Sheela Devi and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-02-2015

Judge : The Honourable Chief Justice Dr. D.Y. Chandrachud, Dilip Gupta &Amp; Suneet Kumar

Appeal No. : Writ C. No. 48378 of 2013 & Writ C. Nos. 1518, 53750, 56342, 63807 of 2014

Appellant : Sheela Devi and Others

Respondent : State of U.P. and Others

Judgement :

Oral Judgment:

Dr. DY Chandrachud, C.J.

Part IX of the Constitution makes provisions in regard to Panchayats. Part IX was introduced by the Constitution (Seventy-third) Amendment Act, 1992 which came into force on 24 April 1993. Article 243 (c) defines the expression "intermediate level" as a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of the Part. Article 243-B (1) requires the constitution in every State of Panchayats at the village, intermediate and district levels in accordance with the provisions of the Part. The present reference to Full Bench relates to the construction of the provisions of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats

Adhiniyam, 19611, more particularly Section 15 which relates to motion of no confidence against a Pramukh of a Kshettra Panchayat. A Kshettra Panchayat is an elected body at the intermediate level.

The reference was occasioned by a referring order of a Division Bench of this Court dated 10 January 20142 by which the following issue has been placed for consideration:

Whether the District Magistrate or the competent authority under the U P Kshetra Panchayat and Zila Panchayat Act, 1961 while proceeding to entertain a notice for tabling a no confidence motion under Section 15 thereof against the Block Pramukh, can exercise his discretion for examining the genuineness or veracity of the signatures endorsed by the members, and as to whether there is a direct conflict on principles in the judgments of this Court on the issue.

Sub-sections (1), (2) and (3) of Section 15 have a bearing on the controversy which is in issue and are extracted herein below for convenience of reference:

"15. Motion of no-confidence in Pramukh - (1) A motion expressing want of confidence in the Pramukh 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.

Explanation.- In computing the period of thirty days specified in this sub-section, the period during which a stay order, if any, issued by a Competent Court on a petition filed against the motion made under this section is in force plus such further time as may be required in the issue of fresh notices of the meeting to the members, shall be excluded."

Sub-section (1) of Section 15 provides for a motion expressing a want of confidence in the Pramukh. Such a motion has to be made and proceeded with in accordance with the procedure laid down in the sub-sections which follow. The moving of a motion precedes its tabling and consideration. Consideration of the motion is a subsequent stage once a motion has been validly made and submitted. Sub-section (1) of Section 15 makes it clear that the making and the manner in which a motion can be proceeded with, must accord with the procedure which is laid down in the Section. Sub-section (2) of Section 15 makes provision for the stage up to the submission of a motion to the Collector having jurisdiction over the Kshettra Panchayat. Sub-section (2) sets down the following conditions:

(i) There has to be a written notice in the form prescribed;

(ii) The written notice must evince an intention to make the motion of no confidence in the Pramukh of the Kshettra Panchayat;

(iii) The written notice must bear the signatures of at least half of the total number of elected members of the Kshettra Panchayat for the time being;

(iv) A written notice, which complies with the aforesaid requirements, together with a copy of the proposed motion must be delivered in person to the Collector; and

(v) The person delivering the notice and the proposed motion must be a member of the Kshettra Panchayat and, in addition, must also be a signatory to the notice.

Once such a notice has been delivered to the Collector, sub-section (3) requires the Collector to comply with the requirements : firstly of convening a meeting of the

Kshettra Panchayat for consideration of the motion at the office of the Kshettra Panchayat on a date to be appointed; and secondly of furnishing of a notice to every elected member of the Kshettra Panachyat. Sub-section (3) of Section 15 makes a reference to two periods of time. Clause (i) provides that the Collector must convene a meeting no later than within thirty days from the date on which the notice under sub-section (2) has been delivered to him. Clause (ii) provides for an individual notice to every elected member of the Kshettra Panchayat of not less than fifteen days of such a meeting which is convened.

