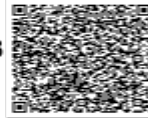


2024:PHHC:120183-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-16523-2024 (O&M)

Reserved On: 22.08.2024

Date of Decision : 12.09.2024

Deepak Malik

...Petitioner

Versus

STATE OF HARYANA & ORS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Puneet Bali, Sr. Advocate with
Mr. Jagbir Malik, Advocate
Mr. Sachin Jain, Advocate and
Ms. Bhagyashri Setia, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana,
Mr. Karan Jindal, AAG, Haryana,
Ms. Kushaldeep Kaur, Advocate,
Mr. Siddhanth Arora, Advocate and
Ms. Saanvi Singla, Advocate for State of Haryana.

Mr. Vikram Singh, Advocate and
Mr. Ishnoor Singh Bains, Advocate
for applicants.

SUDHIR SINGH, J.

The petitioner has filed the present petition seeking a writ in the nature of Certiorari quashing the impugned notice dated 12.07.2024 (Annexure P-2), received by him on 16.07.2024, whereby respondent No.3 had called a meeting on 19.07.2024 of the house of Zila Parishad, Kaithal, for

considering the motion of No Confidence against the petitioner (President of said Zila Parishad).

2. The facts of the case are that in the elections held for Zila Parishad in District Kaithal, in November, 2022, the petitioner was elected as a member of the said Zila Parishad and apart from him, 20 other members were also elected. The total strength of the House was 21 Members. Subsequently, the petitioner was elected as President of Zila Parishad, Kaithal. It is the case of the petitioner that the members of the house started involving in corrupt practices in public dealings and the projects/grants initiated by the Government, but the petitioner being honest person, always tried to end the malice involved and he was thus, considered an obstruction by the other members of the house. It is further averred that on 18.01.2024, one Bijender filed a complaint to the Deputy Superintendent of Police (Anti Corruption Bureau), Panchkula, alleging involvement of Vikramjit Singh, one of the Members of Zila Parishad, Kaithal and one Bharat Dhull, husband of another Member of said Zila Parishad, in demanding illegal gratification to the tune of Rs.10,000/- per water cooler and Rs.25,000/- per water tanker. Subsequently, FIR No.03 dated 18.01.2024, under Section 120-B, 384 IPC read with Sections 7 and 7-A of the Prevention of Corruption Act, was registered against the said Vikramjit Singh and Bharat Dhull. The said persons were arrested at the spot by the team of Anti Corruption Bureau and produced before the competent Court after completing the necessary legal formalities. On account of the arrest of said Vikramjit Singh, he was

suspended vide order dated 07.03.2024 in terms of Section 160 of the Haryana Panchayati Raj Act, 1994 (for short 'the Act'). The Anti Corruption Bureau had presented challan against the aforesaid persons. However, instead of conducting a departmental inquiry, as per the provisions of the Act against the said Vikramjit Singh, the official respondents were in the process of revoking his suspension and reinstating him in violation of the provisions of the Act.

3. It is further averred that the complainant, in the aforesaid FIR, namely Bijender filed CWP No.10572-2024 seeking direction to respondent No.1 therein, to conduct an enquiry against said Vikramjit Singh and remove him from the post of member of the Zila Parishad. The said writ petition was disposed of on 07.05.2024 with a direction to respondent No.1 therein i.e. Commissioner-cum-Secretary, Department of Development & Panchayat, Haryana, to proceed with the case in accordance with law. However, the said respondent, while ignoring the said direction, passed an order dated 14.05.2024 reinstating the said Vikramjit Singh without conducting any enquiry, as stipulated under the Act. This fact led to filing of CWP-11524-2024 by aforesaid Bijender Singh and vide order dated 16.05.2024, the learned Single Judge of this Court, while issuing notice of motion in the said petition, had ordered that order of reinstatement would remain in abeyance till the next date of hearing. It is further the case of the petitioner that as the act of the petitioner in removing the corrupt practices from the office of Zila Parishad, was not to the liking of the some of the

members, a requisition dated 12.07.2024 along with affidavits was submitted by 15 members of the Zila Parishad for calling a meeting of the Zila Parishad, Kaithal for considering a motion of no confidence against the petitioner (President of the Zila Parishad). Respondent No.3 issued impugned notice dated 12.07.2024 for convening a meeting of the house of Zila Parishad, Kaithal, to consider the motion of No Confidence against the President (petitioner) of Zila Parishad on 19.07.2024. While placing reliance upon Rule 10 of the Haryana Panchayati Raj Rules, 1955 (for short 'the Rules'), it is pointed out that the manner and conduct in which the said notice had been issued by respondent No.3 on 12.07.2024 fixing the date of meeting for No Confidence Motion as 19.07.2024 does not satisfy the criteria of sending notice before seven days as prescribed in the Rules.

