

**(2012) 08 AHC CK 0227****Allahabad High Court****Case No:** Writ C No. 38769 of 2012

Smt. Rubi Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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Date of Decision: Aug. 23, 2012

Acts Referred:

- Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 - Section 15(3)(i)

**Citation:** (2012) 10 ADJ 87 : (2013) 4 AWC 3567**Hon'ble Judges:** Yatindra Singh, J; Mahendra Dayal, J**Bench:** Division Bench**Advocate:** U.N. Sharma and N.C. Tripathi, for the Appellant; Ravi Kiran Jain, Indra Mani Tripathi and Ajai. Kr. Misra, CSC., for the Respondent**Final Decision:** Dismissed

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### Judgement

1. This case involves with the interpretation of explanation of sub-section (3) of Section 15 {Section 15(3)} of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 (the Act). The basic question is, in case there was a stay order from a competent court against the motion of no confidence, then what period is to be excluded in computing the period of 30 days mentioned in section 15(3)(i) of the Act.

#### THE FACTS

2. Smt. Rubi Singh (the Petitioner) was elected as Pramukh of Kshetra Panchayat Barsathi, Jaunpur (the Kshetra Panchayat). She took oath of Pramukh and assumed charge on 18.3.2010.

3. The number of elected members of the Kshetra Panchayat is 89. Out of these elected 89 members, 58 members gave a notice in writing to the Collector, Jaunpur (the Collector) on 18.6.2012 to convene a meeting to consider motion of no

confidence against the Petitioner. The notice was accompanied with the motion of no confidence against the Petitioner.

4. The Collector issued a notice on 19.6.2012 convening the meeting on 15.7.2012 to consider motion of no confidence against the Petitioner. However, no meeting could be held as the Petitioner filed writ petition no. 32722 of 2012 challenging the notice dated 19.6.2012 and obtained an interim order on 13.7.2012.

5. Against the aforesaid interim order, Smt. Hirawati Devi (Respondent-6) filed Special Leave to Appeal (Civil) No. 20951 of 2012 (the SLP) before the Supreme Court.

6. The counsel for the parties agreed before the Supreme Court that the writ petition no. 32722 of 2012 filed by the Petitioner be allowed; the notice dated 19.6.2012 be quashed; and the Collector may proceed in accordance with law.

7. In view of the agreement, the Supreme Court disposed of the SLP on 30.7.2012. By this order, The notice dated 19.6.2012 convening the meeting to consider no confidence motion against the Petitioner on 15.7.2012 was quashed; and The Collector was directed to proceed in accordance with law in pursuance of the notice given to him on 18.6.2012.

8. The Collector issued fresh notice dated 3.8.2012 fixing 19.8.2012 to consider the motion for no confidence against the Petitioner. Hence, the present writ petition.

9. The present writ petition was entertained on 17.8.2012 and an order was passed to the effect that:

The meeting to consider motion of no confidence may be held on 19.8.2012. However, the result may not be given effect to; and The case was ordered to come up today.

We are informed that motion for no confidence was passed but was not given effect to, due to order of the court.

10. We have heard, Sri Umesh Narain Sharma and Sri NC Tripathi counsel for the petitioner; Sri CB Yadav, Additional Advocate General and Sri Saroj Yadav standing counsel for State of UP and its officials; Sri Ravi Kiran Jain and Sri Indra Mani Tripathi for Respondent-5; and Sri Ashwani Kumar Misra for Respondent-6. With the consent of the parties, the writ petition is being decided at this stage.

#### POINTS FOR DETERMINATION

11. The following points arise for determination in this case:

(i) Whether the meeting dated 19.8.2012 was beyond thirty days from the date notice was given to the Collector;

(ii) Whether the period of thirty days for holding a meeting as provided u/s 15(3)(i) is mandatory;

(iii) Whether the meeting dated 19.8.2012 was illegal.

1st POINT: IN VIEW OF EXPLANATION--NOT BEYOND 30 DAYS

12. The notice to convene the meeting to consider no confidence motion against the Petitioner was given on 18.6.2012. In pursuance of this notice, the Collector had earlier convened the meeting to consider the motion of no confidence on 15.7.2012. However, it was quashed. Thereafter, a fresh notice was issued on 3.8.2012 fixing 19.8.2012 to consider the motion of no confidence.

13. The meeting on 19.8.2012 was on 62nd day from the date on which the notice was given to the Collector. It is undoubtedly beyond thirty days as stipulated u/s 15(3)(i) of the Act. However, there is an explanation to this sub-section (see below)<sup>1</sup> that excludes certain period in computing the period of thirty days. The question is, whether the meeting was within thirty days, after excluding the period provided in the explanation.

14. Section 15(3) of the Act provides that:

(i) The meeting to consider the no confidence motion should be held within thirty days of giving notice to the Collector {section 15(3)(i)};

(ii) The elected members are required to be given not less than fifteen days notice for the meeting {section 15(3)(ii)}.