The convening of a meeting and the holding of a meeting to consider a motion of no confidence is a matter which has statutory consequences. If the motion is carried with the support of half of the total number of elected members of the Kshettra Panchayat, sub-section (11) (b) of Section 15 provides that the Pramukh shall cease to hold office after the notice has been duly affixed on the notice board of the office of the Kshettra Panchayat. The legislature was cognizant of the fact that such motions should not be allowed to be resorted to in a frivolous manner to destabilize the head of a democratically constituted intermediate level panchayat. Consequently, sub-section (2) of Section 15 provides that before the Collector holds a meeting of the Kshettra Panchayat, the notice of the intention to make the motion has to be in compliance with the provisions of sub-section (2). If a motion is not carried out, sub-section (12) of Section 15 stipulates that no notice of any subsequent motion expressing want of confidence in the same Pramukh shall be received until after the expiration of one year from the date of such meeting. Moreover, under sub-section (13) of Section 15, no notice of a motion under the Section can be received within one year of the assumption of office by a Pramukh.

The vexed issue upon which the present reference to the Full Bench has been occasioned turns upon the role and power of the Collector when a written notice of an intention to move a motion of no confidence purportedly signed by at least half of the total number of elected members of the Kshettra Panchayat has been delivered to him. The issue before the Court is as to whether, upon the delivery of such a notice, the Collector has some element of duty to verify whether the conditions prescribed in sub-section

(2) of Section 15 have been fulfilled and if so, the nature of the proceeding before the Collector. There are two conflicting legal premises which have been placed before the Court in the course of the hearing of this reference. The first postulates that once a written notice signed by half of the total number of elected members of the Kshettra Panchayat has been duly delivered to the Collector, the Collector has no choice or option but to convene a meeting. In this submission, sub-section

(2) of Section 15 or, for that matter, sub-section

(3) do not contemplate an enquiry by the Collector. The Collector in this line of argument, may only verify whether (i) the signatures on the notice are of elected members of the Kshettra Panchayat; (ii) at least half of the elected members purport to have signed the motion; and (iii) the signatories to the notice are living, and if the Collector finds that these requirements are fulfilled, he has no option but to convene a meeting. The submission is that the Collector, in the course of his verification, cannot determine a disputed question, such as when the persons by whom the notice purports to have been signed deny the authenticity of their signatures or allege that their signatures are fabricated. In support of this submission, it has been urged that sub-section

(3) of Section 15 prescribes specific time lines of 30 days for convening a meeting and of fifteen days for furnishing individual notices to elected members and if the Collector were permitted to hold an enquiry when the elected members of the Panchayat who purport to have signed the notice deny the authenticity of their signatures, the time schedule indicated will not be followed, leading to an invalidation of the proceedings. Hence, it has been submitted that on a plain and literal construction of the provisions of sub-sections

(2) and

(3) of Section 15, an enquiry by the Collector is ruled out, save and except of verifying that the members who purported to have signed the motion are elected members of the Kshettra Panchayat; that at least half of the total number of elected members have signed the motion and that each of them continues to be alive. The Collector has no further discretion.

Contrariwise, the submission which has been urged in opposition to this line of interpretation by the learned Additional Advocate General and by learned senior counsel supporting the State is that (i) Section 15 confers both a power on the Collector and provides the procedure for convening a meeting of the Kshettra Panchayat for considering a motion of no confidence; (ii) sub-section (2) of Section 15 lays down specific conditions for a valid notice of an intention to move a motion of no confidence and the Collector has to examine, before he convenes the meeting, whether all the requirements of a valid notice under sub-section (2) have been fulfilled; (iii) for this purpose, the Collector is entitled to verify whether the written notice of an intention to make a motion is duly and actually signed by at least half of the total number of elected members or whether an imposter, who is an outsider to the elected body, has signed the notice purportedly of half of the number of elected members only to invite the Collector to convene a meeting and whether the signatory of the notice is alive or dead; (iv) once a power has been conferred upon the Collector to do a certain act on the existence of certain circumstances, there must exist an implied power to make an enquiry as to whether or not those circumstances exist. The Collector must necessarily be recognized to have the power to make an enquiry to verify the existence of the circumstances spelt out in sub-section (2) as an incident of a proper performance of his duties. Hence, it has been submitted that the interpretation by the Court should be in such a manner as would make the statute workable. If the Collector were held not to have the power to conduct at least a limited enquiry, that would lead to absurd consequences because even if one person has fabricated the signatures purportedly of half of the number of elected members, the Collector would be required to necessarily convene a meeting leading to destabilizing the work of the Kshettra Panchayat. The submission that no prejudice would be caused since such a motion would, in any event, be defeated, it is urged, begs the fundamental question as to whether a meeting should at all be required to be convened when the basic requirements of sub-section (2) of Section 15 have not been fulfilled.

