A.F.R.

Court No. - 1

Case :- WRIT - C No. - 32482 of 2019

Petitioner :- Niyazuddin And 5 Others
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Mahendra Singh,Shashi Nandan (Sr. Advocate)
Counsel for Respondent :- C.S.C.,Purushottam Mani Tripathi

Hon'ble Ramesh Sinha,J.
Hon'ble Ajit Kumar,J.

(*Per* Sinha 'J' for the Bench)

1. Heard Sri Shashi Nandan, learned Senior Advocate assisted by Sri Mahendra Singh, learned counsel for the petitioners, Sri Sanjeev Singh along with Sri Purushottam Mani Tripathi, learned counsel for the respondent No.3, learned Standing Counsel for the State-respondents and perused the record.

2. By means of present writ petition under Article 226 of the Constitution, as it came to be filed, a writ of mandamus was initially sought for commanding respondent No.2, namely, the District Magistrate, Kushinagar to pass appropriate orders exercising power vested with him under Section 15(2) of the U.P. Kshettra Panchayat & Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as 'Adhiniyam, 1961') *qua* the notice of “No Confidence Motion” already delivered to him on 9th September, 2019 by the members of the Kshettra Panchayat, Dudahi, District- Kushinagar.

3. The grievance raised by the petitioners is that though a statutory duty is cast upon the District Magistrate to take a decision to convene a meeting of Kshettra Panchayat for consideration of motion of no confidence moved against the Chairman/ Pramukh within 30 days of the delivery of the notice,

the District Magistrate- respondent No.2 was only borrowing time by holding some roving inquiry in respect of the signatories of the notice. It had been argued initially that in view of the settled legal position emerging out from the Full Bench Judgment of this Court in the case of **Smt. Sheela Devi and others v. State of U.P. and others, 2015 (2) ADJ 325 (FB)** followed by the subsequent Division Benches of this Court, it was not open for the District Magistrate to conduct a roving inquiry calling for evidence to arrive at satisfaction regarding genuineness of the signatures of the members on the notice of no confidence motion.

4. Having found *prima facie* arguments advanced by the learned counsel for the petitioners, to be appealing, we passed an order on 1st October, 2019 to the following effect:-

> *"It is contended by Sri Shashi Nandan, learned Senior Advocate assisted by Sri Mahendra Singh, learned counsel for the petitioners that though the notice for no confidence motion has been moved before the District Magistrate, Kushinagar on 09.09.2019 but he has sit tight over the matter and has not passed any order till date, resultantly, the notice is getting frustrated as not only the 15 days clear time has to be given to the person concerned against whom the no confidence motion is sought to be stated, but even the meeting has to be convened within 30 days of the notice.*
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> *In such view of the matter, he submits that it is something like frustrating the provisions contained in the U.P. Kshettra Panchayats and Zila Panchayat Adhiniyam, 1961.*
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> *Let, District Magistrate, Kushinagar file his personal affidavit on 17.10.2019 to disclose the reasons for not passing any order on the notice of no confidence motion submitted before him on 09.09.2019, failing which, the District Magistrate, Kushinagar shall appear in person before this Court.*
>
> *Put up on 17.10.2019."*

5. On the date so fixed above, a personal affidavit was filed by the District Magistrate, Kushinagar annexing therewith a copy of

an order dated 20th September, 2019 holding that in a fact finding enquiry conducted by him since he has found signatures of 27 members to be valid out of 83 signatories to the notice and the total members of the House being 149, the notice thus being found genuinely signed only by members less than 50%, it was not lawful to convene meeting of the Kshettra Panchayat under sub-section (3) of Section 15 read with sub-section (2) of Section 15 of Adhiniyam, 1961 and thus, notice of motion was held to be incompetent.

6. In such view of the matter, learned counsel for the petitioners sought time to challenge the order of District Magistrate and for that we granted time fixing 21st October, 2019.

7. Having heard learned counsel for the respective parties, two legal questions arise for our consideration in the present matter:-

(A). Whether the District Magistrate is justified in conducting the fact finding enquiry by collecting evidence to consider the notice of no confidence motion to be genuinely signed by members which constitute at least half (50%) members of the total strength of the House and;

(B). What should be the reasonable time within which the District Magistrate should take a decision either to convene a meeting or reject the notice for that matter, so as to ensure that legislative intendment in providing 30 days time for convening a meeting from the date of notice delivered to the District Magistrate under Section 15 of Adhiniyam, 1961, is not frustrated.

