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JIVENDRA NATH KAUL ETC.

v.

THE COLLECTOR/DISTRICT MAGISTRATE AND ANR. ETC.

JULY 24, 1992

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[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

U.P. Kehhetra Samiti and Zilla Parishad Adhiniyam, 1961:

C *Section 28(11)—President—No confidence motion—When carried out—'For the time being'—Interpretation of—Means at the moment or existing position—Actual membership in existence on date of no confidence motion.*

D **The appellant was elected president of the Zilla Parishad on January 25, 1989. Two others were nominated as members of the Zilla Parishad. On the date of its constitution the Zilla Parishad had a total of 62 members.**

E **On August 17, 1990, 56 members of the Zilla Parishad moved a no confidence motion against the president under Section 28 of the U.P. Kehhetra Samiti and Zilla Parishad Adhiniyam, 1961. The meeting to consider the said motion was held on September 14, 1990. 34 members were present at the meeting. 33 members including the two nominated members voted in favour of the motion while one member voted against, and as such the motion of no confidence was carried out against the president.**

F **The appellant filed two writ petitions in the High Court and challenged and proceedings of the meeting dated September 14, 1990 and also his removal from the office of the president. He further challenged the nomination of the two nominated members on the ground that on the date of their nomination both of them were in government service and as such were disqualified to be members of the Zilla Parishad, being holders of an office of profit.**

G **The High Court by its judgment partly allowed the Writ Petitions and set aside the nominations of the two members holding the same to be illegal. It further held, that as they were not lawful members of the Parishad, their names are to be ignored, that the total strength of the members of the Parishad for the time being comes to 60, and if these two**

names are also excluded from the number of members who voted for the action of no confidence, the number of such members who voted for the motion of confidence, comes to 31. Thus, 31 members voted for the action of no confidence out of the total strength of 60 members, and therefore the irresistible conclusion was that the motion of no confidence was carried out by more than half of the total number of members of the Zilla Parishad for the time being.

The appellant filed appeals to this Court by Special Leave. It was contended on behalf of the appellant relying on an earlier judgment of the High Court in *Bhaiya Lal v. P.N. Tiwari* 1970 Allahabad Law Journal 36, that the words "for the time being" in Section 28(11) of the Adhiniyam means the total number of members in existence at the time of the constitution of the Zilla Parishad and not on the date when the motion of no confidence was considered.

Dismissing the appeals, this Court,

HELD : 1. "For the time being" in section 28(11) of the Adhiniyam means at the moment or existing position. These words indicate the actual membership in existence on the date of the motion of no confidence. [648A]

2. The High Court in *Bhaiya Lal's* case has not given natural meaning to the expressions contained in sub-sections 12 and 13 of section 87-A of the U.P. Municipalities Act, 1916. The only meaning which can be given to the expression "half of the total members of the Board" is the members as existing on the date of its constitution. The High Court's interpretation is contrary to the plain language of the sub-section. Similarly, the High Court fell into grave error by not appreciating the plain meaning of the words "for the time being" in sub-section 13 of section 87-A of the Act. On the basis of strained reasoning it has given an interpretation which does not flow from the simple language of sub-sections 12 and 13 of section 87-A of the Act. The High Court Judgment does not therefore lay down the correct law. [647F-648B]

Bhaiya Lal v. P.N. Tiwari, 1970 All. L.J. 36, over-ruled.

In the instant case, where out of total number of 62 members, nomination of two having been held illegal, actual membership on the date of the motion was 60, and out of total 34 members present in the meeting,

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A 33 voted for the motion and only 1 voted against, it has to be held that the motion was carried out against the President. [646 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2652-53 of 1992.

B From the Judgment and Order dated 6.3.1991 of the Allahabad High Court in W.P. No.8460 of 1990 and C.M.W.P. No. 9514 of 1990.

Satish Chandra, P.K. Chakraborty and Ms. Sandhya Goswami for the Appellant.

C The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

D J.N. Kaul was elected president of Zilla Parishad, Lucknow on January 25, 1989. D.K. Anand and Nand Kishore Verma were nominated as members of the Zilla Parishad. On the date of its constitution the Zilla Parishad had total of 62 members. On August 17, 1990 56 members of the Zilla Parishad moved a no confidence motion against the president under section 28 of U.P. Kehhetra Samiti and Zilla Parishad Adhiniyam, 1961 (hereinafter called as the Adhiniyam). Section 28(11) of the Adhiniyam which is relevant is as under:-

"If the motion is carried with the support of more than half of the total number of members of the Zilla Parishad for the time being....."

F The meeting to consider the motion of no confidence was held on September 14, 1990. 34 members were present at the meeting. 33 members including Anand and Verma voted in favour of the motion while one member voted against and as such the motion of no confidence was carried out against the president.

G J.N. Kaul filed two writ petitions before the Allahabad High Court which were heard together. In the writ petitions Kaul challenged the proceedings of the meeting dated September 14, 1990 and also his removal from the office of the president. He further challenged the nomination of Anand and Verma on the ground that on the date of their nomination both of them were in government service and as such were disqualified to be members of the Zilla Parishad, being holders of an office of profit. His

challenge in the writ petition was based on the following grounds:- A

(1) That the nomination of Anand and Verma as members of the Zilla Parishad was illegal as on the date of nomination they were government servants and were holding "office of profit".