Before we deal with the judgments of this Court on the point, we must analyze the issue of interpretation as a matter of first principle. There are clear principles which must weigh with the Court in approaching the task of interpretation. The primary

requirement is that sub-section (1) of Section 15 postulates that a motion expressing want of confidence has to be made and proceeded with in accordance with the procedure which has been prescribed in the following sub-sections. Sub-section (2) of Section 15 provides for the form and content of a written notice for a motion of no confidence; an intention to move the motion of no confidence; the persons by whom such a motion has to be moved and the manner in which it has to be placed before the Collector. As regards the form and content of the notice, sub-section (2) requires that the notice be written, that it must reflect an intention to make the motion and that it should be accompanied by a copy of the proposed motion. As regards the persons by whom the motion is to be moved, sub-section (2) requires that it should be signed by at least half of the total number of elected members of the Kshettra Panchayat. As regards delivery, sub-section (2) requires that the written notice must be delivered in person by one of the members of the Kshettra Panchayat who must also be a signatory to the notice; delivery being made to the Collector having jurisdiction over the Kshettra Panchayat. Advisedly, the legislature has not permitted a written notice signed by any member of the panchayat to fulfill the requirement. The object and purpose of having at least half of the total number of the elected members of the Kshettra Panchayat to sign the written notice is to ensure that there should be a substantial body of persons who are elected members, who desire to support the motion. The rationale of the legislature in doing so is to ensure that the work of the elected head of a Kshettra Panchayat should not be derailed or destabilized except when a substantial number of elected members - at least half - are in support of the motion to move a resolution of no confidence. Hence, the fact that sub-section (2) makes specific requirements in regard to the manner in which the notice is to be prepared, signed and delivered is an indicator of the fact that before a meeting can be convened, the legislature has attached sanctity to the requirements as enacted in sub-section (2).

Once a notice has been delivered to the Collector under sub-section (2), the Collector has to convene a meeting within thirty days from the date on which the notice was delivered, and to furnish every elected member of the Panchayat a notice of not less than fifteen days. To hold that the Collector is merely required to verify whether the written notice of intention that has been delivered to him

purports to bear the signatures of at least half of the total number of elected members, thereby reducing role of the Collector merely to a verification of whether the signatories as appearing in the notice are elected members and whether they are alive, would denude the Collector of any effective supervision over the process. If the Court were to hold that the Collector has no jurisdiction save and except to count the total number of members purporting to have signed a notice and determine whether they represent more than half of the elected members, that would render the exercise of a motion of no confidence a farce in certain situations. Arguably, even if one person has purportedly signed the written notice by fabricating the signatures of half of the total number of elected members, the Collector would be left with no jurisdiction but to convene the meeting even if it were to appear to the Collector on a bare perusal of the notice that the signatures thereon have been ascribed by one and the same person. It would be the duty of the Court, while interpreting the provisions of sub-section (2) of Section 15 as well as of sub-section (3), to make the provision workable and to ensure that the actual working out of the provision does not lead to absurd consequences. The legislature has carefully made provisions in sub-section (2) of the manner in which a notice has to be submitted to the Collector.

