



Reserved on 27 October 2017
Delivered on 6 November 2017

Court No.39

Case :- WRIT - C No. - 41600 of 2017

Petitioner :- Parveen Siddiqui

Respondent :- State Of U.P.Thru.Prin.Secy.Min.Of Panchayati Raj & 3
Others

Counsel for Petitioner :- Subodh Kumar,Sudhir Dixit,Udit Chandra

Counsel for Respondent :- C.S.C.,Onkar Nath Mishra

Hon'ble Dilip Gupta,J.

Hon'ble Jayant Banerji,J.

(Delivered by Hon'ble Dilip Gupta, J.)

The petitioner, who is an elected Block Pramukh of Kshettra Panchayat Damkhoda in District Bareilly, has sought the quashing of the notice dated 30 August 2017 issued by the Collector, Bareilly under Section 15(3) of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961¹ for calling a meeting of the members of the Kshettra Panchayat on 15 September 2017 to consider the motion expressing want of confidence in the Block Pramukh.

It has been stated that since the said notice was sent by registered post by the Collector on 31 August 2017 and received by the petitioner on 1 September 2017, the provisions of Section 15(3)(ii) of the Act that require the Collector to give to the elected members of the Kshettra Panchayat notice of not less than fifteen-days of the meeting of Kshettra Panchayat to be held for consideration of the motion of no confidence on 15 September 2017, were not complied with as the date on which notice

¹ the Act

is despatched and the date on which the meeting is to be held have to be excluded. It has further been stated that the notice was not accompanied by a written notice of intention to make the motion of no confidence.

It is for this reason that when the matter was taken up by the Court on 14 September 2017, time was given to the learned Standing Counsel to seek instructions in the matter and it was further directed that the meeting scheduled to be held on 15 September 2017 could be held but the result of the meeting shall not be declared without the leave of the Court.

A short counter affidavit has been filed on behalf of the Collector, Bareilly, the District Panchayat Raj Officer² and the Block Development Officer³, Damkhoda who have been impleaded as respondent nos.2, 3 and 4 to the writ petition. A counter affidavit was also filed on behalf of respondent no.5 who had submitted the motion of no confidence before the Collector, Bareilly.

In the short counter affidavit filed by the State respondents, it has been stated that there are 89 elected members of the Kshettra Panchayat Damkhoda. A notice dated 29 August 2017 in Form-1 signed by 65 members enclosing the proposed motion expressing want of confidence in the petitioner with their affidavits was submitted before the Collector on 29 August 2017. Thereupon, the Collector issued the notice dated 30 August 2017 convening a meeting of the members of the Kshettra Panchayat on 15 September 2017 at 10.30 a.m. in the office of Kshettra Panchayat for consideration of the motion of no confidence. The Collector by order dated 30 August 2017 directed the DPRO to serve the

² DPRO

³ BDO

notice upon all the members of the Kshettra Panchayat by registered post. In compliance of the order passed by the Collector, the notice was sent by registered post on 31 August 2017 to all the members of the Kshettra Panchayat and was also served upon substantial members of the Kshettra Panchayat personally. A copy of the notice dated 30 August 2017 along with the written notice of intention to make the motion signed by 65 members of the Kshettra Panchayat was also pasted on the Notice Board of Block Damkhoda on 30 August 2017. It has also been stated that the Assistant Development Officer (Panchayat), Block Damkhoda⁴, by a report dated 30 August 2017, informed that the direction to paste the notice on the Notice Board had been duly complied with. It has, therefore, been stated that all the 89 elected members of the Kshettra Panchayat, including the petitioner, had information about the meeting scheduled to take place on 15 September 2017 for consideration of the no confidence motion moved by 65 members of the Kshettra Panchayat Damkhoda against the petitioner. The short counter affidavit further mentions that all the 89 members of the Kshettra Panchayat participated in the meeting and the voting that took place on 15 September 2017. The result has, however, not been declared in view of the order dated 14 September 2017 passed by the Court.

A rejoinder affidavit has been filed by the petitioner to the short counter affidavit filed by the State respondents. It has been stated that the notice was not pasted on the Notice Board of Block Damkhoda nor all the members of the Kshettra Panchayat were served personally. The report

⁴ ADO (Panchayat)

submitted by the ADO (Panchayat) has been stated to have been obtained on a back date as it was practically impossible for the DPRO to send the order passed by the Collector to BDO and then to Block Damkhoda on the same day. A copy of the 'Dakbahi Register' of Block Damkhoda has been enclosed with the rejoinder affidavit to emphasise that the order dated 30 August 2017 passed by the Collector was in fact received in the office of BDO Damkhoda on 4 September 2017.