4. Upon notice, the respondents appeared and filed their written statement. The allegations of violation of the provisions of Section 123 of the Act and Rule 10 of the Rules have been denied. It is further pointed out that while issuing the impugned notice, the provisions of Rule 10 of the Rules were duly complied with. The notice was affixed on the places mentioned in Rule 10(2) of the Rules on the date of issue itself i.e. 12.07.2024 and it was also pasted on the notice board of the office of the petitioner. The communication through Whatsapp group was also sent to all the sitting members on 12.07.2024 itself and on the individual mobile/Whatsapp number of the petitioner as well. It was sent to all sitting/working members of

the Zila Parishad through Registered Post on 13.07.2024. Besides, the said notice was sent for the publication in various newspapers on 12.07.2024 and it was published on 13.07.2024. It is further averred that once the legislature has used the word 'issued' and not 'served', the service of notice cannot be read into the language of Rule 10 and here the issuance would mean that the notice shall be issued at least 7 days prior to the date of meeting fixed. It is further pointed out that though the requisition for calling a meeting to consider the no confidence motion was moved by 15 members, yet one member being under suspension, the requisition along with affidavits submitted by 14 members, was considered by the prescribed authority. It is yet further averred that the scheduled meeting for considering the no confidence motion was convened on 19.07.2024, in which 17 members had participated. The entire proceedings of the meeting were conducted as per law, but the result was not declared because of the interim order dated 18.07.2024 passed by this Court.

5. Learned senior counsel appearing for the petitioner has vehemently argued that Rule 10 of the Rules provides for 'No Confidence Motion' against the Chairman, Vice Chairman, President and Vice President. Sub Rule (2) provides that the notice of the meeting for considering motion of No Confidence shall be issued, at least, seven days before the date fixed for the meeting, intimating the date, time and place. The said Rule further stipulates the modes and manner, in which, the proclamation/service of such notice is to be carried out. It is

further submitted that the said Rule being mandatory in nature, a clear seven days' notice was required to be issued. However, in the instant case, notice was issued on 12.07.2024 fixing the date for No Confidence Motion as 19.07.2024. Still further, the said notice was published in the newspapers on 13.07.2024 and was also sent through Registered Post to the members of the Zila Parishad, including the petitioner, being the President, on 13.07.2024. It is, thus, contended that the effective date will have to be counted from 13.07.2024 itself, and by doing so, fixing 19.07.2024 as the date for No Confidence Motion, cannot be a clear 7 days notice, which is in blatant violation of Rule 10(2) of the Rules. He further argues that merely because the notice was received by the petitioner on 16.07.2024, is no ground to sustain the illegal action on the part of the respondents. Reliance is placed upon a Division Bench judgment of this Court in **Smt. Budho Devi and another vs. Deputy Commissioner and others**, (1998)120 PLR 239.

6. Still further, while relying upon the Division Bench judgment of the Gujarat High Court in **Kanubhai M. Patel (HUF) Vs. Hiren Bhatt or his Successors to Office & Others**, Special Civil Appl. Nos. 5295 to 5297 of 2010 decided on 13.07.2010, it is argued that the word "Issue" as defined in Black's Law Dictionary would be "To send forth; to emit; to promulgate; to put into circulation; to send out; to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding". It is argued that as the issuance of notice would connote sending of the notice and/or giving of the

notice, and as the said notice had been sent through Registered A.D. Post on 13.07.2024, it falls short of a clear seven days, when the meeting was fixed for 19.07.2024. He next submits that in any case, as per the mandate of the law, the dates of issuance i.e. 12.07.2024 and 19.07.2024 are to be excluded, and therefore, the notice issued by respondent No.1 cannot be said to be a legally effective notice in terms of Rule 10 (2) of the Rules. Reliance is also placed upon a Division Bench judgment of the Allahabad High Court in **Dauji Abushan Bhandar (P) Ltd. Vs. Union of India and others**, Writ Tax No. 78 of 2022 decided on 10.03.2022.

