be convened within a year from the date of the previous meeting.

21. In Shiv Ram v. District Panchayat Raj Officer Prescribed Authority, Hardoi 1984 UPLBEC 255 : (1984 All LJ 577), a Division Bench of this Court observed :

"The law does not contemplate any enquiry into the genuineness of the signatures. It is a common practice that many person who first sign a notice of

"no confidence" later disclaim their signatures under pressure from the other party. Thus, such an enquiry does not bring out the realities. The real position can only be ascertained at secret voting on the motion. However, nothing can now be done in respect of the "no confidence motion" dated 13-9-1983 as the period during which a meeting to consider it, could be held has already expired. We, therefore, direct the opposite parties that if and when another notice of "no confidence motion" is given in accordance with rules, they will convene a meeting in accordance with law. The bar of one year will not apply because no meeting was held or convened in pursuance of the earlier notice. A writ in the nature of mandamus be issued accordingly."

22. Similar observations were made in *Munshi Lal v. District Panchayat Raj Officer/Prescribed Authority, Hardoi* 1984 UPLBEC 569.

23. In *Shambhoo Singh v. The District Panchayat Raj Officer, Azamgarh* 1984 UPLBEC 604 : (1984 All LJ 1084), it was observed that Section 14(3) will apply where the motion could not be taken up for want of quorum or filed for lack of requisite majority at a meeting.

24. In *Om Prakash v. State of U.P.* 1984 UPLBEC 672 : (1984 All LJ NOC 29) a Division Bench of this Court held that bar u/s 14(3) of the U.P. Panchayat Raj Act and Rule 33-B framed thereunder shall apply only where motion of no confidence fails for want of quorum or lack of requisite majority at the meeting or it was not signed by at least half of the members.

25. In *Banshoo v. District Panchayat Raj Officer Jaunpur* 1986 UPLBEC 429 : (1986 All LJ 1143) a similar question cropped up, wherein it was observed (Para 13 of All LJ) :

"Under Section 14(3) of the Act the provision is that if a motion of no confidence is not taken up for want of quorum or fails for lack of requisite majority, at the meeting, no subsequent meeting for the removal of the same Pradhan shall be convened within a year of the date of previous meeting. In the instant case 20-9-1985 was the date fixed for considering the motion but before that it was cancelled by the Prescribed Authority by order dated 17/18-9-1986, it cannot therefore, be said that the motion was not taken up for want of quorum nor it can be said to have failed for lack of requisite majority at the meeting rather the meeting was cancelled by the Prescribed Authority himself, hence the bar of one year would not apply in the instant case."

26. In *Balwant Lal Shukla v. Prescribed Authority* 1985 Rev. Jt 201, a Division Bench of this Court observed that the notice of the intention to move the motion of no confidence stands intact and a fresh date has to be fixed by the Sub-Divisional Officer for considering the motion of no confidence.

27. In *Jayanti Prasad Mishra v. District Panchayat Raj Officer, Jaunpur* (1990) 1 UPLBEC 166 : (1990 All LJ 309), the motion of no confidence was moved against the Pradhan, but the date fixed for the meeting was cancelled, as number of

persons required to sign the notice had not signed the notice, as provided under Rule 33-B, but it was observed by the Division Bench that the grievance of the petitioner that second motion for no-confidence cannot take place within one year of the date, i.e. 24-9-1989 is not acceptable to us because the relevant meeting was not held and the provisions of Section 14(3) are not at all attracted, in the fact and circumstances of the case. It was further observed that the bar, contained in Section 14(3) is not applicable, when earlier or original motion became infructuous for other reasons.

As I have stated in the foregoing paragraphs that earlier notices were cancelled by the Prescribed Authority, and thereafter he issued notices, hence it cannot be said that the motion was not taken up for want of quorum nor it can be said to have failed for lack of requisite majority at the meeting. The meeting itself was cancelled by the Prescribed Authority. In view of the aforesaid reason, the bar of one year would not apply in such cases.