8. In so far as the first question is concerned, the issue is no more *res integra*. The Full Bench of this Court in the case of **Smt. Sheela Devi** (*supra*) vide paragraphs 12, 13, 14 and 15 has

observed thus:-

> *“12. This view which we are inclined to take finds support in an earlier judgment of a Full Bench of this Court in Mathura Prasad Tewari v. Assistant District Panchayat Officer, Faizabad, 1966 ALJ 612. The Full Bench in that case considered the provisions of Rule 33-B of the U P Panchayat Raj Rules, 1947 which, at the material time, provided as follows:*
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> > *"33-B (1) A written notice of the intention to move a motion for removal of the Pradhan ... under Sec. 14 ... shall be necessary. It shall be signed by not less than one half of the total number of members of the Gaon Sabha and shall state the reasons for moving the motion and ... shall be delivered in person by at least five members signing the notice to the prescribed authority.*
> >
> > *(2) The prescribed authority shall, as soon as may be after the receipt of the notice convene a meeting of the Gaon Sabha... The meeting so convened shall be presided over by the prescribed authority or the person authorised by him in writing in this behalf."*
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> *13. Under Rule 33-B (2), the prescribed authority was required to convene a meeting of the Gaon Sabha as soon as may be after the receipt of a notice under sub-rule (1) signed by not less than one half of the total number of members. Chief Justice M C Desai in the judgment of the majority, held that having due regard particularly to the need to convene the meeting as soon as possible and the large number of members of the Gaon Sabha, it could never have been intention of the State Government while making the rule that issues such as whether the signatures on the notice were forged or were obtained by fraud or coercion be resolved where a long drawn enquiry would become necessary. In that context, the learned Chief Justice observed as follows:*
>
> > *"...If a prescribed authority finds that some signatures are not of members of the Gaon Sabha or are forged or otherwise invalid and the remaining signatures are insufficient it would be bound to desist from convening a meeting but the question before us is different, it being whether it is required by any rule to make an enquiry. There may be no provision forbidding an enquiry but that also is immaterial because the law does not require everything not forbidden to be done. The most that can be said is that the matter is at the discretion of the prescribed authority; if a complaint is made to it that a*

material number of signatures is invalid it may in its discretion make an enquiry or refuse to make it. If it is a small enquiry it is justified in making it and if it is likely to turn out into a long drawn enquiry or if it thinks that the complaint is not bona fide or is made with the ulterior object of delaying the convening of the meeting it is fully justified in not undertaking an enquiry..."

The Full Bench also held as follows:

"...There is nothing to suggest that he may spend days and even months in enquiring whether the signatures on the requisition are genuine or not or are obtained without resort to fraud or coercion or not. If it cannot be said that he is bound to make an enquiry it cannot be said that the prescribed authority is bound to make an enquiry on receipt of a notice under Rule 33-B. Injustice and anomalies can be imagined but what is certain is that an enquiry may take a long time and may be followed by applications for certiorari, mandamus and prohibition, in turn followed by appeals from orders on the applications. Then the prescribed authority has no power to summon witnesses and documents and it is not understood how it can hold an enquiry.

...Whether a meeting should be convened or not is a matter only between the prescribed authority and the signatories delivering the notice to it. The prescribed authority has to act on its finding that the notice has been signed by at least half the members and has been presented by at least five of the signatories. As nobody has a right to file any objection the question of his holding an 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 to make it. Obviously there cannot be a right in any person to compel it to make it when he has not been given a right to file an objection."

14. The dissenting judgment, it must be noted, also observes that it was not necessary for the prescribed authority to enter upon a detailed enquiry and the authority would not go into difficult question of fraud and duress. However, in the view of the dissenting judge, the prescribed authority would have to make a general enquiry if there was a specific allegation that a particular signature of a living person is forged or is a signature of a person who is dead. The dissenting judge held that he was not in agreement with the principle of the majority that the prescribed authority is not required to make any

enquiry on the receipt of a notice of intention to move a motion for the removal of a Pradhan.