7. While emphasizing that the counting of the 7 days period would commence from the date of the dispatch of the notice, reliance has been placed upon the Full Bench judgment of the Madhya Pradesh High Court in **Farooq Mohammad Vs. State of M.P. and others**, WP No. 14549 of 2015 decided on 15.09.2015, besides placing reliance upon a Division Bench judgment of the Madhya Pradesh High Court in **Smt. Bhulin Dewangan Vs. State of M.P. and others**, Writ Petitoin No. 4709 of 1996 decided on 2.11.1999.

8. Lastly, it is submitted that the very language of Rule 10(2) of the Rules clearly provides that all the modes of effecting service of the notice are to be carried out simultaneously because the conjuncting word between them is 'And' and not 'Or'. Hence, even if some of the modalities as provided in Rule 10(2) were complied with on 12.07.2024 would not mean the proper compliance, as admittedly, the notice through Registered

Post was sent to the petitioner on 13.07.2024 and on the same day, it was also published in various newspapers.

9. On the other hand, learned counsel appearing for the respondents vehemently argues that Rule 10 of the Rules runs into two parts. The first part is mandatory so far as the issuance of notice is concerned and the second part which provides for the modalities is only directory in nature. It is further submitted that issuance does not mean the sending of the notice to the concerned party and, therefore, the counting of seven days would start from the date of the issue of the notice itself. It is further argued that in the instant case, the notice was issued on 12.07.2024, fixing the meeting for considering no confidence motion on 19.07.2024; it was affixed on the places mentioned in Rule 10(2) of the Rules on 12.07.2024 itself, and as on the date of issuance of notice, the petitioner was holding the office of President, copy of the notice was also pasted on the notice board of the Office of the petitioner i.e. Office of Zila Parishad, Kaithal. Besides, it was also sent on the WhatsApp group of the members of the Zila Parishad, including the petitioner, on 12.07.2024 itself. It is further contended that the notice was sent to all sitting/working members of Zila Parishad through Registered post on 13.07.2024 and it was also sent for publication in various newspapers on 13.07.2024.

10. It is further argued by the learned counsel for the respondents that the 'issue of notice' cannot be interpreted to mean 'service of notice' and therefore, the judgment in **Budho Devi's** case (supra) has no applicability in the present case, as

the said case arises out of the provisions of Rule 72-A of the Haryana Municipal Election Rules, 1978 and the language used therein is`shall convene a special meeting by giving a notice...`

11. The learned Counsel for the respondents has further argued that out of modalities stipulated in Rule 10(2) of the Rules, all modalities except the sending of the notice through Registered post and sending it for publications in the newspapers on 13.07.2024, rest of the modalities were carried out on 12.07.2024 i.e. the date of issuance of the notice itself. Therefore, substantial compliance of the said provisions having already been made on 12.07.2024, no prejudice could be said to have been caused to the petitioner, by complying with the aforesaid two modalities on 13.07.2024. Alternatively, it is argued that the very language of Rule 10(2) would make it clear that issuance of notice through Registered A.D. is an additional mode. He places emphases on the words `notice shall also be issued through Registered A.D. Post.` Reliance has been placed upon the Five-Judge Bench of the Allahabad High Court in **Sardar Gyan Singh Vs. District Magistrate, Bijnor and others,** AIR 1975 All 315, to contend that substantial compliance having been done on the date of issue of the notice and the notice sent through Registered Post having been received by the petitioner on 16.07.2024 i.e. well before the date of the meeting on 19.07.2024, no prejudice has been caused to the petitioner. Reliance has also been placed on the learned Single Bench judgment of this Court in **Parmila Yadav Vs.**

State of Haryana and others, (2013)1 RCR (Civil) 148, to contend that as the notice has been issued to all the affected parties, including the petitioner, through the modes of service, which are in sync with the time, the term 'issuance of notice' cannot be twisted to mean 'service of notice'. Reliance is also placed upon the Full Bench judgment of the Andhra Pradesh High Court in **Smt. K. Sujatha Vs. The Government of A.P. and another**, 2004(2) APLJ 330.

12. We have heard learned counsel for the parties. In our opinion, the following questions would arise for consideration and adjudication:-

1. *Whether the provisions of Rule 10(2) of the Rules are mandatory in nature or the same are directory?*
2. *Whether in the instant case there is a proper compliance of Rule 10(2) of the Rules?*

13. Before considering the rival contentions, it would be just and appropriate to reproduce the statutory provisions of the Act and the Rules, hereunder:-

“Section 123 of the Act.

123 Term of office of President and Vice-President and Motion of no-confidence against President and Vice-President.—(1) The term of the office of President and Vice-President of a Zila Parishad shall be five years unless sooner removed.