Consistent with the provisions of sub-section

(3) of Section 15, it is equally clear to our mind that the Collector in order to meet the time lines which have been specified therein would not be justified in launching upon a detailed evidentiary enquiry. The Collector under Section 15 has not been constituted as a civil court. The legislature has not contemplated vesting in the Collector the power of a civil court for summoning and enforcing the attendance of witnesses and for making a detailed factual enquiry or for receiving evidence for that purpose. The Collector has to abide by the time schedule indicated in sub-section

(3) of convening a meeting within thirty days of the date of the delivery of notice and of furnishing at least fifteen days' notice to the elected members of the Kshettra Panchayat. Time is of the essence in convening a meeting as well as in furnishing a notice of a meeting to every elected member. Evidently, the Collector

would neither have the time nor the power to hold a detailed evidentiary enquiry in which disputed questions of fact can be resolved. Hence, questions such as whether the signatures on the written notice have been obtained by fraud, duress or coercion and which would require an evidentiary hearing cannot be gone into by the Collector. The role of the Collector has to be balanced between two extremes. At one end of the spectrum is a situation where the Collector merely plays the role of a post office in which he would only verify whether the notice purports to have been signed by half of the elected members of the Kshettra Panchayat and whether the signatories to the notice were alive. At the other end of the spectrum would be a situation where a detailed enquiry involving evidence and judicial findings would have to be made. In our view, neither of these extremes can be accepted as representing the true role of the Collector. The first would destroy the sanctity of and destablise the working of an elected body. Motions of no confidence are serious business - not a game or sport or a forum for horse trading. The Collector is not merely a post office between the time when a notice is delivered to him under sub-section

(2) and a meeting is convened under sub-section (3). To reduce the role of the Collector to a mere post office or a facilitator for holding and convening the meeting would be to efface and obliterate the requirements which have been spelt out in sub-section (2). If the legislature were not to regard those requirements as matters of moment, there was no reason to introduce a specific requirement that the notice be signed by at least half of the total number of elected members of the Kshettra Panchayat. A requirement that the notice be signed by a member of the Kshettra Panchayat would have sufficed but the legislature in its wisdom has imposed a specific requirement under sub-section

(2) in regard to the number of members signing the motion. Sub-section

(3) of Section 15 stipulates that the Collector "shall thereupon" convene a meeting, meaning thereby that after fulfillment of the requirements of sub-section (2), the Collector shall proceed to act in the manner indicated therein. The second extreme must also be eschewed. The Collector has not been constituted as a civil court. His powers for this purpose are not akin to those of a civil court. He is bound to

comply with the time schedule laid down by the legislature in convening a meeting and furnishing individual notices to members. The correct view in regard to the powers of the Collector is to interpret sub-sections

(2) and

(3) of Section 15 so as to leave it to the discretion of the Collector to determine whether the notice which has been furnished to him meets the requirement of sub-section (2). Undoubtedly, the Collector, as we have already noted above, cannot conduct a detailed evidentiary hearing and the proceedings before him would be of a summary nature. The Collector would, in this line of enquiry, be within his discretion to verify whether there are circumstances which are indicative of the fact that the requirements of sub-section

(2) have not been fulfilled. If the Collector finds in a given case that it would not be possible for him to resolve the issue except after a full-fledged enquiry akin to a judicial proceeding, he would be justified in directing the holding of a meeting at which the motion of no confidence can be resolved. But, on the other hand, if there are circumstances before him which are indicative of the fact that provisions of sub-section

(2) have not been fulfilled, it would not be appropriate to denude the Collector of the power to make a limited verification or enquiry for the purpose of ensuring that the motion of no confidence meets the requirement as spelt out in sub-section (2).

This view which we are inclined to take finds support in an earlier judgment of a Full Bench of this Court in Mathura Prasad Tewari Vs Assistant District Panchayat Officer, Faizabad. The Full Bench in that case considered the provisions of Rule 33-B of the U P Panchayat Raj Rules, 1947 which, at the material time, provided as follows:

"33-B (1) A written notice of the intention to move a motion for removal of the Pradhan ... under Sec. 14 ... shall be necessary. It shall be signed by not less than one half of the total number of members of the Gaon Sabha and shall state the reasons for moving the motion and ... shall be delivered in person by at least five

members signing the notice to the prescribed authority.