15. In our view, both the decisions of the majority as well as the minority essentially follow the same line and the area of dissent is rather narrow. Both the judgments of the majority as well as the minority postulate that the Collector ought not to make a detailed enquiry where serious allegations of fraud, coercion and duress are required to be resolved particularly having regard to the fact that a meeting had to be convened as soon as possible. The area of divergence is only this that whereas the majority left it open to the Collector to determine whether and if so what enquiry should be held, the view of the dissenting judge was that the Collector should hold an enquiry so long as a detailed enquiry into serious questions of coercion or fraud was not involved. In either view of the matter and since we are bound by the judgment of the Full Bench, the law on the subject is thus clear. The Collector, in the course of exercising the power which is conferred upon him, ought not to enquire into seriously disputed questions of fact involving issues of fraud, coercion and duress. Moreover, the Collector must have the discretion in each case of determining on the basis of a summary proceeding whether the essential requirements of a valid notice of an intention to move a motion of no confidence have been fulfilled. Where in the course of the summary enquiry, it appears to the Collector that the written notice does not comply with the requirements of law, the Collector would be within his power in determining as to whether all the required conditions have been fulfilled, as enunciated in sub-section (2) of Section 15. Whether the Collector in a given case has transgressed his power is separate issue on which judicial review under Article 226 of the Constitution would be available. However, we expressly clarify that we are not laying down a detailed and exhaustive enumeration of the circumstances in which the Collector can determine the validity of a notice furnished under Section (2) or those in which he can make a limited enquiry which, as we have held, he is entitled and competent to make. Ultimately, each case depends upon its own facts and it for the Collector to determine as to whether the objections raised before him are outside the scope of the limited inquiry which he can make upon notice of an intent to move a motion of no confidence if it is submitted to him together with a notice of no confidence."

9. Further the Full Bench of this Court vide paragraphs 20, 21, 23 and 24 of the judgment (*supra*) has finally concluded thus:-

"20. The principle which we have laid down in the earlier part

of this judgment is founded on the basic position that when an authority has a power to carry out a public act on the existence of certain circumstances, it has an implied power to make an enquiry in regard to the existence of those circumstances. This is a power which flows out of the basic power which is conferred upon the authority and is incidental to or ancillary for the purpose of effectuating the purpose of the conferment of the power. This principle has been recognized in a judgment of a Division Bench of this Court in Committee of Management, Sri Gandhi Inter College Vs Deputy Director of Education, 1988 UPLBEC 1057, where it was held as follows:

> *"...It is a settled law that when an authority is given power to do certain act on existence of certain circumstances, there is an implied power to make an enquiry as to whether those circumstances exist or not. The enquiry in regard to the existence of those circumstances is included in the grant of power. In other words, the power of making enquiry in regard to the existence of those circumstances flows as necessary means to accomplish the end. In fact, the enquiry is some thing essential for proper and effectual performance of duty assigned..."*

21. As a matter of statutory interpretation, the duty of the Court while interpreting legislation, first and foremost is to give effect to the plain and ordinary meaning of the language contained in the statute. The legislative intent is best reflected in the words used by the legislature in enacting legislation. Hence, the Court will not readily supply a casus omissus except when there is a clear necessity to do so and that too within the four corners of a statute. At the same time, where a literal construction of the words which have been used by the legislature give rise to an absurdity or a manifestly erroneous result, it is open to the Court to adopt a purposive interpretation which will give true effect to the legislative object and scheme. In Padmasundara Rao (Dead) Vs State of Tamil Nadu JT 2002 (3) SCC 1, the Supreme Court observed as follows:

> *"Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the*

> *construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou11, "is not to be imputed to a statute if there is some other construction available"."*

23. The same principle has been enunciated in the judgment of a Bench of two learned Judges of the Supreme Court in Shanker Raju v. Union of India, (2011) 2 SCC 409, where it has been held that a statute is designed to be workable, and the interpretation thereof by the Court should be to secure that object unless a crucial omission or clear statutory direction makes that end unattainable.