(2) If by a resolution passed against the President or Vice-President, as the case may be, two-third of the total number of its elected members of the Zila Parishad decided at a meeting convened by the prescribed authority in the manner prescribed, that

the President or Vice-President, as the case may be, shall vacate the office and in such case the Zila Parishad shall elect the new President or Vice-President as the case may be, as specified in Section 121 of this Act;

Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, as the case may be, was notified, and after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the President or Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.

Rule 10 of the Rules.

10. No confidence motion against Chairman, Vice-Chairman, President, Vice-President, (Sections 62 and 123).—(1) For purposes of (Section 123) Deputy Commissioner shall be the prescribed authority.

(2) The notice of meeting for considering motion of no confidence shall be issued atleast seven days before the date fixed for the meeting, intimating the date, time and place of meeting by proclamation by beat of drum, in the Sabha (areas) concerned and by affixing a copy of same on the notice (boards of the offices of concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad) and at other conspicuous places in the village. The notice shall also be issued to all the members by registered (A.D.) Post at their ordinary place of residence and also by affixing a copy of the same at the notice board of Office of

Block Development and Panchayat Officer,
Additional Deputy Commissioner and Deputy
Commissioner and through any other
expedient manner deemed proper.”

14. The petitioner was elected as President of the Zila Parishad in the year 2022. As per the proviso to Section 123(2) of the Act, no meeting to consider the No Confidence Motion shall be convened before the expiry of one year from the date on which the election of the President or Vice President was notified. As the meeting to consider the motion of no confidence was called after more than one year of the notification of the election of the petitioner as President of the Zila Parishad, the same is in consonance with the provisions of Section 123 of the Act. Rule 10(2) of the Rules, is to be read into two parts. The first part stipulates the mandate for issuing a notice of meeting, containing date time and place, at least seven days before the meeting, to consider the no confidence motion. The second part relates to the modes through which such notice is to be communicated. The first part of the Rule, thus, provides the following:-

- “i) the notice shall be issued at least seven days before the date fixed for meeting; and
- ii) such notice shall contain the date, time and place of meeting.”

The second part of the Rule stipulates the communication of the said notice by the following means:-

- i) Proclamation by beat of drum in the Sabha areas concerned;

- ii) by affixing a copy of same on the notice boards of the office of the concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad;
- iii) at other conspicuous places in the village;
- iv) By Registered A.D. post to the members at their ordinary place of residence;
- v) By affixing a copy thereof at the notice board of the Office of BDPO, Additional Deputy Commissioner and Deputy commissioner;
- vi) Through any other expedient manner, deemed proper.”

15. The notice was issued on 12.07.2019. It is the case of the respondents that except for sending the notice to all the members through Registered A.D. Post and its publication in the newspapers on 13.07.2024, communication of the notice as stipulated in the second part of Rule 10(2) through all other modes was effected on 12.07.2024 itself i.e. by proclamation by beat of drum, in the Saba area concerned; by affixing a copy of same on the notice boards of the offices of concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad and other conspicuous places; and hence, the counting of seven days' period would commence from 12.07.2024 itself, as substantial compliance of the Rule stood done.

16. The 'issue of notice' has been defined in P. Ramanatha Aiyar's Advanced Law of Lexican 'LexisNexis, Volume No.2' 5th Edition, Page Nos. 2727 and 2728, as under:-

“The expression 'issue of notice' as the order passed at the preliminary hearing of the contempt petition

presupposes that the Court has expressed its intention to proceed with the contempt action.

Issue of notice. 'Issue of notice' could only mean intimation to the candidates or their authorized agents, and not necessarily notice in writing. The notice is not a mandatory requirement or a condition precedent to the draw of lots, as the rule itself makes it clear that the notice need be given only in case the candidates or their authorized agents were present."

17. The issue of notice would mean expressing the intention by the concerned prescribed/competent authority to initiate a particular proceedings. The very intent of the first part of the Rule 10(2) would thus, mean that as soon as a requisition is received from the requisite number of the members of the house of the Zila Parishad, the prescribed authority has to intimate all the members, including the President of the Zila Parishad about the date, time and place of the meeting. Such intimation is required so that the members could prepare themselves for taking part in such no confidence motion proceedings

18. In the instant case, the first part of Rule 10(2) stipulates the issuance of notice by the prescribed authority for considering the motion of no confidence at least seven days before the date fixed for such meeting and that such notice shall contain the date, time and place of meeting. Concededly, such notice was issued on 12.07.2024.