In view of the averments made in the rejoinder affidavit, the Court directed the DPRO to file a detailed affidavit to specify the date on which and the mode by which the order dated 30 August 2017 passed by the Collector was received in the office of the BDO Damkhoda and also specify the date on which it was pasted on the Notice Board of Block Damkhoda.

A supplementary counter affidavit has been filed on behalf of the DPRO and paragraphs 5, 6, 7, 8, 9, 10, 11 and 12, which are relevant for the purposes of the controversy involved in this petition, are reproduced below:-

“5. That the contents of paragraph no. 4 of the rejoinder affidavit are not admitted as stated and in reply, it is submitted that the notice of No Confidence Motion bearing no. 3327-C dated 30.8.2017 was duly served upon the members of Kshetra Panchayat Damkhoda by publication on notice board, personal service as well as registered post as required under law.

6. That the contents of paragraph nos. 5, 6 & 7 of the rejoinder affidavit are vehemently denied. The assertions made thereunder are incorrect, based only on presumptions and are contrary to the record. The notice dated 29th August 2017 on Prapatra-1 duly signed by 65 members (out of 89 members) of Kshetra

Panchayat Damkhoda, Bareilly along with proposal of No Confidence was presented by members of Kshetra Panchayat, Damkhoda, Bareilly before the District Magistrate, Bareilly on 29th August 2017 and on the same day, the same was marked to DPRO, Bareilly for necessary action as per U.P. Kshetra Panchayats ad Zila Panchayats Adhiniyam, 1961, hereinafter referred to as the 'Act'. It is not out of place to mention that the office of District Panchayat Raj Officer, Bareilly is situated in Vikas Bhawan at a distance of about 1 Km. from the office of District Magistrate, Bareilly. The DPRO, Bareilly after completing formalities in accordance with the Act put up the file including draft order to appoint Presiding Officer, notice to be served upon the members of Kshetra Panchayat Damkhoda informing the date of meeting of Kshetra Panchayat Damkhoda for consideration of No Confidence Motion, on the date to be fixed by the District Magistrate vide note-sheet on 29th August 2017. After due consideration, the District Magistrate, Bareilly approved the date of meeting of Kshetra Panchayat, Damkhoda and vide order no. 3326-C appointed the Sub Divisional Magistrate, Bareilly to preside over the meeting of Kshetra Panchayat Damkhoda dated 15.09.2017 for consideration of No Confidence Motion brought against Block Pramukh of the said Kshetra Panchayat. The said letter was endorsed to all concerned including Block Development Officer Damkhoda, DPRO Bareilly, Sub Divisional Magistrate, Bareilly etc. for ensuring, necessary steps on the date of meeting. The order no. 3326-C and the notice dated 3327-C dated 30th August 2017 duly signed by the District Magistrate, Bareilly to be served upon all the members of Kshetra Panchayat Damkhoda, District Bareilly along with proposal of No Confidence Motion were received from the office of District Magistrate, Bareilly by Shri Kamlesh Kumar, a Class IV employee in the office of DPRO, Bareilly on 30th August 2017 itself. The reference thereto finds place in the entry of 30th August 2017 in the Register maintained by the office of District Magistrate. For convenient perusal of this Hon'ble Court true copies of the aforesaid letter/orders of District Magistrate bearing nos. 3326-C, 3327-C and relevant extract of the Register of the office of District Magistrate, Bareilly are being filed herewith and marked as Annexures SCA-1, SCA-1A & SCA-1B to this supplementary counter affidavit respectively.

7. That the staff of Block Development Officer, Damkhoda received the letter/order of District Magistrate nos. 3326-C, 3327-C along with letter no. 3060-C of DPRO, Bareilly, directing the Block Development Officer, Damkhoda to publish notice on notice-board on 30th August. The said fact is duly recorded in the Register of office of DPRO, Bareilly of the date 30th August 2017 recording the documents date-wise made available to 15 blocks including the Block Damkhoda, falling within the jurisdiction of DPRO, Bareilly. For convenient perusal of this Hon'ble Court a true copy of the letter no. 3060-C of DPRO, Bareilly addressed to Block Development Officer, Damkhoda, who on the same day marked the said letter to Assistant Development Officer (Panchayat), Damkhoda for compliance, and relevant extract of the Register are collectively being filed herewith and marked as **Annexures SCA-2 & SCA-2A** to this supplementary counter affidavit respectively.