(2) That the notice by the members intimating their intention to move the motion of no confidence was illegal as Anand and Verma who were disqualified to hold the office of member of Zilla Parishad, had signed the said notice. B

(3) That the meeting dated September 14, 1990 was in violation of mandatory provisions of the Adhiniyam as the requisite clear notice of 15 days was not served upon the members nor the notice was published by affixing the same on the notice board of the Parishad. C

(4) That the participation of Anand and Verma in the deliberation of the meeting dated September 14, 1990 vitiates the entire proceedings of the meeting. D

(5) That the required "more than half of the total number of members of the Zilla Parishad for the time being" did not vote in favour of the motion. E

The High Court by a reasoned judgment partly allowed the petitions and set-aside the nominations of Anand and Verma holding the same to be illegal. All other contentions raised before it on behalf of Kaul were rejected. This appeal via special leave petition is against the judgment of the High Court. F

We have heard Mr. Satish Chandra, learned Senior Advocate on behalf of the appellant. We have been taken through the judgment of the High Court. We do not find any infirmity in the same. We agree with the reasoning and the conclusions reached by the High Court. Mr. Satish Chandra, taking support from *Bhaiya Lal v. P.N. Tiwari*, 1970 Allahabad Law Journal 36 has assailed the finding of the High Court on the point that the motion of no confidence was not supported by more than half of the total number of members of the Zilla Parishad for the time being. The relevant part of the High Court judgment, under appeal, is as under:- G

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A "We have the report of the Presiding Officer, Sri Sushil Kumar Srivastava, as Annexure-3 to the counter affidavit of the Collector, Lucknow. The report is quite revealing. The report shows that in all 34 members of the Parishad were present. After deliberations 32 members voted in favour of the motion of no-confidence and one member voted against the motion of no-confidence. The remaining vote of the 34th member was debated because the mark made by the voter was not made in the column meant for "yes". Initially the Presiding Officer was of the view that the vote was invalid but when the Assistant Election Officer informed the Presiding Officer that it was not explained to the members as to at what place the mark was to be placed by the voter, the Presiding Officer was of the view that since the mark was above the column meant for "yes" the vote was valid and was cast in favour of the motion of no-confidence. Thus, a total of 33 members voted for the motion of no-confidence when the total strength at that time was 62. It was not disputed that both opposite parties nos.2 and 3 voted for the motion of no-confidence. We have already held that they were not lawful members of the Parishad and, as such, their names are to be ignored. If we ignore these two members, then the total strength of the members of the Parishad for the time being comes to 60 and if these two names are also excluded from the number of members, who voted for the action of no-confidence, the number of such members who voted for the motion of no-confidence, comes to 31. Thus, 31 members voted for the action of no-confidence out of total strength of 60 members. The conclusion was irresistible that the motion of no-confidence was carried out by more than half of the total number of members of the Zilla Parishad for the time being."

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G Mr. Satish Chandra contended that "for the time being" in section 28(11) of the adhiniyam means the total number of members which were in existence at the time of the constitution of the Zilla Parishad and not on the date when the motion of no confidence was considered. According to him the total number of members which should have been taken into consideration was 62 and since the votes for the motion were 31 which means only 50% and not more than 50%, the motion failed. The argument

H has been advanced on the basis of the judgment of a Division Bench of

Allahabad High Court in *Bhaiya Lal's* case (supra). In that case the High Court was concerned with the provisions of U.P. Municipalities Act, 1916 (Act). The Municipal Board Mugal Sarai consisted of 16 members including the president. A notice of the intention to move a motion of no-confidence against the president was given by the members. Sub-sections (12) and (13) of section 87-A of the Act which came for consideration before the High Court in *Bhaiya Lal's* case (Supra) were as under:-

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12. "The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the Board".

13. "If the motion.....which shall not be less than one-half of the total number of members of the board for the time being, no notice of any subsequent motion of non-confidence in the same President shall be received until after the expiry of a period of twelve months from the date of the meeting."

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The Allahabad High Court interpreted "for the time being" in sub-section (13) of section 87-A to mean the members of the board as they existed on the date of its constitution and not on the date when the motion of no confidence was considered. So far as sub-section (12) of section 87-A of the Act was concerned the High Court interpreted the expression "total number of members of the Board" to mean the total number of members who were functioning as such at the relevant time which means on the date of the meeting and did not include members or members who had been removed from office. We are of the view that the High Court judgment in *Bhaiya Lal's* case (supra) does not lay down correct law. The High Court has not given natural meaning to the expressions contained in sub-sections (12) and (13) of section 87-A of the Act. The only meaning which can be given to the expression "half of the total number of members of the Board" is the members as existed on the date of its constitution. The total number of members on the date of the composition of the municipal board, Mugal Sarai was 16 and as such notwithstanding the removal of member/members the motion of no confidence could only be passed if the motion was supported by more than 8 votes. The High Court's interpretation is on the face of it contrary to the plain language of the sub-section. Similarly the High Court fell into grave error by not appreciating the plain meaning of the words "for the time being" in sub-section (13) of section 87-A of the

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A Act. "For the time being" means at the moment or existing position. These words indicate the actual membership in existence on the date of the motion of no confidence. The High Court on the basis of strained reasoning has given interpretation which does not flow from the simple language of sub-sections (12) and (13) of section 87-A of the Act. We, therefore, hold that the High Court judgment in *Bhaiya Lal's* case (Supra) does not lay down the correct law and we over-rule the same.

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Apart from relying on the judgment of Allahabad High Court in *Bhaiya Lal's* case Mr. Satish Chandra did not advance any other argument before us.

C We, therefore, dismiss the appeal with no orders as to cost.

N.V.K.

Appeals dismissed.