(2) The prescribed authority shall, as soon as may be after the receipt of the notice convene a meeting of the Gaon Sabha... The meeting so convened shall be presided over by the prescribed authority or the person authorised by him in writing in this behalf."

Under Rule 33-B (2), the prescribed authority was required to convene a meeting of the Gaon Sabha as soon as may be after the receipt of a notice under sub-rule (1) signed by not less than one half of the total number of members. Chief Justice M C Desai in the judgment of the majority, held that having due regard particularly to the need to convene the meeting as soon as possible and the large number of members of the Gaon Sabha, it could never have been intention of the State Government while making the rule that issues such as whether the signatures on the notice were forged or were obtained by fraud or coercion be resolved where a long drawn enquiry would become necessary. In that context, the learned Chief Justice observed as follows:

"...If a prescribed authority finds that some signatures are not of members of the Gaon Sabha or are forged or otherwise invalid and the remaining signatures are insufficient it would be bound to desist from convening a meeting but the question before us is different, it being whether it is required by any rule to make an enquiry. There may be no provision forbidding an enquiry but that also is immaterial because the law does not require everything not forbidden to be done. The most that can be said is that the matter is at the discretion of the prescribed authority; if a complaint is made to it that a material number of signatures is invalid it may in its discretion make an enquiry or refuse to make it. If it is a small enquiry it is justified in making it and if it is likely to turn out into a long drawn enquiry or if it thinks that the complaint is not bona fide or is made with the ulterior object of delaying the convening of the meeting it is fully justified in not undertaking an enquiry..."

The Full Bench also held as follows:

"...There is nothing to suggest that he may spend days and even months in enquiring whether the signatures on the requisition are genuine or not or are obtained without resort to fraud or coercion or not. If it cannot be said that he is bound to make an enquiry it cannot be said that the prescribed authority is bound to make an enquiry on receipt of a notice under Rule 33-B. Injustice and anomalies can be imagined but what is certain is that an enquiry may take a long time and may be followed by applications for certiorari, mandamus and prohibition, in turn followed by appeals from orders on the applications. Then the prescribed authority has no power to summon witnesses and documents and it is not understood how it can hold an enquiry.

...Whether a meeting should be convened or not is a matter only between the prescribed authority and the signatories delivering the notice to it. The prescribed authority has to act on its finding that the notice has been signed by at least half the members and has been presented by at least five of the signatories. As nobody has a right to file any objection the question of his holding an enquiry simply does not arise. Whatever enquiry is made by it is made entirely at its own discretion and nobody has a right to compel it to make it. Obviously there cannot be a right in any person to compel it to make it when he has not been given a right to file an objection."

The dissenting judgment, it must be noted, also observes that it was not necessary for the prescribed authority to enter upon a detailed enquiry and the authority would not go into difficult question of fraud and duress. However, in the view of the dissenting judge, the prescribed authority would have to make a general enquiry if there was a specific allegation that a particular signature of a living person is forged or is a signature of a person who is dead. The dissenting judge held that he was not in agreement with the principle of the majority that the prescribed authority is not required to make any enquiry on the receipt of a notice of intention to move a motion for the removal of a Pradhan.