8. That it is relevant to submit that at the relevant time the post of Block Development Officer, Damkhoda was vacant and accordingly, the District Magistrate, Bareilly vide separate order dated 6th July 2017 assigned the additional charge of Block Development Officer, Damkhoda to the then District Youth Welfare Officer, Bareilly, whose office is also situated on IIInd Floor in Vikas Bhawan, Bareilly itself, which also houses the office of District Panchayat Raj Officer, Bareilly. A true copy of the order of the District Magistrate, Bareilly dated 6th July 2017 circulated by Chief Developmental Officer, Bareilly and the charge certificate dated 6th July 2017 are collectively being filed herewith and marked as **Annexure SCA-3** to this supplementary counter affidavit.

9. That as the date of meeting was fixed on 15.09.2017 the officiating BDO rushed to Block Damkhoda and handed over the letter/ order no. 3326-C and notice no. 3327-C signed by District Magistrate, Bareilly to the Assistant Development Officer (Panchayat) posted at Block Damkhoda who got the same pasted on the notice board on 30th August 2017 and reported compliance of pasting of the notice on the notice board of Kshetra Panchayat Damkhoda on 30.08.2017 to the authorities, a copy whereof has already been filed as Annexure -2 to the short counter affidavit.

10. That it is not out of place to mention here that apart from pasting of the notice and No Confidence Motion on the notice board, the Assistant Development Office (Panchayat), Damkhoda got the notice along with Motion of No Confidence served upon the members of Kshetra Panchayat Damkhoda personally. Substantial members were duly served by the said process also.

11. That apart from publication of notice on Prapatra-1 and motion of no confidence pasted on notice board of Block Damkhoda on 30th August 2017, the same were duly sent to all 89 members of Kshetra Panchayat Damkhoda by registered post on 31st August 2017. Thus, substantial compliance of provisions of law, to serve impugned notice along with no confidence motion to the members of Kshetra Panchayat Damkhoda by the process of publication on notice board, personal service and registered post, has been made. The assertions to the contrary are false, incorrect and specifically denied.

12. That the assertions made in paragraph -5 of the rejoinder affidavit that the impugned order/notice dated 30th August 2017 issued by the District Magistrate, Bareilly was received in the office of Block Development Officer on 04.09.2017 are false and incorrect. Copy of the Dak Bahi Register filed as Annexure-1 to the rejoinder Affidavit is of the date of 30th August 2017 itself. The petitioner has obtained copy of the Dak Bahi unofficially in connivance with Shri Mahsood Ahmad (Urdu Translator/Senior Assistant) posted in Block Damkhoda by pretending it to be of the date of 04.09.2017 after scoring the date 30.08.2017. The action of the aforesaid Senior Assistant referred above was found to be contrary to the Government Servant's Conduct Rules and accordingly the Block Development Officer, Damkhoda has already informed the said fact to the said officials for appropriate action. For convenient perusal of this Hon'ble Court a relevant extract Dak Bahi Register of Block Damkhoda and the order Block Development Officer Damkhoda are being filed herewith and marked as **Annexures SCA-4 & SCA-5** to this supplementary counter affidavit respectively.”

A rejoinder affidavit to the aforesaid supplementary counter affidavit has been filed by the petitioner and paragraphs 4, 5, 6 and 7 are reproduced below:

“4. That the contents of Paragraph No. 3 of the Supplementary Counter Affidavit is not admitted and denied specifically and it is the further submitted that the perusal of the Dakbahi Register of Block Damkhoda District Bareilly, shows that the order dated 30.08.2017 bearing paper No. 3326-C passed by the District Magistrate Bareilly was received on 04.09.2017 and it is false to say that order dated 30.08.2017 bearing paper No. 3326-C was received in the office of Block Development Officer (hereinafter referred as B.D.O), Block Damkhoda, District Bareilly was received on 30.08.2017.