24. For these reasons, we have come to the conclusion that where a notice is delivered to the Collector under sub-section (2) of Section 15, the Collector has the discretion to determine whether the notice fulfills the essential requirements of a valid notice under sub-section (2). However, consistent with the stipulation of time enunciated in sub-section (3) of Section 15 of convening a meeting no later than thirty days from the date of delivery of the notice and of issuing at least a fifteen days' notice to all the elected members of the Kshettra Panchayat, it is not open to the Collector to launch a detailed evidentiary enquiry into the validity of the signatures which are appended to the notice. Where a finding in regard to the validity of the signatures can only be arrived at in an enquiry on the basis of evidence adduced in the course of an evidentiary hearing at a full-fledged trial, such an enquiry would be outside the purview of Section 15. The Collector does not exercise the powers of a court upon receipt of a notice and when he transmits the notice for consideration at a meeting of the elected members of the Kshettra Panchayat. Hence, it would not be open to the Collector to resolve or enter findings of fact on seriously disputed questions such as forgery, fraud and coercion. However, consistent with the law which has been laid down by the Full Bench in Mathura Prasad Tewari's case, it is open to the Collector, having due regard to the nature and ambit of his jurisdiction under sub-section (3) to determine as to whether the requirements of a valid notice under sub-section (2) of Section 15 have been fulfilled. The proceeding before the Collector under sub-section (2) of Section 15 of the Act of 1961 is more in the nature of a summary proceeding. The Collector for the purpose of Section 15, does not have the trappings of a court exercising jurisdiction on the basis of evidence adduced

at a trial of a judicial proceeding. Whether in a given case, the Collector has transgressed the limits of his own jurisdiction is a matter which can be addressed in a challenge under Article 226 of the Constitution. We clarify that we have not provided an exhaustive enumeration or list of circumstances in which the Collector can determine the validity of the notice furnished under sub-section (2) in each case and it is for the Collector in the first instance and for the Court in the exercise of its power of judicial review, if it is moved, to determine as to whether the limits on the power of the Collector have been duly observed."

10. The aforesaid judgment has been followed by two Division Benches of this Court in the case of **Amit Kumar v. State of U.P. and 13 others** (Writ-C No.- 3982 of 2018) and **Kusumawati Verma v. State of U.P. and 4 others** (Writ-C No.- 22702 of 2018).

11. At this stage, we would also like to refer to another Division Bench judgment of this Court in the case of **Smt. Shashi Yadav v. State of U.P. and others** (Writ- C No. 1994 of 2018 decided on 22nd February, 2018) in which vide paragraphs 38, 39 and 40 the Court has held thus:-

"38. We hold the provision regarding the form of written notice of intention to make the motion required to be submitted to the Collector on behalf of the members signing the notice under Section 15(2) is to be directory in nature. A substantial compliance of the provisions would implement the requirements of law. A substantial compliance is done when the purpose of the notice is achieved. The purpose of the notice of intent to make the motion, is to furnish to the Collector the material on which he has to found his satisfaction before convening the meeting. Such material should demonstrate full compliance of mandatory provisions of 15(2) of the Act. In particular, the notice should be in writing. It should manifest the clear intention of the members to make a motion expressing want of confidence in the Pramukh. It should be signed by at least half of the elected members. The copy of the no confidence motion should be attached thereto.

39. In fact, if a strict compliance of the said mandatory parts of Section 15(2) is done, then the substantial compliance of directory provisions of the aforesaid of Section 15(2) would be

automatically deemed to have been done.

40. If such facts or material can be distilled from the notice to make a motion expressing want of confidence irrespective of its form, it substantially complies with the mandate of law. As has been held, these prerequisites are fulfilled in the instant case."

