

**AFR****Judgment Reserved on 16 November 2017****Judgment delivered on 21 November 2017****Court No. - 39****Case :-** WRIT - C No. - 51900 of 2017**Petitioner :-** Devendra Singh**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Rahul Agarwal, Shri Ravi Kant**Counsel for Respondent :-** C.S.C., Pradeep Kumar Sharma, Ashok Khare**Hon'ble Dilip Gupta, J.****Hon'ble Jayant Banerji, J.****(Delivered by Hon'ble Dilip Gupta, J.)**

An elected Block Pramukh of Block Bithri, Chainpur in district Bareilly has filed this petition to assail the order dated 24 October 2017 issued by the Collector, Bareilly on the written notice of intention to make the motion of no confidence against the petitioner.

It is stated that the total strength of the elected members of the Kshettra Panchayat is 112 and 70 of these elected members submitted a written notice of intention to make the motion of no confidence with a copy of the proposed motion against the petitioner to the Collector on 23 October 2017 under Section 15(2) of the U.P. Kshettra Panchayat and Zila Panchayat Act, 1961<sup>1</sup>. The Collector then issued an order dated 24 October 2017 that the meeting of all the elected members of the Kshettra Panchayat shall be held on 11 November 2017 at 10:30 a.m in the office of the Kshettra Panchayat to consider the proposed motion of no confidence against the petitioner and also appointed the Sub-Divisional Magistrate Sadar as the Presiding Officer. Copies of the order as also the proposed motion were

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1 'the Act'

endorsed to the Block Development Officer to paste them on the notice board of the Kshettra Panchayat on 25 October 2017 and to the Zila Panchayat Raj Officer Bareilly to send copies of the notice/proposed motion by registered post to all the elected members.

On 8 November 2017, when the matter was taken up by the Court, it was sought to be contended by Sri Ravi Kant learned Senior Counsel appearing for the petitioner that the provisions of Section 15(3)(ii) of the Act had not been complied with as 15 days time for holding such a meeting was not given to the members. This submission was based on the averments made in the supplementary affidavit sworn on 7 November 2017 that the notice sent by the Collector was actually received by 16 members of the Kshettra Panchayat on various dates between 27 October 2017 and 1 November 2017, while seven members had not received the notice at all.

It was, however, sought to be urged by Sri Ashok Khare, learned Senior Counsel appearing for the elected Block Pramukh that the notice dated 24 October 2017 issued by the Collector was not only despatched by registered post on 24 October 2017 but it was also published in the newspaper on 25 October 2017. It was also stated by learned Senior Counsel that the notice and the proposed motion were also pasted on the notice board of the office of the Kshettra Panchayat on 25 October 2017. The submission, therefore, was that the provisions of Section 15(3)(ii) of the Act had been duly complied with.

Learned Standing Counsel was, accordingly, granted time to seek instructions in the matter and to also place the original records before the

Court. It was also ordered that the meeting could take place but the result would not be declared.

When the matter was taken up by the Court on 16 November 2017, a third supplementary affidavit was filed by the petitioner stating *inter alia* that the order dated 24 October 2017 issued by the Collector had been subsequently modified and the First Additional City Magistrate had been appointed as the Presiding Officer instead of the Sub-Divisional Magistrate, who had earlier been appointed. A chart was also enclosed with the supplementary affidavit as Annexure-SA-2. It gives the dates on which the registered envelopes sent by registered post containing the notice and the proposed motion were received by 43 members of the Zila Panchayat. It indicates that the envelopes were received by them between 27 October 2017 and 13 November 2017.

Ms. Meenakshi Singh, learned Standing Counsel has produced the original records. The records indicate that the notice dated 24 October 2017 and the proposed motion of no confidence were despatched by registered post to all the members of the Kshetra Panchayat on 24 October 2017. The records also indicate that the notice dated 24 October 2017 and the proposed motion of no confidence were pasted on the Notice Board of the Kshetra Panchayat on 25 October 2017 and they were published in the newspaper Amar Ujala on 25 October 2017.