The contention that the expression "which shall not be later than thirty days" contained in Rule 33-B, means that unless a period of thirty days is expired from the date, when the notice was given, the motion of no confidence cannot be carried out, suffers from absurdity. The expression "not later than thirty days" suggests an outer terminus, meaning thereby that it should be before thirty days as observed in *Devi Singh v. District Panchayat Raj Adhikari* 1987 UPLBEC 745 : (1987 All LJ 1097). *Dayashanker v. District Panchayat. Raj Officer* 1968 All LJ 753, was converse to that of *Devi Singh* (supra), wherein it was observed that provision about convening of the meeting of the Gaon Sabha, not later than thirty days from the receipt of the notice is not compulsory or mandatory. It is merely directory. It is to be complied with substantially but its infraction would not nullify the proceedings of the meeting. The contention that the meeting could only be convened within the period of thirty days and if it was convened beyond a period of thirty days, it would in no case nullify the proceedings, is totally misconceived.

28. In few of the present writ petitions it was challenged that 15 days previous notice was not given either to the members or to the Pradhan before the meeting specially convened for the purpose of consideration of the vote of no confidence.

29. In *Om Prakash v. State of U.P.* (1984 All LJ 29) (supra) which was relied upon in *Devi Singh v. District Panchayat Raj Officer, Aligarh* 1987 UPLBEC 745 : (1987 All LJ 1097) a Division Bench of this Court observed that as the procedure provided under Sub-rule (1) of Rule 37 was followed in the instant case, hence it was not necessary to give any formal notice to the Pradhan.

30. In *Gyan Singh Vs. The District Magistrate, Bijnor and Others*, , the petitioner was the President of Municipal Board which consisted of 15 members and the President, who was an ex-officio member of the Board. On 24th October, 1973, two members of the Board presented a notice of intention to move a motion of no confidence against the President to the District Magistrate. On 8-11-73 the

District Magistrate convened the meeting of the Board for consideration of the motion of no confidence to be held in the office of the Board on 24-11-73. 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 of, a copy 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 Nagar Palika on 14-11-73. The District Magistrate also directed the publication of the notice in two local newspapers and pasting of the notice on the notice board of the Municipal Board as well as on the , notice board of the tehsil collectorate, which was done. The petitioner contended that the mandatory provisions of Section 87-A(3) which were mandatory were not followed and for that reason the proceedings of the meeting which had passed the motion of no confidence was totally vitiated. Section 87-A provided that the District Magistrate shall send the notice by registered post and less than 7 clear days before the date of the meeting indicating the date and time appointed therein, to every member of the board at his place of residence and shall at the same time such notices to be published in such manner as he deems fit. Thereupon every member shall be deemed to have received the notices. It was contended by the petitioner that no registered notice was sent to him at the place of his residence, hence the entire meeting shall vitiate.

31. In the light of the aforesaid facts and circumstances, a Full Bench of this Court in Gyan Singh Vs. The District Magistrate, Bijnor and Others, observed :

"The purpose of service of the notice by registered post and publication of notice otherwise is to ensure that members should get adequate notice of the meeting to enable them to participate in the debate over the no-confidence motion at the meeting. The purpose is not defeated if the notice is sent to the members not by registered post, but by other method and 7 clear days are given to 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 two steps as laid down in sub-section are taken by the District Magistrate, i.e. notice of the meeting is sent to the members by registered post at his residence and further if it is published in the manner as 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 the notice can be achieved even without sending the same without registered post."

32. Disagreeing with the view of a learned single Judge of this Court in Vishwa Nath Tripathi v. State of U.P. 1968 All WR (HC) 114, the Full Bench held :

"We however, do not agree with the observation of the learned single Judge that actual service of the notice of the meeting should be proved. It would be sufficient compliance with the provision of Section 87-A(3) if notice is sent to

the members and the members acquired knowledge about the time, date and place of the meeting."