5. That it is also false to say that date 30.08.2017 was cut and later on 04.09.2017 was written. A perusal of the register starting from date 22.08.2017 to 13.09.2017 shows that prior to 04.09.2017 the last date was 29.08.2017 and an entry of letter No. 779-80 shows that it was received on 31.08.2017 and the order dated 30.08.2017 bearing Paper No. 3326-C, passed by District Magistrate Bareilly was received in the office of B.D.O Block Damkhoda district Bareilly 04.09.2017 and an entry at Serial No.1 dated 04.09.2017 shows that the copy of the order dated 3326-C dated 30.08.2017 as served to the SHO Police Station Devania on 04.09.2017 and an entry at Serial No. 3 shows that the copy of the order dated 3326-C dated 30.08.2017 was received by the S.D.M, Bahedi on 04.09.2017, by which it is clear that order dated 30.09.2017 bearing Paper No 3326-C passed by District Magistrate Bareilly was not served in the office B.D.O Block Damkhoda prior to 04.09.2017. The Xerox Copy as well as typed copy of the Dakbahi of Block Damkoda, District Bareilly from date 22.08.2017 to 13.09.2017 is being filed herewith and marked as **Annexure No. RA-1** to this Rejoinder Affidavit.

6. That it is pertinent to mention here that an order dated 30.08.2017 bearing paper No. 3060-C dated was not received in the office of B.D.O Block Damkhoda as shown in the Dakbahi and it is also important to mention here that the copy of order dated 30.08.2017 bearing Paper No. 3060-C passed by D.P.R.O.

Bareilly was annexed with the short counter affidavit filed by Respondent Nos. 2, 3 & 4 dated 23.09.2017. The copy was annexed as Annexure No. 2, Page No. 16 in the Short Counter Affidavit, but a perusal of it shows that there has been no endorsement/signature of the B.D.O dated 30.08.2017 and similarly copy of the order bearing paper No. 3326-C dated 30.08.2017 passed by District Magistrate Breilly, the copy of which was already annexed as Annexure No. SCA-2 in Short Counter Affidavit dated 23.09.2017, Paper No. 14-15 does not bear any endorsement/signature of the B.D.O Block Damkhoda, but copy of the same order has been annexed as Annexure No. SCA-1 bearing Paper No. 10-11 shows an endorsement/signature of order dated 30.08.2017, which clearly shows that these endorsements/signatures have been made later on after notice by this Hon'ble Court just to show that the order dated 30.08.2017 was served and pasted on the notice board on 30.08.2017 though a perusal of all documents shows that the letter bearing paper No. 3060-C dated 30.08.2017 passed by D.P.R.O Bareilly was not received in the office of B.D.O Block Damkhoda Bareilly. The true copies of the both the orders one bearing endorsements/signatures and others having no endorsements/signatures on the orders dated 30.08.2017 bearing Paper No. 3326-C, passed by District Magistrate Bareilly and orders dated 30.08.2017 bearing paper No. 3060-C, passed by D.P.R.O Bareilly are being filed, herewith and marked as **Annexure No. RA-2 & RA-3** respectively to this Rejoinder Affidavit.

7. That is also pertinent to mention here that a perusal of the order dated 30.08.2017 bearing letter No.3326-C, passed by District Magistrate Bareilly shows that D.P.R.O. Bareilly was directed to send the copies of the notice regarding no confidence motion by way of registered post to the members of the Kshetra Panchayat and it has not been mentioned in the order that the copy of the order will be pasted on the notice board of the office of the B.D.O. Block Damkhoda, District Bareilly.”

It is on the basis of the averments made in the writ petition and the affidavits referred to above that Sri Shashi Nandan, learned Senior

Counsel for the petitioner assisted by Sri Udit Chandra and Sri Sudhir Dixit submitted that the notice dated 30 August 2017 issued by the Collector, Bareilly was not pasted on the Notice Board of Block Damkhoda and was only sent by registered post on 31 August 2017. It is, therefore, his submission that there has been no compliance of the provisions of Section 15(3)(ii) of the Act inasmuch as members of the Kshettra Panchayat were not given fifteen-days notice of the meeting to be held on 15 September 2017 for consideration of the motion of no confidence against the petitioner. Learned Senior Counsel placed reliance upon the 'Dakbahi Register' of Block Damkhoda and submitted that when the notice issued by the Collector on 30 August 2017 was actually received in the office of Block Damkhoda on 4 September 2017, it could not have been pasted on its Notice Board on 30 August 2017.

Sri A.K. Goyal, learned Additional Chief Standing Counsel appearing for the State respondents, however, on the basis of the averments made in the short counter affidavit as also the supplementary counter affidavit, submitted that the notice dated 30 August 2017 issued by the Collector was pasted on the Notice Board of the Kshettra Panchayat, which is also one of the modes prescribed under the Rules framed under Section 237 of the Act. It is also his submission that not only was the said notice also sent by registered post to all the members of the Kshettra Panchayat on 31 August 2017 but substantial number of members had also received it personally on 30 August 2017. Learned Additional Chief Standing Counsel also submitted that the fact that all the

members of the Kshettra Panchayat had information about the meeting scheduled to take place on 15 September 2017 also finds support from the fact that all the 89 members of the Kshettra Panchayat, including the petitioner, attended the meeting on 15 September 2017 for consideration of the no confidence motion against the petitioner.