Sri Ravi Kant, learned Senior Counsel appearing for the petitioner submitted that the provisions of Section 15 (3)(ii) of the Act have not been complied with inasmuch as notice of not less than fifteen days of the

meeting to be held on 11 November 2017 had not been given to the elected members of the Kshettra Panchayat. Elaborating his submission, learned Senior Counsel pointed out that though the notice and the proposed motion may have been despatched by registered post on 24 October 2017 but since they were received between 27 October 2017 and 13 November 2017, it cannot be said that the requirement of giving to the elected members notice of not less than fifteen days notice had been complied with. According to the learned Senior Counsel the date of despatch is not relevant and what is relevant is the date on which the envelopes containing the notice and the proposed motion are received by the elected members of the Kshettra Panchayat. The submission is that the Collector has to “**give**” to the elected members of the Kshettra Panchayat notice of not less than 15 days of the meeting and, therefore, the elected members will have information of the meeting only when the notice is actually received by them and not when it is despatched .

Learned Senior Counsel has also placed reliance upon Rule 2 of the Rules framed under Section 237 of the Act to contend that the notice under Section 15(3)(ii) of the Act can only be sent by registered post and by affixation of a copy thereof on the notice board in the office of the Kshettra Panchayat and by no other mode. It is, therefore, his submission that the publication of the notice in the newspaper is of no consequence. In support of his contention learned Senior Counsel has placed reliance upon the

judgment of the Supreme Court in **Dipak Babaria & Anr. Vs. State of Gujarat & Ors.**,<sup>2</sup>

Sri Ashok Khare, learned Senior Counsel appearing for respondent No.4-Pankaj Singh who had served the written notice, however, contended that the provisions of Section 15(3)(ii) had been duly complied with inasmuch as not only was the notice and the proposed motion despatched by registered post on 24 October 2017 but the notice was also pasted on the notice board of the office of Kshettra Panchayat on 25 October 2017 and the notice was also published in the newspaper on 25 October 2017. Learned Senior Counsel submitted that the relevant date for determining whether notice of not less than fifteen days has been given is the date on which the notice and the proposed motion are despatched by registered post and not when they are received by the elected members. In support of his contention, learned Senior Counsel placed reliance upon the decision of the Supreme Court in **Jai Charan Lal & Anr. Vs. State of Uttar Pradesh & Ors.**,<sup>3</sup> as also a Division Bench judgment of this Court in **Satya Prakash Mani & Ors., Vs. State of U.P.& Ors.**,<sup>4</sup>. In this connection, learned Senior Counsel has also placed reliance upon Section 27 of the U.P. General Clauses Act, 1904.

Learned Senior Counsel, therefore, contended that all the elected members of the Kshettra Panchayat had information that the meeting of the members of the Kshettra Panchayat shall be held on 11 October 2017 at 10:30 a.m. in the office of the Kshettra Panchayat to consider the Motion of

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<sup>2</sup> (2014) 3 SCC 502

<sup>3</sup> AIR 1968 SC 5

<sup>4</sup> (2005) 2 UPLBEC 1883

No Confidence against the petitioner and infact 74 elected members attended and participated in the voting that took place on 11 November 2017.

Learned Standing Counsel also submitted that the provisions of Section 15(3)(ii) of the Act had been duly complied with and in this connection placed the relevant pages of the original records.

We have considered the submissions advanced by learned counsel for the parties.

To appreciate the submissions advanced by learned Senior Counsel for the parties, it would be appropriate to refer to the provisions of Section 15 of the Act as also the Rules framed under Section 237 of the Act relating to the form in which a written notice of intention to make the motion of no confidence will be given by the members of the Kshettra Panchayat and for prescribing the manner in which the Collector shall give notice of the said motion to the members of the Kshettra Panchayat.

Section 15 of the Act is reproduced below:

"15 Motion of non-confidence in Pramukh -

(1) A motion expressing want of confidence in the Pramukh or any of a Kshettra Panchayat may be made and proceeded with in accordance with the procedure laid down in the following sub-sections.

(2) A written notice of intention to make the motion in such form as may be prescribed, signed by at least half of the total number of elected members of the Kshettra Panchayat for the time being together with a copy of the proposed motion, shall be delivered in person, by any one of the members signing the notice, to the Collector having jurisdiction over the Kshettra Panchayat.

(3) The Collector shall thereupon:-

(i) convene a meeting of the Kshettra Panchayat for the consideration of the motion at the office of the Kshettra Panchayat on a 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 elected member of the Kshettra Panchayat notice of not less than fifteen days of such meeting in such manner as may be prescribed."