After reviewing several decisions of this Court, the Full Bench further observed :

"The above discussion shows that the preponderance of the judicial opinion is that the second part of Sub-section (3) of Section 87-A is directory, its literal compliance is not necessary. A substantial compliance in regard to the service of the notice of the meeting for consideration of the motion of no confidence on the members will be sufficient and literal non-compliance of the said provision will not invalidate the meeting or motion of no confidence which may be adopted in the said meeting. In view of the above decision, we are of the opinion that second part of subsection (3) of Section 87-A of the Act laying down manner of sending the notice to the members of the Board is directory, while the first part of the said sub-section requiring the said Magistrate to convene a meeting and send notice to the members is mandatory. It would be sufficient compliance of the directory provision of this sub-section if notice is served on the members not by the registered post, but by any other modes and in that situation the motion of no confidence which may be carried on at the same meeting cannot be nullified on the ground of any literally non-compliance of the service of notice by the registered post."

33. After the decision of the Full Bench in Gyan Singh Vs. The District Magistrate, Bijnor and Others, more or less similar question cropped up again in Jivendra Nath Kaul v. State of U.P. 1991 (8) LCD 186, before a Division Bench of this Court, pertaining to passing of vote of no confidence against the President of Zilla Parishad, Lucknow. Section 28 of the Kshetriya Samiti of Zila Parishad Adhiniyam, which deals with the procedure relating to the motion of no confidence against the President is reproduced below :

"Motion of non-confidence in Adhyaksha :

(1) A motion expressing want of confidence in the Adhyaksha of a Zila Parishad may be made and proceeded with in accordance with the procedure laid down in the following sub-section.

(2) A written notice of intention to make the motion in such form as may be prescribed signed by not less than one half of the total number of members of the Zila Parishad for the time being together with a copy of proposed motion, shall be delivered in person, by any one of the members signing the notice, to Collector having jurisdiction over the Zila Parishad.

(3) The Collector shall thereupon-

(i) convene a meeting of the Zila Parishad for the consideration of the motion at the office of the Zila Parishad on the date appointed by him, which shall not be later than thirty days from the date on which the notice under Sub-section (2) was delivered to him; and (ii) give to the members notice of not less than fifteen days of such meeting in such manner as prescribed."

34. In the light of the aforesaid provision, after quoting extensively the observations of the Full Bench in Gyan Singh Vs. The District Magistrate, Bijnor and Others, , the Division Bench remarked :

"The question whether only first part of Section 28(3) was mandatory and the second part was only directory also came up for consideration before a Division Bench of this Court in the case of Satish Chandra Agarwal v. State of U.P. (Writ Petition No. 6038 of 1990) which was decided on 7-11-1990, a certified copy of the judgment is on the record. Relying upon the cases of Yudunath Pandey v. District Panchayat Raj Officer, District Ballia 1986 UPLBEC 632 : (1986 All LJ 1456), The Pioneer Motors (Private) Ltd. Vs. The Municipal Council, Nagercoil, ; Gyan Singh Vs. The District Magistrate, Bijnor and Others, ; Jai Charan Lal Vs. State of U.P. and Others, and K. Narasimhiah Vs. H.C. Singri Gowda, , the Division Bench has held in Satish Chandra Agarwal's case that "the provision in regard to the time occurring in Clause (ii) of Sub-section (3) of Section 28 in the context is directory and not mandatory. While giving to the members notice is mandatory and cannot be dispensed with but not the period prescribed for attending a meeting to consider the motion of no confidence. We find no reason to disagree with the view taken in Satish Chandra Agarwal's case. We are in full agreement with the view expressed therein."