In our view, both the decisions of the majority as well as the minority essentially follow the same line and the area of dissent is rather narrow. Both the judgments of the majority as well as the minority postulate that the Collector ought not to

make a detailed enquiry where serious allegations of fraud, coercion and duress are required to be resolved particularly having regard to the fact that a meeting had to be convened as soon as possible. The area of divergence is only this that whereas the majority left it open to the Collector to determine whether and if so what enquiry should be held, the view of the dissenting judge was that the Collector should hold an enquiry so long as a detailed enquiry into serious questions of coercion or fraud was not involved. In either view of the matter and since we are bound by the judgment of the Full Bench, the law on the subject is thus clear. The Collector, in the course of exercising the power which is conferred upon him, ought not to enquire into seriously disputed questions of fact involving issues of fraud, coercion and duress. Moreover, the Collector must have the discretion in each case of determining on the basis of a summary proceeding whether the essential requirements of a valid notice of an intention to move a motion of no confidence have been fulfilled. Where in the course of the summary enquiry, it appears to the Collector that the written notice does not comply with the requirements of law, the Collector would be within his power in determining as to whether all the required conditions have been fulfilled, as enunciated in sub-section (2) of Section 15. Whether the Collector in a given case has transgressed his power is separate issue on which judicial review under Article 226 of the Constitution would be available. However, we expressly clarify that we are not laying down a detailed and exhaustive enumeration of the circumstances in which the Collector can determine the validity of a notice furnished under Section (2) or those in which he can make a limited enquiry which, as we have held, he is entitled and competent to make. Ultimately, each case depends upon its own facts and it for the Collector to determine as to whether the objections raised before him are outside the scope of the limited inquiry which he can make upon notice of an intent to move a motion of no confidence if it is submitted to him together with a notice of no confidence.

In a later decision of a Division Bench of this Court in Banshoo Vs District Panchayat Raj Officer, Jaunpur, a similar view was taken of the power of the Collector under Rule 33-B of the U P Panchayat Raj Rules in the following observations:

"We are of the opinion that where the result of the electoral process was sought to be set at naught and notice signed by not less than half of the members of the Gaon Sabha was given to the Prescribed Authority to convene a meeting to consider it, in his discretion he would be justified to hold an enquiry to satisfy himself about the genuineness of the signatures, but the enquiry should not be long drawn and date for consideration should not be fixed beyond the statutory period of thirty days. We deem it proper to refer to a Latin Maxim "Ut Res Magis Valeat Quam Pereat" which obviously means that a statute or any enacting provision must be so construed as to make it more effective and operative."

Rule 33-B of the U P Panchayat Raj Rules 1947 was subsequently amended by a notification dated 4 March 2005 so as to specifically incorporate the requirement that before proceeding further on the notice, the District Panchayat Raj Officer shall satisfy himself regarding genuineness of the signatures of the members signing the notice. Hence, in cases falling within the ambit of Rule 33-B, the jurisdiction of the prescribed authority is now in terms of the amendment which we have taken note of, for the sake of completeness. However, that amendment to the Panchayat Raj Rules has no bearing on the issue which has been raised in the present case.

The reference before the Full Bench has been occasioned as a result of certain judgments of Division Benches of this Court which had adopted a position contrary to the view of the Full Bench in Mathura Prasad Tewari as well as the decision of the Division Bench in Banshoo. In Smt Savita Bharat Vs State of U P, a Division Bench of this Court, while interpreting the provisions of Section 15 observed as follows:

"...there is no procedure under the law authorizing the District Magistrate to conduct any inquiry in this respect. Once motion of no confidence and notice of intention was presented before District Magistrate according to the procedure prescribed under the law he has no option but to call the meeting for considering the motion of no confidence. Inquiry at his level about the signatures on the motion has neither been provided not practicable as date for meeting has to be fixed within 30 days and notice of meeting is required to be issued before 15 days. This

Court in Chhatrapal Singh Vs. State of U.P. and others, (2003) 3 UPLBEC 2634 has held that District Magistrate cannot make inquiry about the signatures of the members."