The English version of the Rules framed under Section 237 of the Act regarding making of a motion of no confidence against the Pramukh or Up-Pramukh of the Kshettra Panchayat, as amended in 1994, would read as follows:

"1. A written notice of intention to make a motion expressing want of confidence in the Pramukh or the Up-pramukh of a Kshettra Panchayat shall be in Form I of the Schedule given below.

2. The notice under clause (ii) of sub-section (3) of Section 15 of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, shall be in Form II of the Schedule given below and shall be sent by registered post to every member of the Zila Panchayat at his ordinary place of residence. It shall also be published by affixation of a copy thereof on the notice board of the office of the Kshettra Panchayat.

#### **SCHEDULE**

##### **FORM I**

*(Form of the written notice of intention to make a motion expressing want of confidence in the Pramukh/Up-pramukh of a Kshettra Panchayat)*

To,  
The Collector,  
.....

#### **Notice**

Sir,

We the undersigned members of the .....  
..... Kshettra Panchayat hereby give this notice to you of our intention to make the motion of non-confidence in Sri ....., the Pramukh/Up-Pramukh of our Kshettra Panchayat and also annex hereto a copy of the proposed motion of non-

confidence.

2. The total number of members, who for the time being constitute the Kshettra Panchayat. ....  
..... is .....

Your faithfully,

- 1.
- 2.
- 3.
- 4.

Place .....  
Dated .....

**FORM II**

(Form of the notice of a meeting of the Kshettra Panchayat to be held for the consideration of the non-confidence motion against the Pramukh/Up-Pramukh )  
To  
Sri .....  
Member of ..... Kshettra Panchayat,  
District .....

**Notice**

This notice is hereby given to you of the meeting of ..... Kshettra Panchayat which shall be held at the office of the said Kshettra Panchayat on .....  
..... (date) at ..... (time) for consideration of the motion of non-confidence which has been made against Sri ..... , the Pramukh/Up-Pramukh of the said Kshettra Panchayat.  
A copy of the motion is annexed hereto.  
Collector .....  
Place .....  
Dated ....."

The total number of elected members of the Kshettra Panchayat is  
112. Seventy elected members of the Kshettra Panchayat had submitted the written notice of intention to make the motion of no confidence. This was accompanied by the proposed motion of no confidence. Thus, the written notice of intention to make the motion expressing want of confidence in the Pramukh was signed by at least half of the total elected members of the



Kshettra Panchayat. The provisions of Section 15(2) of the Act were, therefore, complied with.

On receipt of the notice, the Collector issued an order dated 24 September 2017 for convening a meeting of the elected members of the Kshettra Panchayat on 11 November 2017 at 10:30 a.m in the office of the Kshettra Panchayat.

A notice dated 24 October 2017 was thereafter issued by the Collector. The notice mentions that a meeting of the elected members of the Kshettra Panchayat would be held in the office of the Kshettra Panchayat at 10:30 a.m. on 11 November 2017 to consider the proposed motion of no confidence against the petitioner. This notice and the proposed motion of no confidence were sent by registered post to all the elected members on 24 October 2017. The notice as also the proposed motion of no confidence was also pasted on the notice board of the Kshettra Panchayat on 24 October 2017. It was also published in the newspaper 'Amar Ujala' on 25 October 2017.

Section 15(3)(ii) provides that the Collector shall give to the elected members of the Kshettra Panchayat notice of not less than fifteen days of such meeting in such manner as may be prescribed. As noted above, the manner has been prescribed in the Rules framed under Section 237 of the Act. Rule 1 provides that a written notice of intention to make a motion expressing want of confidence in the Pramukh shall be in Form I of the Schedule. Rule 2 provides that the notice shall be sent by registered post to every member of the Kshettra Panchayat at his ordinary place of residence.

It also requires it to be published by affixation of a copy thereof on the notice board of the office of the Kshettra Panchayat. It is not in dispute that the written notice of intention was in Form-I and that the notice was sent by the Collector together with the copy of the motion in Form-II.

The main issue that arises for consideration in this petition is as to whether the provisions of Section 15(3)(ii) of the Act requiring the Collector to give to the elected members of the Kshettra Panchayat a notice of not less than fifteen days of such meeting was complied with by the Collector.