Sri M.D. Singh 'Shekhar', learned Senior Counsel appearing for respondent no.5 also submitted that the notice dated 30 August 2017 issued by the Collector was pasted on the Notice Board on 30 August 2017 itself and, therefore, there was substantial compliance of the provisions of Section 15(3)(ii) of the Act. In support of this contention, learned Senior Counsel placed reliance upon a Division Bench judgment of this Court in **Smt. Sarita Devi Vs. State of U.P. & Ors.**⁵ as also the Division Bench judgments of the Lucknow Bench in **Awadhesh Singh Vs. State of U.P. & Ors.**⁶ and **Jivendra Nath Kaul Vs. State of U.P. & Ors.**⁷.

We have considered the submissions advanced by learned Senior Counsel for the parties.

The main issue that arises for consideration in this petition is as to whether the provisions of Section 15(3)(ii) of the Act were complied with by the Collector.

To examine this issue, the Court has to ascertain whether the notice dated 30 August 2017 issued by the Collector, Bareilly for convening a meeting of the members of the Kshettra Panchayat on 15 September 2017

⁵ Writ-C No.39772 of 2017, decided on 11 September 2017

⁶ Misc. Bench No.7171 of 2017, decided on 12 April 2017

⁷ 1991 (9) LCD 186

to consider the motion of no confidence against the petitioner was pasted on the Notice Board of the Kshettra Panchayat on 30 August 2017 and whether the pasting of such notice can be said to be substantial compliance of the provisions of Section 15(3)(ii) of the Act.

To appreciate this submission, 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 the elected members of the Kshettra Panchayat Damkhoda is 89. It is stated that the written notice dated 29 August 2017 in Form-I of the intention to make a motion expressing want of confidence in the Block Pramukh was signed by 65 members and it was

personally submitted on 29 August 2017 to the Collector who, on the same day, marked it to the DPRO for necessary action. It is further stated that the office of the DPRO is situated in Vikas Bhawan which is at a distance of about 1 km. from the office of the Collector. The DPRO, after completing the formalities, submitted the file with the note-sheet to the Collector and after due consideration, the Collector passed an order dated 30 August 2017 bearing no.3326-C. The said order states that the meeting of the members of the Kshettra Panchayat to consider the motion expressing want of confidence in the Block Pramukh would take place on 15 September 2017 and it would be presided over by the Sub-Divisional Magistrate. This order was endorsed to as many as 12 Officers including the DPRO with a direction that the notice of the meeting signed by the Collector should be sent to all the members of the Kshettra Panchayat by registered post. The notice dated 30 August 2017 bearing no.3327-C signed by the Collector seeks to inform all the members of the Kshettra Panchayat that the motion of no confidence against the petitioner shall be considered in the meeting of the members of the Kshettra Panchayat to be held on 15 September 2017 at 10.30 a.m. in the office of the Kshettra Panchayat Damkhoda.

The aforesaid order of the Collector bearing no.3326-C and the notice issued by the Collector bearing no.3327-C, both dated 30 August 2017, were received in the office of the DPRO on 30 August 2017 by a Class IV employee namely, Kamlesh Kumar. This fact is reflected in the Despatch Register maintained in the office of the Collector. The original

Despatch Register in the office of the Collector has also been produced before the Court which also indicates that the aforesaid papers were received on 30 August 2017 in the office of DPRO by Kamlesh Kumar. The staff of BDO Damkhoda received the order bearing no.3326-C and the notice bearing no.3327-C along with the letter no.**3060-C** of DPRO on 30 August 2017. The original Despatch Register maintained in the office of the DPRO shows that all the three letters were despatched and received on 30 August 2017. It needs to be stated that the letter dated 30 August 2017 bearing no.3060-C sent by the DPRO to the BDO Damkhoda directs for pasting of the notice as also the copy of the motion on the Notice Board of the Kshettra Panchayat on 30 August 2017. This letter contains an endorsement of the BDO to ADO (Panchayat) for ensuring compliance of the order. The ADO (Panchayat) has submitted a report dated 30 August 2017 regarding compliance of the order dated 30 August 2017 of the DPRO by pasting the notice and the copy of the motion on the Notice Board of the Kshettra Panchayat on 30 August 2017.