In taking this view, the Division Bench relied on an earlier decision in Chhatrapal Singh Vs State of U P and in Meera Azad Vs State of U P. The decision in Chhatrapal Singh's case followed the earlier decisions which took a view that the duty of the Collector to convene a meeting not later than within thirty days from the date of delivery of the notice under sub-section (2) is mandatory. The contention before the Division Bench was that the notice was furnished to the District Collector of a motion of no confidence on 30 June 2003. Though a notice was issued to all members for holding a meeting on 21 July 2003, the meeting was not held and was scheduled on 22 September 2003. This was challenged on the ground that it was mandatory for the Collector to hold the meeting within thirty days of the receipt of notice and as the notice had lapsed, the meeting for no confidence could not be held. In the concluding part of the judgment, the Division Bench also held that the District Collector had overreached himself by holding an enquiry regarding the genuineness of the signatures of the members on the notice and proposal for the no confidence motion which was not warranted as the statute did not envisage such an eqnuiry. In the decision in Meera Azad, the Division Bench had observed that it was not necessary for the Collector to verify the signatures or the thumb impressions of the members who had signed the notice and in case a member had not signed the notice, he could always vote against the motion. These decisions of the Division Benches have, it is evident, not taken cognizance of the earlier decision of the Full Bench in Mathura Prasad Tewari as well as the decision of the Division Bench following it in Banshoo (supra). The Full Bench in Mathura Prasad Tewari has taken the view that while a detailed enquiry akin to a judicial enquiry into allegations of fraud, coercion and duress cannot be conducted by the Collector under Section 15, the Collector has the discretion, in an appropriate case, to consider whether the requirements of sub-section (2) of Section 15 have been fulfilled. However, the enquiry before the Collector is of a summary nature. The Collector while carrying out a verification of compliance with the requirements of sub-section (2) would be at liberty to consider, in those cases which do not warrant a detailed factual enquiry particularly of evidentiary material,

whether the requirements of law of a valid notice have been fulfilled. Since the judgments of the Division Benches, noted above, have proceeded to take a view at variance with the view in Mathura Prasad Tewari, they would not, to that extent, be reflective of the correct position in law. We may also refer at this stage to a judgment of a Division Bench of this Court in Utma Devi Vv State of U P8. In that case, af the 82 elected members of the Kshettra Panchayat, a notice of no confidence was presented with the signatures of forty nine members. Thirty six appeared before the District Magistrate and their signatures/thumbs impressions were verified. Nineteen persons had filed affidavits supporting the motion but subsequently respondent no 5 therein filed affidavits of the same persons denying their earlier signatures. Accordingly, a notice was issued to those members to appear before the District Magistrate, of whom seven appeared and supported their affidavits filed in support of the motion of no confidence. The District Magistrate held that since the remaining ten members who had filed their affidavits in support of the motion for no confidence did not appear and notice on two members could not be served, the motion was not supported by the required number of half of the elected representatives. Holding that this was an improper exercise of jurisdiction, the Division Bench observed as follows:

"There cannot be a presumption about the signatures being forged or not being that of the members. Contention raised on behalf of the petitioner appears to be correct. Under the Act, 1961 and the Rules prescribed, there is no requirement of any actual physical presence of the members before the District Magistrate in support of the motion. What is only required is that the motion should be signed by more than half of the members, and if there are affidavits on record in support of the motion and further if there are affidavits to the contrary submitted by the Block Pramukh, it is the duty of the District Magistrate to satisfy himself from the records of the Kshetra Panchayat as to whether prima facie the motion bears the signatures of members or not. He is not required to act as the Civil Court and enter into the necessities of evidence for coming to the conclusion that the signatures on the motion are genuine or not."

Here again, the Division Bench has clearly laid down that the District Magistrate is not required to act as a civil court and to enquire into matters of evidence for

coming to the conclusion as to whether the signatures on the motion are genuine or otherwise.

The principle which we have laid down in the earlier part of this judgment is founded on the basic position that when an authority has a power to carry out a public act on the existence of certain circumstances, it has an implied power to make an enquiry in regard to the existence of those circumstances. This is a power which flows out of the basic power which is conferred upon the authority and is incidental to or ancillary for the purpose of effectuating the purpose of the conferment of the power. This principle has been recognized in a judgment of a Division Bench of this Court in Committee of Management, Sri Gandhi Inter College Vs Deputy Director of Education where it was held as follows:

"...It is a settled law that when an authority is given power to do certain act on existence of certain circumstances, there is an implied power to make an enquiry as to whether those circumstances exist or not. The enquiry in regard to the existence of those circumstances is included in the grant of power. In other words, the power of making enquiry in regard to the existence of those circumstances flows as necessary means to accomplish the end. In fact, the enquiry is some thing essential for proper and effectual performance of duty assigned..."