To examine this issue, the Court has to ascertain whether the notice dated 24 October 2017 issued by the Collector, Bareilly for convening a meeting of the members of the Kshettra Panchayat on 11 November 2017 to consider the motion of no confidence against the petitioner was despatched by the Collector by registered post on 24 October 2017 and was pasted on the notice board of the Kshettra Panchayat on 25 October 2017. The records and the affidavit do substantiate that the notice and the proposed motion of no confidence against the petitioner was sent by registered post to all the elected members of the Kshettra Panchayat on 24 October 2017 and they were also pasted on the notice board of the Kshettra Panchayat on 25 October 2017.

It would at this stage be appropriate for the Court to refer to two Full Bench decisions of this Court in **Sardar Gyan Singh Vs. District Magistrate, Bijnor & Ors.**<sup>5</sup> and **Vikas Trivedi & Ors. Vs. State of U.P. & Ors.**<sup>6</sup>.

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<sup>5</sup> 1975 AWC 321

<sup>6</sup> AIR 2014 All 166

**Sardar Gyan Singh** is a Full Bench decision of five Hon'ble Judges and Section 87-A(3) of the U.P. Municipalities Act 1916 relating to motion of no-confidence against the President came up for interpretation. The Full Bench noticed that though Section 87-A contains 15 sub-sections, only the first three sub-sections were material. They are as follows:-

"87-A: (1) Subject to the provisions of this section, a motion expressing no-confidence in the President shall be made only in accordance with the procedure laid down below.

(2) Written notice of intention to make a motion of no-confidence on its president signed by such number of members of the board as constituted not less than one-half of the total number of members of the Board, together with a copy of the motion which it is proposed to make, shall be delivered in person together by any two of the members signing the notice to the District Magistrate.

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

The issue that arose before the Full Bench was as to whether the provisions of Section 83-A(3) are mandatory or directory. The Full Bench held that the first part of the section requiring the District Magistrate to convene a meeting and to send notices to the members is mandatory but the manner of service of notice and publication of the same is directory in nature

and substantial compliance of the same would meet the requirement of law.

The relevant paragraphs are as follows:-

"8. A careful analysis of Sub-section (3) would make it clear that the first part which requires the District Magistrate to convene meeting of the Board for considering the motion of no-confidence against the President is mandatory. The District Magistrate is required to perform a public duty in convening a meeting of the Board for consideration of the motion at the office of the Board on the date and time as fixed by him, he has no choice in the matter. He has to convene a meeting on a date within 30 and 35 days from the date of presentation of the motion to him. The District Magistrate is further enjoined to perform a public duty of sending notice of the meeting to the members, this again is a mandatory requirement of law which must be strictly complied with. The second part of the sub-section lays down the manner required to be followed in sending notices to the members. It lays down that notice of the meeting shall be sent by registered post to every member of the Board at his place of residence. The essence of this provision is to give information to the members to enable them to avail opportunity of participating in the meeting convened for the purpose of considering the no-confidence motion. **The first part of the section requiring the District Magistrate to convene meeting and to send notices to the members is mandatory, any disregard of that provision would defeat the very purpose of the meeting, but the manner of service of notice and publication of the same is directory in nature, therefore a substantial compliance of the same would meet the requirement of law.**

9. **The purpose of service of notice by registered post and publication of the notice otherwise is to ensure that members should get adequate notice, of the meeting to enable them to participate in the debate over the no-confidence motion at the meeting. That purpose is not defeated if the notice is sent to the members not by registered post but by other methods and seven clear days are given to the members. The legislature never intended that unless notice is sent by registered post to the members the proceedings of the meeting would be vitiated.** The legislature, no doubt, stressed that if the two steps as laid down in the sub-section are taken by the District Magistrate, i.e., notice of

the meeting is sent to members by registered post at their place of residence and further if it is published in the manner directed by the District Magistrate, a presumption would arise and every member shall be deemed to have received the notice of the meeting. In that case it will not be open to any member to contend that he did not receive notice of the meeting or that the meeting was illegally constituted for want of notice. The purpose of sending notice can be achieved even without sending the same by registered post. There may be a case where the postal system may be disorganised and it may not be possible to send notice by registered post. In that situation the District Magistrate may send notice to members of the Board by special messenger giving them seven clear days before the date of the meeting. In that event the legislative intent and purpose requiring sending of notice would be fully achieved, although in that event the rule of presumption as laid down in the sub-section would not be available and if a challenge was made by a member that no notice was received by him, the deeming provision will not be applicable and it would require proof that the notice even though sent by ordinary post or by special messenger was actually served on the member. The emphasis on sending notice to members by registered post and for publication of the same in the manner directed by the District Magistrate, is directed to invoke the presumption as contemplated in the last sentence of the sub-section. In the absence of presumption, it is always open to a party to prove that notice though sent in a different manner was served on the members. In view of the above discussion, I am of the opinion that even if the notice is not sent to the members by registered post the meeting cannot be held to have been illegally convened provided it is proved that the notice was received by the members and they had knowledge of the meeting.