35. It was further indicated :

"As already observed, excluding the petitioner no other member of the parishad has come forward to state that the notice of the meeting of no confidence which was scheduled for 14th September, 1990, was not served upon him. The question arises whether the petitioner had proper and sufficient notice of the meeting of no confidence. In this connection we may point out that this writ petition was presented before the Registrar of this Court on 25-8-1990 and came for before a Division Bench of this Court on 27-8-90. In para 15 of the petition the petitioner had categorically stated that on 17th August, 1990, the notice of intention to move no confidence motion against the petitioner to the District Magistrate, Lucknow, was given by opposite parties Nos. 2 and 3 who were not lawful members of the Zila Parishad. This assertion in para 15 of the petition leaves no room for doubt that at least on 25th August, 1990, the petitioner did have the knowledge of the notice of intention dated 17th August, 1990, which was moved by opposite parties Nos. 2 and 3 and others to the Collector, Lucknow. The petitioner has claimed in para 21-B of the petition that he moved an application for inspection before the Collector, Lucknow, on 3-9-90. He admits that he did inspect the file although he was not permitted to copy out or make notes from the file. The petitioner has not offered any explanation as to why he did not apply for the inspection of the file on 25th August, 1990 or within a day or so thereafter when he had come to know about the notice of no confidence. The essential part is the knowledge of the petitioner. A man can have knowledge of a meeting even if he reads a notice which was served upon one of his colleagues. In that case he cannot come and say that the notice was not served

upon him individually. After all the intention of giving notice is to inform the members of the Parishad about the date, time and place of the meeting in which a motion of no confidence is to be considered. In case a member is vigilant, he can always come to the office of the Parishad (after all he is a member of the Parishad) and he can make enquiries from the members of the staff including the executive officer. Thus, when the petitioner had the knowledge of the notice of motion of no confidence on 25th August, 1990, he could have very well obtained information from the District Magistrate as to which was the date fixed for the meeting. At least on 3rd September, 1990 the petitioner must have come to know of the fact that 14th September, 1990 was fixed for meeting. Admittedly, the petitioner did attend the meeting in question and he was not prejudiced in any manner for the simple reason that the notice in fact was served upon him on 11th September, 1990."

36. It was also indicated :

"The fact that notices were in fact issued, finds corroboration in the own admission of the petitioner. The petitioner, in his supplementary affidavit has submitted that the notice of the meeting was received by him on 11th September, 1990. The delay may have been due to the vagaries of the postal department. Thus, the notices were sent on 28th August, 1990 and 14th September, 1990 was the date fixed. If we exclude these two days, i.e. 28th August, 1990 and 14th September, 1990, a clear 15 days time was given to the members as contemplated under the provisions of Section 28 of the Adhiniyam. Since no other member of the Parishad has come forward to state regarding non-receipt of the notice, the mere fact that the notice was not pasted on the notice board of the Zila Parishad, Lucknow, would not invalidate the meeting. After all the purpose of issuing notice is to intimate the members of the date, time and place of the meeting well in time so that they may come prepared to take part in the meeting."

37. In *Brijendra Bahadur Singh v. District Magistrate* 1991 (9) LDC 606, where in a Division Bench of this Court, sitting at Lucknow observed :

""Section 87-A(3) is divisible into two parts. The first part deals with convening of the meeting and sending a notice to the members, and the second part deals with the manner of sending notices to the members. The first part has been held to be mandatory and the later part directory. The record produced before us has shown that the meeting was convened by the District Magistrate himself and he himself fixed the date and time of the notice. The record has further shown that the notices were issued to the members. Thus, there was complete compliance of the mandatory provisions. Regarding the manner of the service of the notice, the record shows that notices were not issued in the manner prescribed in Section 87-A(3), but the notices actually issued were served on the members either personally or through someone at their residence. The record further shows that the petitioner has knowledge of the date and time of the meeting. Thus, there was sufficient compliance of the provisions of Section 87-A(3) of the Act.

Accordingly, the meeting at which the motion of no confidence was adopted cannot be said to be illegal. Consequently, the motion of no confidence also cannot be said to be illegal and invalid."

38. In *Brijendra Bahadur Singh* (1991 (1) LDC 606) (supra) it was further observed :

"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 notices also cannot be held to be mandatory. Accordingly, non-publication of the notice of meeting has not rendered the meeting and the no-confidence motion illegal."

39. It was further indicated :

"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 date (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 87-A(3) requires that a period of seven days must mandatorily 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 mis-conceived. At any rate, the requirement of seven days falls in the latter part of Section 87-A(3) and is directory. Accordingly, the notices dated 18th May, 1990 cannot be faulted on the ground that it was given less than seven days prior to the date of meeting."