12. From the reading of the aforesaid authorities what is clearly revealed is that the *ratio* behind limiting the power of the District Magistrate is that he being an authority to take decision for calling the meeting of the House enjoys only the limited power to ensure that it has been presented by the members signed/ supported by at least half (50%) members of the total strength of the House. Even if they had not signed and their affidavit accompanies the notice, it has been held that the formalities stand complete. This *ratio* in the judgment is in keeping spirit of Legislative intendment in providing 30 days limited time for the District Magistrate to convene the meeting to discuss the motion. The Legislature while drafting this statutory provision seemed to be quite conscious of sensitiveness of the issue *qua* confidence of an elected leader of the House. If the confidence of an elected leader of the House is put to challenge, in democracy the horse trading phenomenon is concomitant to a situation where majority is shaking the confidence while the one affected is pulling the string the other way. The limited period, therefore, was deliberately provided by the Legislature to avoid any such unhappy situation getting created eroding faith of the people in the democratic institution. One who does not have the confidence of the House must leave in principle but as the stances are, in practice, it is quite reverse. So, in case if any enquiry is instituted to verify the signatures by the District Magistrate of individual members on the notice and then to parade the members in his office would be something like putting a caveat to the prerogative of the House to deliberate and

vote for or against the motion and this is the reason why the District Magistrate is certainly not supposed to hold any roving enquiry as such.

13. Applying the aforesaid principle of law to the facts of the present case, it is quite reflective from the order of the District Magistrate now impugned in the present writ petition, that the District Magistrate virtually paraded the members of the House and gave opportunity to the respondent Pramukh to bring men in his support by submitting their notary affidavits. Such an exercise of power was totally uncalled for. Something what was done in the House through discussion and voting, got done in the office of the District Magistrate. Neither the provisions as contained under Section 15 of Adhiniyam, 1961 contemplated any such powers nor, any such intendment of the Legislature is presumable behind the incorporation of such a provision. Hence, the order passed by the District Magistrate dated 20th September, 2019 deserves to be held bad for undertaking an exercise beyond the authority vested with the District Magistrate. However, any order by us setting aside the order passed by the District Magistrate and remitting the matter for fresh decision would not enable him to convene the meeting within 30 days of the delivery of notice. Accordingly, we consider it appropriate to hold that rejection of the present notice would not come in the way of the petitioners and other members of the Kshettra Panchayat in moving fresh notice for no confidence motion, if they so desire.

14. The necessity to frame second question (*supra*) has arisen on account of the fact that we have experienced in the past as number of writ petitions have come to be filed seeking directions to District Magistrate to take decision within limited period of

time so that the notice does not get frustrated on account of mandatory 30 days limitation prescribed for, under sub-section (3) of Section 15 of Adhiniyam, 1961.

15. In order to deal with the second point, it is necessary to reproduce sub-section (3) of Section 15 of Adhiniyam, 1961:-

> *"**15. Motion of non-confidence in Pramukh or Up-Pramukh**- (1) ….....*
>
> *(2) ….....*
>
> *(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.***
>
> ***Explanation** - In computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a Competent Court on a petition filed against the motion made under this section is in force plus such further time as may be required in the issue of fresh notices of the meeting to the members, shall be excluded.*
> *(4) ....."*
>
> *(emphasis supplied)*

16. From the bare reading of the aforesaid provision two important and mandatory requirements appear to be:-

(1). Meeting has to be convened within 30 days from the date on which the notice under sub-section (2) of Section 15 was delivered to the District Magistrate and;

(2). There should be a notice of not less than 15 days *qua* the scheduled meeting.

17. A Division Bench of this Court in the case of **Kamal Sharma v. State of U.P. and others** (Writ-C No. 9763 of 2013 decided on 5th October, 2013) has held that in computing 15 days, the date of issuance of notice and of the meeting scheduled have to be excluded. The Division Bench vide 26 of the judgment (*supra*) has held thus:-

> *"26. There is no difference in the words "**at least**" and "**not less than**". Admittedly, the notice dated 13.2.2013 was dispatched to the elected members on 14.2.2013 by speed post for convening the meeting which was scheduled to be held on 1.3.2013. While computing 15 days period the two terminal dates have to be excluded. Thus 15 days clear notice was not given to the elected members."*

18. In such above view of the matter, therefore, the District Magistrate is required to proceed keeping the above calculations in mind. Once he has been delivered with the notice of no confidence motion, he is bound in law to take a decision whether to convene a meeting or not to convene a meeting. And if he has to convene a meeting then he has to keep in mind that he has to provide 15 clear days notice on one hand and then the meeting scheduled has to be within 30 days prescribed for under the Statute.