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.. ..

19. 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 service of notice of the meeting for consideration of the motion of no-confidence on the members will be sufficient and any literal non-compliance of the said provision will not invalidate the**

**meeting or the motion of no-confidence which may be adopted at the said meeting.** In view of the above discussion I am of the opinion that the second part of Sub-section (3), of Section 87-A of the Act laying down manner for sending the notice to the members of the Board is directory, while the first part of the said sub-section requiring the District Magistrate to convene a meeting and to send notices to the members is mandatory. It would be sufficient compliance of the directory provision of this sub-section if notice is served on the members not by registered post but by any other mode and in that situation the motion of no-confidence which may be carried at the said meeting cannot be nullified on the ground of any literal non-compliance of service of notice by registered post."

(emphasis supplied)

**Vikas Trivedi** is a Full Bench decision of three Hon'ble Judges. The issue that arose before the Full Bench was with regard to the motion of no-confidence contemplated under Section 15(3)(ii) as also Section 28(2)(3) of the Act. The Full Bench held that the requirement of giving notice by the Collector under Section 15(3)(ii) in the prescribed proforma as required by Rule-2 and Form F-2 was not mandatory and the proceedings would not be vitiated if there was substantial compliance of the provisions. However, whether there was substantial compliance of the provisions would depend on the facts and circumstances of each case. The observations are as follows:-

"63. Now after having noticed the relevant statutory provisions, the principles of statutory interpretation and the various judgments of this Court interpreting Section 15 and Section 28 of the 1961 Act, which are up for consideration in this writ petitions, we have to look into the statutory provisions under consideration and find out as to whether the requirement of sending the notice in accordance with the prescribed proforma with annexures is mandatory and non compliance of the same shall vitiate entire proceeding.

64. A perusal of sub-section (2) of Section 15 indicates that it is specifically provided that written notice of intention to make the motion in such form as maybe prescribed together with a copy of proposed motion shall be delivered in person to the Collector. After receiving the written notice of intention to make the motion along with proposed motion, it is enjoined on the Collector to convene a meeting of the Kshetra Samiti for consideration of the motion on a 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. Sub-section (3)(ii) of Section 15 requires the Collector to give notice to the members of not less than fifteen days of such meeting in such manner as may be prescribed. The manner in which the notice is to be given has been prescribed in the rules. As noted above, the manner of sending notice is prescribed in Rule 2. Rule 2 contains three requirements i.e. (a) shall be in Form-2 of the schedule given below, (b) shall be sent by registered post to the Kshetra Samiti at its ordinary place and (c) shall also be published by affixation of copy thereto on the Notice Board of the office of the Kshetra Samiti. Form-2 of the Schedule is the formate of the notice. The notice is required to contain information regarding following:-

- (a) Name of Kshetra Samiti whose meeting is to be held;
- (b) Date of meeting;
- (c) Time of meeting; and
- (d) The name of Pramukh/Up-Pramukh against whom motion of no confidence has been brought.

.. ..

72. Whether there has been substantial compliance of the second part of Clause (ii) of Section 15(3) read with Rule 2 of the Rules and Form II contained in the Schedule to the Rules, depends on the facts and circumstances of each case.

.. ..

74. The judgment of 5-Judge Full Bench in Gyan Singh's case (supra) had considered Section 87-A of the U.P. Municipalities Act, 1916, which is also similar provision for bringing no confidence motion against the President of the Municipal Board. As noted above, Section 87-A sub-clause (3) of the Municipalities Act, 1916 requires the District Magistrate to send the notice by registered post not less than seven clear days before the