40. In *Banwari Lal Shukla v. Prescribed Authority (Panchayat Raj Officer), Banda*, 1985 RJ 201, an observation was made that the Sub-divisional Magistrate shall now see that 15 days" clear notice is given for holding such a meeting and shall act in accordance with law.

41. In *Yadu Nath Pandey v. District Panchayat Raj Officer, Ballia* 1986 UPLBEC 632 : (1986 All LJ 1456), the following observations were made by a Division Bench of this Court :

"In our opinion, an act is required by the statute to be done so many days "at least" before a given event, the time must be reckoned excluding both the day of the act and that of the event If 15 days" notice has not been given, the resolution passed before the expiry of the period of 15 days, notice would be void. We have already held above that in computing 15 days both the first and

the last days have to be excluded. In the instant case, notice was given on 3rd June, 1986 for holding the no confidence meeting on the 18th June, 1986. If both the days the initial and the last are excluded, that would not give 15 clear days. That would mean that only 14 days" time was given to the members of the Gaon Sabha. Giving of 14 days, when the law requires 15 days would be in contravention of Sub-section (1) of Section 14 and the business transacted would be null and void."

42. Very recently in Smt. Narangi Devi v. District Panchayat Raj Officer, Civil Misc. Writ Petition No..... of 1987, decided on 13-1-1997, wherein a proposal for moving a no-confidence motion was submitted on 31-12-1996 to the concerning authority, but the same (notice) was served on 4-1-1997 to the petitioner, who is Pradhan of the Gaon Sabha, when the meeting for passing no-confidence motion was to be held on 16-1-1997. It was contended that after receipt of the notice, the confidence motion was to be proposed to be moved against the petitioner within 15 days, but not after 15 days and thus, the provisions of Section 14 of the Act and Rule 33-B of the Rules have been violated. On the basis of the alleged fact, a Division Bench of this Court observed :

"In view of the factual position as stated by Shri Yatindra Singh, learned counsel for the petitioner, there is no norm (sic) to rebut his submission. The submission is based on factual matrix of the case, but on the other hand, learned counsel for the respondents fairly conceded and contended that this petition may be finally disposed of. This being so, the writ petition is allowed and the impugned notice of no confidence motion dated 31 -12-1996 is hereby quashed.

43. From the perusal of the observations made in Banwari Lal Shukla (1985 Rev J 201) (supra), Yadunath Pandey (1986 All LJ 1456) (supra) and Smt. Narangi Devi (supra), it is evident that in all the aforesaid cases the Pull Bench decision in Gyan Singh Vs. The District Magistrate, Bijnor and Others, was neither cited nor considered. In Smt. Narangi Devi (supra), the decisions of this Court in Jivendra Nath Kaul (1991 (8) LCD 186) (supra) and Brijendra BahadurSingh (1991 (9) LDC 606) (supra) were also not cited or discussed. No reason has been indicated for allowing the writ petition, hence I am constrained to hold that the decision in Smt. Narangi Devi is per incuriam.

45. WhatSection 14(1)contemplatesisthatat least 15 days previous notice must be given to remove the Pradhan by a majority of 2/3rd of the members present and voting. According to Rule 33-B a written notice of intention to move a motion for removal of the Pradhan or Up-Pradhan u/s 14 of the Act shall be necessary. It shall be signed by not less than one half of the total members of the Gram Panchayat and shall state reason for moving the motion and it shall be delivered in person at least by three members signing the notice to the District Panchayat Raj Officer. Nowhere, except in Rule 37 mode or the manner of the notice to be served has been indicated. Actual period of 15 days occurring in Section 14 of the Act is meant for issuance of the notice and it has no relevance with the service of the notice.

46. In Brijendra Bahadur Singh (1991 (9) LDC 606) (supra) seven days" time did not intervene between the date of issuance of the notice and the date of meeting. The notice of the meeting held on 22-5-90 was issued on 18-5-1990 and only five days intervened inclusive of the date of the notice and date of the meeting, but it was observed that the requirement of seven days falls in the latter part of Section 87-A(3) and is directory and hence the notice dated 18-5-1990 cannot be faulted on the ground that it was given less than seven days prior to the date of the meeting.