15. The explanation to section 15(3) of the Act provides for exclusion of two kinds of period while computing the period of thirty days. They are as follows:

(i) The period during which there was any stay order against the motion for no confidence; and

(ii) Time as may be required in issue of fresh notices of the meeting to the members.

16. The counsel for the petitioner submits that:

The interim order was granted on 13.7.2012 and notice was quashed on 30.7.2012 and thereafter, a fresh notice was issued on 3.8.2012;

The period from 13.7.2012 to 3.8.2012 (both days inclusive) namely, 22 days are to be excluded;

In case 22 days are excluded then, the meeting was held on 40th day and was beyond 30 days as stipulated u/s 15 (3)(i) of the Act;

The meeting was illegal.

17. The High Court in the earlier writ petition no. 32722 of 2012 had granted interim order on 13.7.2012. Thus, this date has to be excluded while computing the period

of thirty days.

18. The Supreme Court allowed the SLP on 30.7.2012 and quashed the earlier notice dated 19.6.2012 issued by the Collector. The Collector could not have called the meeting during this period up to the date, the SLP was allowed. It included this date (namely 30.7.2012) also. Thus, 30.7.2012 should also be excluded.

19. In our opinion, all days from 13.7.2012 to 30.7.2012 (both days inclusive), total of 18 days are to be excluded on account of the orders passed by the courts as contemplated in the first part of the explanation to section 15(3) of the Act.

20. According to the counsel for the petitioner, The notice dated 3.8.2012 was the second notice; and Fifteen days notice to the members in the second notice was neither required nor 15 days can be excluded; and Only days up to 3.8.2012, namely four days more (apart from the period during which stay order was operative), are to be excluded as this was the time required by the Collector to issue fresh notice.

In our opinion, this is not correct.

21. Section 15(3)(ii) of the Act provides not less than fifteen days notice for meeting to consider the motion of no confidence. It is applicable to every notice, whether given for the first time or for the second time after the first notice is quashed.

22. Section 15(3)(ii) of the Act provides at least fifteen days notice to be given to the elected members for holding a meeting to consider motion of no confidence. This is applicable irrespective whether the notice is being issued for the first time or the second time. It was not possible for the Collector to give less than 15 days time in the notice dated 3.8.2012. This is the time that is required in the issue of fresh notice to consider the motion of no confidence.

23. The matter may be seen from another angle. In case instead of 15 days only the days up to issue of second notice are to be excluded then this would lead to absurd and unreasonable result

24. Suppose, the meeting to consider the no confidence motion is scheduled on the 29th day from the date, the notice is given to the collector. Thereafter, the meeting is not held because of a stay order of a competent court on any day after fifteen days from the date, the notice was given to the collector. Then, in every such case where second notice is given, it would be beyond 30 days, as the second notice has also to be at least of 15 days.

25. The result would be that the meeting cannot be held without any fault of the members giving the notice. This cannot be the intention of the legislature--absurdity, cannot be attributed to it; legislature does not intend unreasonable interpretation. The interpretation of the explanation to section 15(3) of the Act, as explained by us, is also borne out from its language.

26. In our opinion, 15 days are to be excluded as contemplated in the second part of the explanation to section 15(3) of the Act. Thus, total of  $18 + 15 = 33$  days are to be excluded while computing limit of 30 days.

27. The meeting, convened on 19.8.2012, was on 62nd day. In case 33 days are excluded then it was on 29th day: it was well within thirty days as provided u/s 15(3)(i) of the Act. There is no illegality in the same.

#### 2nd & 3rd POINT: MEETING WAS VALID

28. A division bench of our court in [Chhatrapal Singh Vs. State of U.P. and Others](#), has held the period of 30 days as provided in section 15(3)(i) of the Act is mandatory.

29. The counsel for the respondent submits that:

A full bench decision in Gopal Tewari vs. District Panchayat Raj Officer, Deoria: (1991) 2 UPLBEC 904 (the Gopal case) has held that thirty days period is directory;

The Gopal case was wrongly distinguished in the Chhatrapal case;

The Chhatrapal case has been wrongly decided.

30. It is not necessary to consider the submissions raised by the counsel for the respondent and express any opinion on the second point as in view of our answer to the first point, the third point is to be answered in negative, in favour of the respondents.

31. In view of above, the meeting held on 19.8.2012 was within 30 days from giving notice to the Collector and was valid.

#### CONCLUSIONS

Our conclusions are as follows:

(a) Under explanation to section 15(3) of the UP Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, the date on which the stay order is granted as well as the date on which the stay order comes to an end have to be excluded while computing the period of thirty days;

(b) Apart from above, section 15(3)(ii) of the Act mandates fifteen days notice to be given for holding a meeting to consider motion of no confidence. This is the period required in the issue of fresh notice. It is also to be excluded in computing period of thirty days;

(c) After excluding the period as aforementioned, the meeting convened on 19.8.2012 was on 29th day. It was within the time stipulated in the Act;

(d) The notice dated 3.8.2012 as well as the meeting to consider the motion of no confidence on 19.8.2012 was valid.

In view of our conclusions, the writ petition has no merits. It is dismissed.