date of meeting ..... at his place of residence. The words used in Section 87(3) were "he shall send registered post". Sending of the notice by registered post was thus preceded by word "shall". The Full Bench held that second part of Section 87(3) which requires sending of the notice by registered post is not mandatory and substantial compliance of the said provision was sufficient and shall not invalidate the proceeding. **Sending the notice in prescribed proforma as required by Rule 2 read with Form-2 is also procedural requirement substantial compliance of which shall serve the purpose. Insisting on compliance of each and every part of formate of the notice shall be giving undue weight to the procedure and formate ignoring the purpose and object of whole statutory provision and scheme.** The ratio of Full Bench judgment in Gyan Singh's case (supra), as noted above, are fully applicable while interpreting the provisions of Section 15(3)(ii) read with Rule 2 and Form-2. The Full Bench in Gyan Singh's case held that second part of sub-section (3) of Section 87 requiring sending of notice by registered post lays down the manner required to be followed in sending the notice to the members which is directory. The same has been specifically laid down by the Full Bench in paragraphs 8 and 18 which have already been quoted above. We are of the view that ratio of the Full Bench in Gyan Singh's case (supra) is fully applicable for interpreting the provisions of Section 15(3) read with Rule 2 and Form-2.

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.. ..

77. The provisions of Rule 2 read with Form-2 are also statutory provisions which are required to be complied with and there is no discretion in the authorities or they are not free to disregard the same at their whims. If the notice, which is sent by the Collector does not substantially comply with the requirements, the proceeding may be vitiated, similarly when the notice substantially comply with the provisions, the action may survive. This can be explained by giving illustration. Take an example where Collector after receiving notice for no confidence motion along with proposal convenes a meeting and issue a notice to the members which does not indicate that meeting is fixed for consideration of no confidence motion against which office bearers, obviously the said notice cannot be said to be substantial



compliance. Another example of non compliance shall be when notice does not mention even the date of meeting. **The Court has to look into as to whether there is substantial compliance, and the proceeding will be allowed not to be vitiated only when the Court is satisfied that there is sufficient compliance of the manner in which notice has been sent. .... "**

(emphasis supplied)

It is clear from the aforesaid Full Bench decisions that the notice contemplated under Section 15(3)(ii) requires the following information to be given to the elected members:-

- (a) Name of Kshetra Samiti whose meeting is to be held;
- (b) Date of meeting;
- (c) Time of meeting; and
- (d) The name of Pramukh/Up-Pramukh against whom motion of no confidence has been brought."

This issue was also examined by a Division Bench of the Lucknow Bench in **Awadhesh Singh Vs. State of U.P. & Ors.**,<sup>7</sup> After referring to the Full Bench decision in **Sardan Gyan Singh** and a decision of the Division Bench of the Lucknow Bench in **Jivendra Nath Kaul Vs. State of U.P. & Ors.**,<sup>8</sup> the Division Bench observed as follows:

"In our considered opinion, the said ratio was again appropriately reiterated while applying it to the office of Chairman of a Zila Panchayat under the 1961 Act as held in the case of Jivendra Nath Kaul (supra). The Division Bench in that case was directly considering the impact of non-fixation of notices by posting on the notice board which is evident from the recitals contained in paragraphs 2, 12, 18, 27, 28, 29, 31 and 32 of the said decision. We are not reproducing the said paragraphs to unnecessarily burden this judgment, **but the crux of the ratio is, that mere fact that the notice was not pasted on the notice board of the Zila Panchayat would not invalidate the convening of the meeting as the purpose**

<sup>7</sup> Misc. Bench No.7171 of 2017, decided on 12 April 2017

<sup>8</sup> 1991 (9) LCD 186

**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. The judgment clearly states that a man can have knowledge of a meeting even if he reads a notice which was served upon one of his colleagues. In such circumstances, the person cannot even come and say that he was not served a notice individually, inasmuch the intention of giving notice is to inform the members of the Panchayat of the date, time and place in which a motion of no confidence is to be considered.** The decision cited by Sri Prashant Chandra in the case of State Bank of India (supra) of the Bombay High Court would not be attracted as the said decision was not concerned with any such requirement as involved in the present case relating to the compliance of procedure under the 1961 Act. The direct decisions which are closer to the controversy have already been indicated above and hence no benefit can be availed of by the petitioner on the strength of the judgment of the Bombay High Court. **Apart from this, the distinction between form and content being mandatory or directory has again been explained in the Full Bench decision of Vikas Trivedi (supra) which also relies on the earlier Full Bench decision of Sardar Gyan Singh (supra)."**

(emphasis supplied)

Thus, it is clear from the aforesaid decisions rendered by the two Full Benches that the requirement of giving notice by the Collector under Section 15(3)(ii) in the prescribed proforma as required by Rule-2 and Form-II is not mandatory and the proceedings will not be vitiated if there has been substantial compliance of the provisions. What is necessary is that the elected members should have information regarding the name of the Kshettra Samiti whose meeting is to be held; the date of the meeting; the time of the meeting and the name of the Pramukh against whom the motion has been brought.