47. In all the cases before me fifteen days previous notice was given. But in few cases notices might have been served later on. Hence it cannot be said that 15 days previous notice was not given. According to Section 14 and Rule 33-B, the period is to be computed from the date of the issue of the notice and not from the date of service, because it is always possible that a person may evade the service for a longer period of frustrate the holding of the meeting for passing the motion of no confidence.

48. The petitioner, after deriving the knowledge of the meeting, filed the writ petitions. If despite the knowledge, they did not attend the meeting in which the motion of "no confidence" was passed, they have to blame themselves. But if after deriving the knowledge they have attended the meeting, in which the motion was carried on by two third majority of members present and voting, they cannot challenge the notice of motion, by raising the technicalities as observed in Brijendra Bahadur Singh (1991 (9) LDC 606) (supra) in para 44 of the report quoted below :

"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 no-confidence has been carried through by the requisite majority. This factor too disentitles the petitioners to relief. The scope of equity jurisdiction of this Court in granting relief has been discussed in Gyan Singh Vs. The District Magistrate, Bijnor and Others, as also in 1991 LCD 186, Jivendra Nath Kaul v. State of U.P."

49. No Court, muchless a single Judge of this Court can ignore what has been observed in the cases mentioned in the foregoing paragraphs, rather it is binding upon this Court.

50. There is another aspect of the matter which deserves consideration, which was canvassed very vehemently that as in one or two cases motion was not signed by half of the members, or it was initially signed by half of the members, but later few retraced their signatures, hence the proceedings of the meeting was vitiated. After the motion has been carried out, the fact that the meeting was convened on a notice not signed by at least half of the members is only a

technical irregularity, not causing any prejudice to anyone as it was held in *Mathura Prasad Tewari v. Assistant District Panchayat Raj Officer* 1996 RLJ 222 that in such a situation the High Court is not to issue certiorari, just for curing technical irregularity not affecting the merit of the case.

51. In most of the present cases the meeting has passed the vote of no confidence. After the motion has been carried on the only job, which is assigned to the prescribed authority, is to fix a date on which the charge would be handed over, in the presence of the official appointed in that behalf, by the prescribed authority. If the motion of vote of no confidence has been carried against the pradhan, then the Up-Pradhan shall be handed over the charge, but if the Pradhan or Up-Pradhan fails to hand over the charge, the transfer of the charge shall be affected through the police. Democracy rests on the principle of rule of the majority. After a no confidence motion is passed either against the Pradhan or Up-Pradhan, he will have no option except to hand over the charge.

52. In *Om Prakash Yadav v. Collector, Etah* 1991 (1) UPLBEC 38, a Division Bench of this Court observed :

"There is no doubt that the matters pertaining to election are to be settled strictly in accordance with the provisions and Statute and it is not open to import principle of equity in proceedings pertaining to election dispute. In the instant case, however, there is no dispute about the election and the only question is whether this Court in exercise of its equitable discretion possess any power under Article 226 of the Constitution of India to intervene against the resolution of Kshetriya Samity where the petitioner has been voted out of power by a thumping majority. Under Article 226 of the Constitution of India this Court does not exercise any power pertaining to the election matters and its jurisdiction is confined only to see whether any action of the authority is in conformity with the law of equity. Power of this Court under Article 226 of the Constitution of India being supervisory in nature equitable principles are enshrined in it."

It was further observed :

"Even if orders are not in accordance with law and suffer from infirmity, this Court can decline to exercise its discretionary powers under Article 226 of the Constitution, if it considers that in view of the fact and circumstances of the case no interference is called for. As mentioned above, motion of no confidence has been passed against the petitioner by overwhelming majority, an interference by this Court against such a resolution will amount to restore office to a person against the will of majority of people. In a democratic set up where right to an office depends on the will of the people, a person who has lost the majority cannot be permitted to hold the office. It is not a fit case to interfere under Article 226 of the Constitution of India.