As a matter of statutory interpretation, the duty of the Court while interpreting legislation, first and foremost is to give effect to the plain and ordinary meaning of the language contained in the statute. The legislative intent is best reflected in the words used by the legislature in enacting legislation. Hence, the Court will not readily supply a casus omissus except when there is a clear necessity to do so and that too within the four corners of a statute. At the same time, where a literal construction of the words which have been used by the legislature give rise to an absurdity or a manifestly erroneous result, it is open to the Court to adopt a purposive interpretation which will give true effect to the legislative object and scheme. In Padmasundara Rao (Dead) Vs State of Tamil Nadu, the Supreme Court observed as follows:

"Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first

principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou, "is not to be imputed to a statute if there is some other construction available"."

In Ramesh Mehta Vs Sanwal Chand Singhvi, the Supreme Court emphasized that if two constructions are possible, a meaning which renders a statutory provision workable should be adopted:

"A subordinate or delegated legislation must also be read in a meaningful manner so as to give effect to the provisions of the statute. In selecting the true meaning of a word regard must be had to the consequences leading thereto. If two constructions are possible to adopt, a meaning which would make the provision workable and in consonance with the statutory scheme should be preferred."

The same principle has been enunciated in the judgment of a Bench of two learned Judges of the Supreme Court in Shanker Raju Vs Union of India where it has been held that a statute is designed to be workable, and the interpretation thereof by the Court should be to secure that object unless a crucial omission or clear statutory direction makes that end unattainable.

For these reasons, we have come to the conclusion that where a notice is delivered to the Collector under sub-section (2) of Section 15, the Collector has the discretion to determine whether the notice fulfills the essential requirements of a valid notice under sub-section (2). However, consistent with the stipulation of time enunciated in sub-section (3) of Section 15 of convening a meeting no later than thirty days from the date of delivery of the notice and of issuing at least a fifteen days' notice to all the elected members of the Kshettra Panchayat, it is not

open to the Collector to launch a detailed evidentiary enquiry into the validity of the signatures which are appended to the notice. Where a finding in regard to the validity of the signatures can only be arrived at in an enquiry on the basis of evidence adduced in the course of an evidentiary hearing at a full-fledged trial, such an enquiry would be outside the purview of Section 15. The Collector does not exercise the powers of a court upon receipt of a notice and when he transmits the notice for consideration at a meeting of the elected members of the Kshettra Panchayat. Hence, it would not be open to the Collector to resolve or enter findings of fact on seriously disputed questions such as forgery, fraud and coercion. However, consistent with the law which has been laid down by the Full Bench in Mathura Prasad Tewari's case, it is open to the Collector, having due regard to the nature and ambit of his jurisdiction under sub-section (3) to determine as to whether the requirements of a valid notice under sub-section (2) of Section 15 have been fulfilled. The proceeding before the Collector under sub-section (2) of Section 15 of the Act of 1961 is more in the nature of a summary proceeding. The Collector for the purpose of Section 15, does not have the trappings of a court exercising jurisdiction on the basis of evidence adduced at a trial of a judicial proceeding. Whether in a given case, the Collector has transgressed the limits of his own jurisdiction is a matter which can be addressed in a challenge under Article 226 of the Constitution. We clarify that we have not provided an exhaustive enumeration or list of circumstances in which the Collector can determine the validity of the notice furnished under sub-section (2) in each case and it is for the Collector in the first instance and for the Court in the exercise of its power of judicial review, if it is moved, to determine as to whether the limits on the power of the Collector have been duly observed.

The reference to the Full Bench is answered in the aforesaid terms. All the writ petitions shall now be placed before the regular Bench according to the roster of work for disposal in the light of this judgment.