19. Accordingly and in view of the sensitiveness of the issue of no confidence motion, it is always necessary to take quick decision in a reasonable period of time. In view of the *ratio* of the judgment of the Full Bench (*supra*) and the subsequent Division Benches, the District Magistrate is not to hold any roving and detailed fact finding enquiry. He has to only satisfy that the notice bears the signature or if does not bear, it has the requisite number of affidavits supporting it or appended to it which may make the notice competent within the meaning of sub-section (2) of Section

15 of Adhiniyam, 1961 in the light of the judgment of the Division Bench of this Court in the case of Smt. Shashi Yadav (*supra*).

20. There is a logic also behind the above; if the House is not supporting the motion, the members *per* majority would vote against it and resultantly it will fall. Merely because the notice has been delivered to the District Magistrate and he has convened the meeting by scheduling it, does not mean that motion has stood carried nor, does it raise presumption that the Chairman or the Pramukh has lost the confidence. The ultimate show of strength is always on the floor of the House and in any democratic institution where the elected members constitute the House, this exercise has to be done in the House itself, instead of wasting time in the office of the District Magistrate parading the members of the House for verification of the signatures etc.

21. A purposive interpretation of a statutory provision would entail an exercise to understand the intendment of Legislature first. As we have already discussed above as to how the statute in the present case limits the discretion of the District Magistrate in matters of decision making on a delivered notice so as to ensure that meeting to discuss the motion on all counts is held within 30 days, it comes out to be a case where we need to look for contextual construction of the given provisions. In ordinary sense of the words 'rule of construction' means literal interpretation of the provision. However, at times discretion is provided for, with certain riders, putting a crease of limits upon powers but the question is how within those limit an authority should exercise in a case of limited authority given under statute and the answers, in our view, is discipline in exercise of authority. If a pendulum swings 60 times ordinarily to hit the 60th second, it follows a

discipline to strike a minute. So the end result is guided by the rule of discipline. The power if is vested in an authority to draw a proceeding to its logical end, the exercise of power should be aimed at achieving the said end result flawlessly. One who has the discretion to reject a notice holding it as not competent in his wisdom based on conclusion drawn, he must not shirk away from a prompt decision. The Legislature though did not provide for definite period for taking decision but since the statute provides for maximum 30 days to direct for a meeting and that too with a 15 days' clear notice, it contextually means that District Magistrate has to take decision within a limited time to ensure that purpose of notice is not frustrated. Discipline of time in decision making process, in such circumstances is contextually a must.

22. The question now is what should be a time reasonable enough, for the District Magistrate to take a decision. As we have already discussed the provision, a meeting not only has to be convened with 15 days' clear notice but the meeting in all conditions have to be called within 30 days of the delivery of notice. This being the situation, the District Magistrate has maximum 14 days from the date of delivery of notice to consider the notice and pass an appropriate order. We may also notice at this stage that explanation appended to sub-section (1) of Section 15 saves a situation where a notice has been issued convening the meeting as per the provisions but the same has come to be stayed in a court proceeding. So the time spent in a court proceeding and time taken in issuing a fresh notice have come to be excluded. But there is no saving provision to the effect that in case if notice is returned/ rejected by the District Magistrate and the same is challenged in a court of law and if set aside, would the period of 30 days exclude the period of court proceeding and the period that

may be taken by the District Magistrate in issuing a fresh order in the light of the order of the Court.

23. Equally by any rule of interpretation, we cannot apply the aforesaid saving clause given in the explanation (*supra*) to such above situation, this Court in the case of **Anil Kumar Singh v. State of U.P. and others** (Writ- C No.- 29087 of 2019 decided on 24th September, 2019) has held thus:-

> *"In view of the legislative intent behind the provision, this Court exercising its power under Article 226, cannot pass a direction which would not only carry out a new exception to the general law but in substance would amount to an exercise, quite legislative in nature, which is clearly not permissible. The law is very clear that a casus omissus can in no case be supplied by a Court of Law, for that would be to make laws (per Buller J. in Jones vs. Smart, 99 ER 963), except in some case of absolute necessity. The settled legal position as a rule of interpretation is that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers. [Union of India vs. Rajiv Kumar(2003) 6 SCC 516]."*