53. In the aforesaid case the petitioner had challenged the meeting on the ground that u/s 15(3)(ii) of the U.P. Kshetriya Samiti and Zila Parishad Adhiniyam, 1961, a notice of not less than 15 days was alleged to have not

given. But the contention was repelled and the foregoing observations were made.

54. The contention that in few of the notices issued by the District Panchayat Raj Officer, for holding the meeting to consider the vote of no confidence, no reason has been indicated in accordance with Rule 33-B, is misconceived. According to Rule 33-B(1) a written notice of an intention to move a motion of no confidence to remove the Pradhan or Up Pradhan u/s 14 of the Act shall be necessary, which shall be signed by not less than half of the total number of members of the Gaon Sabha and shall state the reasons of-or moving the motion and it shall be delivered in person by at least three members signing the notice to the prescribed authority. Thus, reason is to be indicated by the mover of the resolution and there is no requirement that in the notice issued by the District Panchayat Raj Officer reasons are to be recorded. If the majority of the members who intend to move vote of no confidence only indicate one reason, i.e. want of confidence in the Pradhan, that would be a sufficient compliance of Rule 33-B(1) of the Rules. Reason is to be indicated where the Pradhan or any other person holding a civil or elected post is to be removed on the charge of misconduct, but in case of a motion of no confidence, only reason, indicating want of confidence is sufficient.

It was vehemently argued by the learned counsel appearing on behalf of some of the petitioners that it is incumbent upon the prescribed authority either to verify the genuineness of the signatures of the members of the Panchayat, who have given the notice to move a vote of no confidence or to make an enquiry on the receipt of notice of the intention to move for removal of the Pradhan. In that regard great emphasis was laid on the expression "the District Panchayat Raj Officer shall satisfy himself regarding genuineness of signatures of the members signing the notice, occurring in Rule 33-B(1).

In *Mathura Prasad Tewari v. Assistant District Panchayat Raj Officer* 1967 Rev Dec 17, the prescribed authority made some enquiry which was considered necessary. After considering the relevant provisions of Section 14 of the Act and Rule 33-B, Hon^{ble} Desai, J. the then Chief Justice, speaking on behalf of the Full Bench (per majority) observed that there existed no provision in the rule either for any objection against acting on a notice of the intention to move a motion for removal of the Pradhan and an enquiry into it. The Act does not deal with the procedure to be followed for passing a motion for removal of a Pradhan, it has left it to be prescribed by Rules. The only rule laying down the procedure is Rule 33-B. Not only is there no express provision for an objection or air enquiry into an objection but also the provisions suggest that no objection and no enquiry into an objection are contemplated by the State Government which has made the Rules.

55. It was further observed that whether a meeting should be convened or not, it is the matter only between the prescribed authority and the signatory delivering the notice to it. The prescribed authority has to act on its finding that the notice

has been signed by, at least half of the members and has been presented by at least 5 of the signatures. As nobody has a right to file any objection, the question of holding any enquiry simply does not arise. Whatever enquiry is made by it, is made entirely at its own discretion and nobody has a right to compel it. Obviously there cannot be any right in any person to compel it when he has not been given a right to file an objection.

56. A Division Bench of this Court in *Devi Singh v. District Panchayat Raj Officer, Aligarh* (1987 All LJ 1097) (supra) reiterating the view expressed by the Full Bench observed that the prescribed authority was not obliged by law to make an enquiry into the genuineness or otherwise of the signatures appended to the notice.

57. I am of the view that it is for the District Panchayat Raj Officer to be satisfied that the notice has been signed by at least one half of the members. If he verifies about the genuineness of the signatures, the matter pertains to its discretion, but if he does not verify the genuineness of the signatures, the rule does not provide that he should hold an enquiry as to whether the motion has been signed by the majority of members or not. Often it happens that the signatures of some person on the motion of no confidence are forged. It is also a common practice that those who sign the notice of motion of no confidence disclaim their signatures, only on the influence of the other party, any enquiry in such a situation may not carry conviction or satisfy the parties to the dispute. But as observed in *Shiv Ram v. District Panchayat Raj Officer/Prescribed Authority, Hardoi* (1984 All LJ 577 (supra)), the real position can be ascertained at secret voting on the motion.

