

(1998) 01 AHC CK 0036

Allahabad High Court

Case No: C.M.W.P. No. 40873 of 1997

Smt. Meera Devi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision:** Jan. 7, 1998**Acts Referred:**

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 12, 12(11), 12(6), 14, 14(1)

**Citation:** AIR 1998 All 157 : (1998) 1 AWC 716 : (1998) 2 UPLBEC 922**Hon'ble Judges:** S.R. Singh, J**Bench:** Single Bench**Advocate:** S.P. Singh and Sanjay Kumar Singh, for the Appellant;**Final Decision:** Allowed

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### Judgement

S.R. Singh, J.

Petitioner Smt. Meera Devi, elected as Pradhan of Gram Panchayat Jalalpur. Vikas Khand Majhawan, district Mirzapur in the last election held in April, 1995, has filed the present petition, seeking the relief of quashing the entire proceeding of motion of no-confidence dated 24.8.1997, held in pursuance of the order dated 2.8.1997 of the District Panchayat Raj Officer. Mirzapur u/s 14 of the U. P. Panchayat Raj Act, 1947 (In short the "Act") read with Rule 33B of the Rules made under the Act.

2. Concededly, the concerned Gram Panchayat is a body consisting of 13 elected members to the exclusion of the petitioner. All the elected members were present in the meeting and they exercised the right to vote on the motion of no-confidence, brought to bear against the petitioner. The petitioner was kept at bay from voting. Nine out of thirteen voted in favour and four against the motion of no-confidence. As a result, the petitioner stood expelled from her office as Pradhan. Sri Sanjal Kumar Singh, learned counsel appearing for the petitioner circumscribed his contentions to only two points in support of the relief claimed in the writ petition, first, that the petitioner was entitled to cast her vote in the meeting by virtue of her

being a member of the Gram Panchayat in view of Section 12 (6) of the Act. The learned counsel urged that the removal of the petitioner by motion of no confidence is vitiated since she was not permitted to cast her vote. The second point canvassed by the learned counsel was that in case the requisite two-thirds of the members presenting and voting, falls short by any fraction of vote, then in that event, the fraction will have to be rounded up to the nearest whole number for the purposes of determining the requisite majority of two-thirds.

3. In so far as first submission advanced across the bar is concerned, it has been held in *Raj Singh and others v. District Panchayat Raj Adhikari, Muzaffarnagar and others* 1997 RD 429, that by virtue of sub-section (6) of Section 12 of the U. P. Panchayat Raj Act as it stands substituted by U. P. Act No. 9 of 1994, a Pradhan shall be deemed to be a member of the Gram Panchayat of which he/she happens to be the Pradhan and that being the position, the Pradhan is entitled to participate in the meeting convened for the purposes of discussion and voting on the motion of no-confidence brought against him/her u/s 14 of the Act read with Rule 33B of the Rules. It may usefully be stated here that in Section 12 (11) of the U. P. Panchayat Raj Act, as it stood before its substitution by U. P. Act No. 9 of 1994, there was a clear stipulation that Pradhan would not be deemed to be the member of the Gram Panchayat and would not be entitled to vote (except in the case of motion of resolution before the Gram Panchayat but excluding any election). In the case of motion of resolution before the Gram Panchayat, the Pradhan had, under the old provision, a casting vote in a situation of equality of votes and in no other case. But after its amendment by U. P. Act No. 9 of 1994, Section 12 (6) clearly postulates that Pradhan shall be deemed to be a member of the Gram Panchayat and, therefore, in the absence of any express or implied provisions taking away the right of Pradhan as a member of the Gram Panchayat to cast his/her vote in the meeting of Gram Panchayat, the Pradhan would have a right to cast his/her vote. Pertinently, it may be observed that a candidate for office of Pradhan has every right to cast his/her vote as an elector in his own favour and if he/she is a member of the Gram Panchayat, why can't he/she exercise her franchise as a member at the no-confidence meeting in the absence of any expressed prohibition contained in the Act? No principle was suggested nor could I envision any on the basis of which a Pradhan could be denied of any of his/her rights as a member of the Gram Panchayat. The respondents were not justified in balking the petitioner of her right to cast vote in the impugned meeting convened for discussion on the motion of no-confidence brought against her. The result of the voting and motion of no-confidence may be impaired in case it is found that by sub-joining the vote of the petitioner to the total number of votes polled against motion, it is found that votes polled in favour of the motion, falls short of two-thirds majority of the members present and voting and in that eventuality, the motion would be deemed to have failed.