It has been stated by the respondents that at the relevant point of time, the post of BDO was vacant and by order dated 6 July 2017, the Collector assigned the additional charge of BDO to the then District Youth Welfare Officer, Bareilly whose office is situated on the second floor of the Vikas Bhawan and that the office of the DPRO is also situated in the Vikas Bhawan. It has, therefore, been stated that since the meeting for considering the motion of no confidence was fixed on 15

September 2017, the Officiating BDO rushed to Block Damkhoda and handed over the order no.3326-C and the notice no.3327-C to the ADO (Panchayat) on 30 August 2017 for pasting them on the Notice Board.

To controvert the pasting of the notice on the Notice Board of the Kshettra Panchayat, reliance has been placed by learned Senior Counsel for the petitioner upon the 'Dakbahi Register' maintained in the office of the BDO Damkhoda and it was sought to be contended that it was only on 4 September 2017 that the order of the Collector and the notice were received in the office of the BDO Damkhoda. It has, therefore, been asserted that the notice could not have been pasted on the Notice Board in the office of BDO Damkhoda on 30 August 2017.

It is not possible to accept this contention of learned Senior Counsel for the petitioner. The 'Dakbahi Register' contains the date on which these documents were received in the office of BDO Damkhoda. It clearly shows that 30 August 2017 has been scored out and 4 September 2017 has been written. The signatures indicate that the Station House Officer, the Sub-Divisional Officer and the petitioner received these papers on 4 September 2017. The 'Dakbahi Register' does not, in any manner, support the case of the petitioner that the order and the notice were received in the office of BDO Damkhoda on 4 September 2017. In fact, it has been asserted in the supplementary counter affidavit that the date 30 August 2017 has been scored out and 4 September 2017 has been inserted by Sri Masood Ahmad (Urdu Translator/Senior Assistant) and that a notice dated 7 October 2017 has been served upon Masood Ahmad

for this act. The averments made in the short counter affidavit and the supplementary counter affidavit filed on behalf of the State respondents as also the original Registers do establish that the notice dated 30 August 2017 as also the copy of motion were pasted on the Notice Board of the Kshettra Panchayat on 30 August 2017 itself. Pasting of the notice on the Notice Board of the Kshettra Panchayat is also a requirement contained in the Rules framed under Section 237 of the Act. Such being the position, the contention of learned Senior Counsel for the petitioner that fifteen-days notice was not given for holding the meeting of no confidence motion against the petitioner on 15 September 2017 is not correct.

The second submission of learned Senior Counsel for the petitioner is that the time period contemplated under Section 15(3)(ii) has to be counted from 31 August 2017 when the notice was sent by registered post to all the members of the Kshettra Panchayat.

To examine this issue, it would be appropriate for the Court to refer to the two Full Bench decisions of this Court in **Sardar Gyan Singh Vs. District Magistrate, Bijnor & Ors.**⁸ and **Vikas Trivedi & Ors. Vs. State of U.P. & Ors.**⁹.

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:-

⁸ 1975 AWC 321

⁹ AIR 2014 All 166

"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(2)(3) 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 format 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.

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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.

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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 decision, the notice contemplated under Section 15(3)(ii) requires information regarding the 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."

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.

This issue was also examined by a Division Bench of the Lucknow Bench in **Awadhesh Singh**. 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**, 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 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*)."

There has been, in the facts and circumstances of the case, substantial compliance of the provisions of Section 15(3)(ii) of the Act and all the members of Kshettra Panchayat had due information that the meeting of the members of the Kshettra Panchayat for motion expressing want of confidence in the Block Pramukh would be held on 15 September 2017 at 10.30 a.m in the office of the Kshettra Panchayat when the notice

and the motion were pasted on the Notice Board of the Kshetra Panchayat on 30 August 2017.

It is also pertinent to note that except for the petitioner, who is the Block Pramukh of the Kshetra Panchayat, no other member has come forward to state that he had no information about the meeting that was to take place on 15 September 2017 to consider the motion expressing want of confidence in the Block Pramukh. It also needs to be noted that all the 89 elected members of the Kshetra Panchayat Damkhoda, including the petitioner, participated in the meeting that was held on 15 September 2017.

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

The writ petition is, accordingly, dismissed and the interim order dated 14 September 2017 is vacated. The respondents shall now declare the result of the voting that took place in the meeting held on 15 September 2017 as expeditiously as is possible.

Date :-06.11.2017

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(Dilip Gupta, J.)

(Jayant Banerji, J.)