

**(2014) 09 AHC CK 0151**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 47648 of 2014

Mohammad Sadiq

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 5, 2014

**Citation:** (2014) 9 ADJ 165 : (2014) 6 AWC 6256 : (2014) 4 ESC 2235 : (2014) 125 RD 219

**Hon'ble Judges:** Vivek Kumar Birla, J; Amreshwar Pratap Sahi, J

**Bench:** Division Bench

**Advocate:** Bharat Singh Pal and Neeraj Tripathi, Advocate for the Appellant; S.K. Srivastava and Vinod Tripathi, Advocate for the Respondent

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### **Judgement**

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Amreshwar Pratap Sahi and Vivek Kumar Birla, JJ.

Heard Sri Neeraj Tripathi, learned Counsel for the petitioner and the learned Standing Counsel for the respondent Nos. 1 to 3. Sri Vinod Tripathi has put in appearance for the respondent No. 4 alongwith Sri S.K. Srivastava. We have heard learned Counsel for the parties at length. Learned Counsel for the respondents urge that they do not propose to file any counter-affidavit and this petition be disposed of finally at this stage itself on the basis of the records which is available.

2. The challenge raised in this petition is to the convening of No Confidence Motion meeting against the petitioner, who holds the post of Block Pramukh Kiratpur, District Bijnor. The No Confidence Motion is proposed to be held in terms of section 15 of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961.

3. The short ground of challenge is that the notice impugned dated 26.8.2014 convening a Meeting for 12.9.2014 for the said purpose is invalid as it is in violation of mandatory provisions of section 15(3) of the Act.

4. Learned Standing Counsel and learned Counsel for the Respondent No. 4 contend that the Notice has been issued and the District Magistrate has taken cognizance of the same for the purpose of holding the Meeting which should not be interfered with.

Section 15(3)(i) of the Act reads as under:--

"15(3)(i). The Collector shall thereupon:--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."

5. A perusal thereof leaves no room for doubt that the notice sent by the District Magistrate for holding of such meeting should have 15 days clear notice to the Members and that the Meeting should not be held later than 30 days from the date on which the notice under sub-section (2) was delivered to the District Magistrate.

6. The admitted facts in this case are that the notice was delivered to the District Magistrate by the Members proposing the Motion on 27.7.2014. The District Magistrate, therefore, could have convene the Meeting by giving 15 days clear notice to the Members but the date of the Meeting should not have been later than 30 days from such notice. It is also undisputed that the District Magistrate has dispatched the Notice to the Members on 26.8.2014 for convening the Meeting on 12.9.2014. It is, thus, clear that the said notices have been issued for convening the Meeting on 12.9.2014 which is beyond the period of 30 days as counted from 22.7.2014. The convening of Meeting, therefore, is clearly in violation of the mandatory provision aforesaid.

7. The respondent No. 4 had earlier come up before this Court complaining that the District Magistrate was not convening the Meeting on account of the undue pressure being exercised and the tactics adopted by the petitioner, who does not want the holding of the Meeting. The said writ petition was disposed of on 19.8.2014 by the following order:--

"The petitioner is a Member of Ward No. 63 of Kshetra Panchayat, Keeratpur, district-Bijnor.

The petitioner contends that a proposal for No Confidence Motion has been initiated by sending a Notice to the District Magistrate, Bijnor, copy whereof has been filed as An-nexure-2 to the writ petition, but the District Magistrate has failed to respond to the same.

This writ petition is disposed of with a direction to the respondent No. 2 to examine as to whether the said Notice is in accordance with section 15 of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam or not as well as the rules framed in relation to such No Confidence Motion and then proceed to pass appropriate orders in accordance with law within the time prescribed as per the Statute.

Let a certified copy of this order be issued to the learned Counsel, on payment of usual charges, today."

8. The District Magistrate does not appear to have taken notice of the provision which has been quoted above and in our considered opinion has erroneously fixed the date of the Meeting contrary to the provisions of sub-section (3) of section 15 as indicated above.

9. Consequently, Notice dated 26.8.2014 is vitiated and is hereby quashed. The proposed Meeting dated 12.9.2014 also cannot be held as a result of this order being passed today.

10. However, on the facts of this case, it shall be open to the Members to initiate a fresh No Confidence Motion in accordance with law and the District Magistrate shall be at liberty to convene a Meeting as observed herein above. With the aforesaid observations, the writ petition is allowed.