24. The issue, therefore, is that a 14 days' time is permitted to the District Magistrate to take a decision and if he rejects notice or returns the notice for that matter, the litigant and supporting members who have challenged the order of the District Magistrate, are rendered remediless. In our considered opinion, this cannot be the intention of the Legislature. The Legislative intent in not providing any saving provision in such circumstances, seems to be for simple reason that under sub-section (12) of Section 15 a fresh motion is barred only in case motion falls, however rejection of notice does not beget such a situation and so fresh motion can always be moved. The issue does not get resolved here because if the process is again led, the

same procedure will be followed and again the District Magistrate shall pass an order and same will again be challenged in a court of law and then if it is quashed, the situation would turn out to be the same as in this case and so it will all lead to an endless process. This will not be a happy situation either and, therefore, in our considered opinion, it is necessary to ask the District Magistrate to take a decision upon delivery of notice to him either way i.e. to return the notice or fixe the date for the meeting to discuss the motion, within a reasonable time.

25. In such above view of the matter, therefore, we hold that 7 days' time is sufficiently reasonable time for the District Magistrate to form an opinion whether to convene a meeting or not to convene a meeting. However, in exceptional circumstances and for the reasons to be recorded in writing, he may take further time but in all circumstances he shall have to pass an order before the expiry of the 13th day of the delivery of the notice. We may hasten to add that this extended period from 7th day to 13th day should be resorted to in a rarest of the rare cases and should be in a very exceptional and compelling circumstance. We hold, therefore, that if he finds that the notice is supported with signatures or the affidavits of the members consisting at least half (50%) members of the total strength of the House, he is bound to convene meeting. While he may hold a preliminary enquiry only to the extent as has been held by the Full Bench (*supra*), he has to place the motion before the House scheduling the meeting as contemplated under the law. The urgency involved in such matters and in the backdrop of sensitiveness of the issue of no confidence motion, the earlier is decision taken by the District Magistrate lesser would be the chance of speculations and manipulations at the end of the office of District Magistrate. District Magistrate is

the head of the district civil administration and so his office must send message absolutely clear and loud *qua* righteousness. The fairness in approach should be apparent on the face of the record. The District Magistrate has been entrusted with this onerous duty on account of his position as a responsible head civil servant and, therefore, he is supposed to be conscious of his sacrosanct position while dealing with such matters.

26. Accordingly, while disposing of this writ petition, we are issuing following directions:-

(1). Once delivered with the notice of "No Confidence Motion" the District Magistrate shall only ensure that it is signed by at least half (50%) members of the total strength of the House and carries the names of those who have signed and are elected members and the enquiry will be limited to the extent as observed by us hereinabove following the Full Bench judgment and the judgment in the case of **Smt. Shashi Yadav** (*supra*).

(2). The District Magistrate in all such matters of "Notice of No Confidence Motion" once delivered to him shall take decision either to call a meeting or return the notice on the expiry of 7th day of the delivery of the notice unless he has reasons to be recorded, to take more time but in no case he shall have to pass order by the 13th day of the delivery of notice.

(3). District Magistrate shall ensure that clear 15 days notice is published and also sent by registered post excluding the date of publication of notice and the date of the scheduled meeting.

27. Registrar General of this Court is directed to send a copy of this order forthwith to the Chief Secretary, State of U.P., Lucknow for communication and compliance to all the District Magistrates

of the State of Uttar Pradesh.

Order Date :- 21.10.2019
Atmesh

(Ajit Kumar,J.) (Ramesh Sinha,J.)

Court No. - 1

Case :- WRIT - C No. - 32482 of 2019

Petitioner :- Niyazuddin And 5 Others
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Mahendra Singh,Shashi Nandan (Sr. Advocate)
Counsel for Respondent :- C.S.C.,Purushottam Mani Tripathi

Hon'ble Ramesh Sinha,J.
Hon'ble Ajit Kumar,J.

Ref:- Civil Misc. Amendment Application

Heard learned counsel for the parties.

Amendment application is allowed.

Learned counsel for the petitioners is permitted to carry out necessary amendment in the prayer clause of the writ petition during the course of the day.

Order Date :- 21.10.2019
Atmesh

(Ajit Kumar,J.) (Ramesh Sinha,J.)