4. Coming to grips with the second contention. I may usefully advert to Section 14 (1) of the Act which postulates removal of Pradhan "by a majority of two-thirds of the members present and voting", and Rule 33B (viii) of the Panchayat Raj Rules which similarly visualises that, ".....the motion shall be deemed to have been carried out only when it has been passed by a majority of two-thirds of the members present and voting. In *Arunandra Singh v. Distt. Panchayat Raj Officer, Unnao and others*. 1997 (3) AWC 1662 (LB), the question came up for consideration before a Learned Single Judge as to whether seven out of eleven members present and voting in the meeting held for consideration of motion of no-confidence constitute the requisite majority of two-thirds. In that case seven out of eleven voted in favour of motion while four voted against the motion. Mathematically, two-thirds of eleven members present and voting would represent 7.33 and since Section 14 (1) of the U. P. Panchayat Raj Act and corresponding Rule 33B (5) (viii) provide that motion of no-confidence would be carried out by majority of two-thirds of the members present and voting, the figure "7.33" would have to be as a necessary consensus, rounded off to "8" inasmuch as unless eight members voted in favour of no-confidence motion, it cannot be said that motion has been carried for it does not make up the required majority of two-thirds. A Full Bench of this Court, in [Wahid Ullah Khan Vs. District Magistrate, Nainital and others](#), has held that rounding off a figure is permissible where a particular figure has to be arrived at. The Court observed that "where half of the total number is necessary to be arrived at.....then principle of rounding up vote could be applied". It cannot be gainsaid that Section 14 of the Act and Rule 33B (viii) of the Rules do require at least two-thirds of the total number of members present and voting to be arrived at if the motion is to be deemed to have been passed. The expression "majority of two-thirds" has the same purport and Import as the expression "at least two-thirds", it means that at least two-thirds of the members present and voting at a no-confidence meeting validity convened must vote in favour of motion if it has to be carried. In case it falls short by a fraction, the fraction vote would be rounded off for the purpose of computing two-thirds majority. In a recent case *Ram Beti a, District Panchayat Raj Officer and others*, Civil Appeal No. 4675 of 1997, decided on 17.12.1997, the Supreme Court while maintaining the judgment of this Court upholding the constitutional validity of Section 14 of the Act observed as under :  
"While amending Section 14 of the Act so as to confer the power to remove the Pradhan of a Gram Sabha on the members of Gram Panchayat the Legislature must have taken into consideration the prevailing social environment. Moreover, by way of safeguard against any arbitrary exercise of the power of removal it is necessary that the motion must be passed by a majority of two-thirds of the members present and voting."

5. In view of the afore stated discussions, I am of the considered view that where two-thirds majority of the members present and voting falls short by a fraction, in that eventuality, motion would be deemed to have fallen to the ground. In the

instant case, the petitioner was admittedly present in the meeting but she was not allowed to cast her vote and in the circumstances, for all practical purposes, she would be deemed to be present and voting and if her vote is reckoned, then two-thirds of 14 members would be equal to 9.33 as against which only nine votes polled in favour of motion would not constitute requisite majority of two-thirds of the members present and voting. By applying the principle of rounding off, the requisite majority of two-thirds would be ten votes. The declaration that motion of no-confidence was carried in the meeting held on 24.8.1977 does not commend itself to be sustained.

6. As a result of foregoing discussion, the petition succeeds and is allowed. The proceedings of motion of no-confidence dated 24.8.1997 held in pursuance of the order dated 2.8.1997 of the District Panchayat Raj Officer. Mirzapur are accordingly quashed. Consequential election, if any, would stand Invalidated as void and non-est being an election held against non-existent vacancy.