Sri Ravi Kant, learned Senior Counsel for the petitioner, however, contended that since Rules 1 and 2 referred to above require publication of the notice by sending the notice by registered post and by pasting it on the notice board of the Kshettra Panchayat, the mode adopted for publishing the notice in the newspaper is of no consequence and cannot be made the basis for submitting that information had been conveyed to the elected members of the Kshettra Panchayat. In support of his contention, learned Senior Counsel has placed reliance upon the decision of the Supreme Court in **Dipak Babaria** that if the law requires a particular thing to be done in a particular manner, it should be done in that way and none other.

The two modes prescribed under the Rule had been adopted. There is nothing in the Rule which prohibits the Collector from publishing the notice in the newspaper or serving it personally. These would be additional modes. It is, therefore, not possible to accept the contention of learned Senior Counsel for the petitioner.

From what has been stated above, there has been substantial compliance of the provisions of Section 15(3)(ii) of the Act as all the members of Kshettra Panchayat had due information that a meeting of the members of the Kshettra Panchayat expressing want of confidence in the Block Pramukh would be held on 11 November 2017 at 10.30 a.m in the office of the Kshettra Panchayat to consider the motion because the notice and the motion were pasted on the notice board of the Kshettra Panchayat on 24 October 2017 and it was also published in the newspaper on 25 October 2017.

In such circumstances, it may not be necessary for the Court to deal with the submissions advanced by learned Senior Counsel for the petitioner that the provisions of Section 15(3)(ii) of the Act were not complied since the notice that was sent by registered post was received by some of the elected members between 27 October 2017 and 13 November 2017 and, therefore, the requirement of giving notice of not less than fifteen days had not been complied with.

However, as learned counsel for the parties have made submissions on this issue, we consider it appropriate to examine this issue also.

Section 15(3)(ii) of the Act provides that the Collector shall **“give”** to the elected members of the Kshettra Panchayat notice of not less than fifteen days of the meeting. The issue is whether this period of fifteen days should be counted from the date the notice is despatched by registered post or should be counted from the date when they are actually received by the members. It needs to be remembered that once a written notice of intention to make the motion is submitted in person to the Collector, the Collector has to, in view of the provisions of Section 15(3)(i) of the Act, convene a meeting of the Kshettra Panchayat for consideration of the motion on a 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. Sub-section (3)(ii) of Section 15 of the Act, however, provides that the Collector shall **“give”** to the elected members of the Kshettra Panchayat notice of not less than fifteen days of the meeting. Rule 2 also provides that the notice shall be sent by registered post to every member of the Zila Panchayat at his ordinary

place of residence. These factors have to be kept in mind for determining whether the period of fifteen days should be counted from the date the notice is despatched by registered post or the date when it is actually received.

It would be very difficult for the Collector to comprehend, when he proceeds to give the notice contemplated under Section 15(3)(ii) of the Act by registered post, the date on which the notice will be received by the elected members. Can he, in such circumstances, be expected to fix a date by which all the elected members would have received the notice. The Collector has also to keep in mind that the meeting has to be held not later than thirty days from the date on which the notice under Section 15(2) is delivered to him. There would be no uncertainty if the period of fifteen days is counted from the date the notice is despatched by registered post.

It also goes without saying that Courts should avoid an interpretation that would defeat the very legislative measure. This is what has been observed by the Supreme Court in **N. Parameswaran Unni Vs. G. Kannan & Anr.**<sup>9</sup> while dealing with the provisions of Section 138 of the Negotiable Instruments Act, 1881. The Supreme Court also observed that once a notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected and that interpretation of a statute should be based on an object which the intended legislation seeks to achieve. The relevant observations are:-

“13. It is clear from Section 27 of the General Clauses Act, 1897 and Section 114 of the Evidence Act, 1872, that once notice is sent by registered post by correctly addressing to the drawer of the cheque, the

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service of notice is deemed to have been effected. Then requirements under proviso (b) of Section 138 stand complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption.