58. It is for the District Panchayat Raj Officer to be satisfied, subjectively, regarding the genuineness of the signatures of the numbers, signing the motion. If he on receipt of any material or information, exercises his discretion to enquire into the genuineness of signatures, it cannot be objected to, but nobody has a right to compel him to exercise such a discretion. There is no requirement under law for the District Panchayat Raj Officer either to verify the genuineness of the signatures alleged to be signed by the majority of the members of the Panchayat or to hold an enquiry as to whether members of the Panchayat have signed it or not.

59. In *Banshoo v. District Panchayat Raj Officer* (1986 All LJ 1143) (supra), a Division Bench of this Court after considering *Sheo Ram v. Panchayat Raj Officer* 1984 All LJ 577 (DB); *Shambhoo Singh v. District Panchayat Raj Officer* 1984 All LJ 1084; *Daya Shankar v. Panchayat Raj Officer* 1968 All LJ 753 and *Mathura Prasad Tewari v. Assistant District Panchayat Raj Officer* (1967 Rev Dec 17) (FB) (supra) observed that it is the discretion of the prescribed authority to hold or not to hold an enquiry.

60. The Full Bench in *M.P. Tewari* (supra) further laid down the law that where the only opposite party to the Writ petition are the prescribed authority and the

authority presiding over the meeting of the Gaon Sabha, all the signatories delivering it to the prescribed authority and the members of the Gaon Sabha, who voted in support of the motion are opposite parties. The meeting was convened on the notice signed by certain members and presented by some of them, to hold that convening of the meeting on the notice was illegal, without giving them an opportunity to be heard infringes the principle of natural justice. Similarly in the absence of the members voting in support of the motion, the proceedings of the meeting and the motion passed in it cannot be quashed. The matter is not only between the Pradhan and the prescribed authority or presiding officer, there is a third party namely, the signatories, the persons delivering the notices and the members voting in support of the motion. This matter has not been considered by the learned Judge in Jai Beer Singh's case 1963 All LJ 272.

61. In none of the writ petitions, the persons delivering the notice and the members voting in support of the motion have been impleaded as party to the writ petition. Besides the other reasons indicated in the foregoing paragraphs, due to non-impleadment of such members, the writ petitions deserve to be dismissed.

62. In Writ Petition No. 27777 of 1997 the matter pertains to passing of the vote of no confidence against the Block Pramukh. According to the petitioner the total membership was 51, 41 member signed over the notice, but 10 persons denied their signatures by filing affidavits. According to the petitioner, the verification was not done by the District Magistrate in spite of the request made to him.

As I have already indicated in the foregoing paragraphs that there exists no such requirement for the District Magistrate to verify the genuineness of the signatures. If he was satisfied subjectively that the majority of the members have signed the motion and issued notices, he cannot be faulted. It was within his discretion either to verify the genuineness of the signatures or not. If he has not done so by holding an enquiry in the matter, it cannot be said that the majority of the members have not signed the motion. The meeting was held on 28th August, 1997, where the vote of no confidence must have been considered, either it would have carried on or failed. The will of the majority would have been reflected in the meeting and due to such technical objection, the will of the majority cannot be doubted. If the motion would have been lost by majority of the members voting against it, then such objections are not at all relevant, but if it would have been carried out in the meeting, which was convened on a notice, not signed by at least half of the members, it would be deemed to be a technical irregularity not causing prejudice to anyone as observed by this Court in *M.P. Tewari v. Assistant District Panchayat Raj Officer* (1967 Rev Dec 17) (supra) and *K. N. Guruswami v. State of Mysore* (1995) 1 SCR 305 at page 310.

63. Before I part with this judgment I acknowledge with thanks the assistance provided to this Court by the counsel of the petitioners and Mr. Nurul Huda, the Standing Counsel.

64. In view of what has been indicated hereinabove, the writ petitions are devoid of merits. They are accordingly dismissed. The interim orders stand discharged. No costs.