**14.** It is well settled that interpretation of a statute should be based on the object which the intended legislation sought to achieve:

“It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid.”

It will also be appropriate to reproduce how **“giving of notice”** has been defined in Black's Law Dictionary. The 'giving of notice' is distinguished from 'receiving of the notice'. It provides that a person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such person actually comes to know of it. 'A person 'receives' a notice when it is duly delivered to him or at the place of his business.

It would also be useful to reproduce Section 27 of the U.P. General Clauses Act and the same is as follows:-

**“27. Meaning of service by post.--**Where any Uttar Pradesh Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document and, unless the contrary is proved, to have been effected at the time at

which the letter would be delivered in the ordinary course of post."

This issue was also considered by the Supreme Court in **Jai Charan Lal** the Supreme Court while examining the provisions of Section 87-A(3) of the U.P. Municipalities Act, 1916 which are as follows:-

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

It was sought to be contended by the appellant that the notice which was sent by the District Magistrate by registered post did not allow seven clear days before the date of meeting as is required to be under the latter part of sub-section (3) and to substantiate this it was sought to be argued that the critical date is not the date on which the notice was despatched but the date on which the notice is received. The Supreme Court repelled this submission and observed as follows:-

"4. The contentions of the appellant are based upon the provisions of sub-sections (3) and (5) and it is contended that there has been a breach of these provisions and therefore, the resolution is void. Three arguments in this connection have been raised before us and we shall mention them now. the First contention is that the notice which was sent out by the District Magistrate by registered post did not allow seven clear days before the date of the meeting as required by the latter part of sub-section (3). In advancing this argument

the learned counsel for the appellant contends that the critical date is not the date on which the notice is despatched but the date on which the notice is received. Since the notice was despatched on the 17th and presumably reached the next day the learned counsel excludes the date of receipt of the notice and the date of the meeting and says that seven days did not intervene. In our judgment this is an erroneous reading of the sub-section. The sub-section says that the District Magistrate shall send the notice not less than seven clear days before the date of the meeting and the word "send" shows that the critical date is the date of the despatch of the notice. As the notice was sent on the 17th and the meeting was to be called on the 25th, it is obvious that seven clear days did intervene and there was no breach of this part of the section."

A Division Bench of this Court in **Satya Prakash Mani & Ors.**, after referring to the observations made by the Full Bench of this Court in **Gyan Singh** that the essence of provisions of Section 87-A(3) of the U.P. Municipalities Act is to give information to the members to enable them to avail the opportunity of participating in the meeting convened for the purpose for considering the no confidence motion as also the observations made by the Supreme Court in **Jai Charan Lal**, observed as follows:-

**"34. Even if it is taken that that some members had received notice that gave less than 15 days time for the meeting from the date of receipt, the meeting cannot be invalidated. The relevant thing is date of giving the notice and not of the date of receipt by the members. The notice is given on the date when it is affixed on the notice board or is despatched to the members.** It has also been so held in *Jai Charan Lal Anal Vs. State of U.P.* AIR 1968 SC 5 and *Ramshrya V. District Panchayat Raj Officer, Gorakhpur*, (1997) 3 UPLBEC 1872.

(emphasis supplied)



This decision was followed by the Division Bench in **Rajeev Kiran Vs. State of U.P. & Ors.**,<sup>10</sup> Reference was made to Section 27 of the General Clauses Act and it was observed:-

“Since Section 27 of the General Clauses Act specifically incorporated the expression “give”, which is equivalent to the word “give” used under Section 15(3)(ii) of the Act, therefore, service shall be deemed to be effected by properly posting, to which there is no such dispute. The dispute, which has been tried to be raised by the petitioner herein, is with regard to delivery by hand on 27 July 2012, which is, according to us, extraneous in nature.”

Thus, from what has been stated above, it is more than apparent that Section 15(3)(ii) of the Act requires the counting of fifteen days from the date of despatch of the notice by registered post and not from the date the envelopes are received by the elected members.

There is, therefore, no merit in any of the contentions advanced by learned Senior Counsel for the petitioner.

The writ petition, therefore, deserves to be dismissed and is, accordingly, dismissed. The interim order is vacated and the respondents are directed to declare the result of the voting that took place in the meeting held on 11 November 2017 as expeditiously as is possible.

**Order Date :- 21.11.2017**  
NSC

(Dilip Gupta, J.)

(Jayant Banerji, J.)