19. As the meeting to consider the no confidence motion against the petitioner, was fixed for 19.07.2024, we have to see

whether the notice has been issued seven days prior to the meeting.

20. The `Day` has been defined under Rule 2 (ii) of the Rules, as under:-

“Day” means a calendar day beginning and ending at midnight.”

In P. Ramanatha Aiyar’s Advanced Law of Lexican `LexisNexis, Volume No.2’ 5<sup>th</sup> Edition, Page 1315, `Day` has been defined to mean as under:-

“The word `day` as per the English Calendar begins at midnight and covers a period of 24 hours thereafter.”

In Black’s Law Dictionary, 9th Edition at Page No.453, `Day` has been defined to mean – i) any 24-hour period; the time it takes the earth to revolve once on its axis; ii) the period between the rising and the setting of the sun; iii) Sunlight, we can see it in the day; iv) the period when the sun is above the horizon, along with the period in the early morning and late evening when a person’s face is discernible and iv) any specified time period, esp. as distinguished from other periods....”

21. In Raj Kumar Yadav v. Samir Kumar Mahaseth, (2005) 3 SCC 601, it was held by the Hon’ble Supreme Court to the following effect:-

“6. The limitation provided by Section 81 of the Act expires on the 45th day from the date of election. The word “day” is not defined in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word “day” as per English calendar begins at midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context. (See *Ramkisan Onkarmal Agrawal v. State of Maharashtra* [AIR 1994 Bom 87 : 1994 Mah LJ 369] , AIR at p. 94, *Municipal Council of Cuddalore v. S. Subrahmania Aiyar* [16 MLJ 101 : ILR (1906) 29 Mad 326] and P. Ramanatha Aiyar, *The Law Lexicon*, pp. 470, 471.) Thus, the election petition could have been presented up to the midnight falling between 27-8-2003 and 28-8-2003.”

22. The notice containing date time and place, to consider the no confidence motion, was issued on 12.07.2024. The meeting was scheduled for 19.07.2024. As observed above the ‘issue of notice’ means intimation to the affected party about a particular act or proceedings to be initiated against such party and, therefore, the first day would be counted from 12.07.2024, as it would come to an end at the midnight of the said day i.e. 12.07.2024. Taking the date of issuance of notice i.e. 12.07.2024, as the first day, the seven day’s period would come to an end on 18.07.2024 midnight. As the meeting was scheduled for 19.07.2024, we find that the notice issued on 12.07.2024 in the instant case, has been issued seven days

before the holding of the meeting to consider the No Confidence Motion against the petitioner.

23. We may notice here that in Acts or Rules governing the other local bodies/Municipalities, the language stipulated in the provisions, is either 'giving of the notice', 'sending of the notice' or 'dispatch of the notice'. However, in the instant case, the language is 'issuance of the notice' and the day has clearly defined under Rule 2(ii) of the Rules. Thus, we hold that the first part of Rule 10(2) is mandatory in nature and the same stands statutorily complied with.

24. The second part of Rule 10(2) contains the mode and manner in which the mandate contained in first part is to be carried out. It specifically provides as to how the communication of the notice is to be effected and there are as many as 6 modes to execute such mandate. It is settled law that the procedural part of the statute/Rules is to be treated as directory and not mandatory. The question whether or not any statute/Rule is mandatory or directory depends upon the legislature's intent. The meaning thereof must be ascertained not only from the phraseology used in the provisions, but also by examining its nature and consequences that would follow from construing it one way the other.

25. The aforesaid principle, as formulated in Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004), has been cited with approval in Kailash v. Nanhku, (2005) 4 SCC 480 as follows:-

“34. ... The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: “No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered. “For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider *inter alia*, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the noncompliance with the provisions

is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory.”

As the second part of Rule 10(2) contains a defined procedure to carry out the communication of notice so issued, we hold the same to be directory in nature. Question No.1 is answered accordingly.

26. In the said backdrop, let us now examine the Question No.2. In para No. 7 of the written statement filed by the respondents, it has been specifically pleaded to the following effect:-

“7. That it is respectfully submitted that in compliance of the provisions of Rule 10 prescribing about the publication and publicity of the notice, the notice dated 12.07.2024 was published in the manner as follows:-

- i) That the notice of meeting was affixed on the places mentioned in Rule 10(2), *ibid*. It is pertinent to mention that on the date of issue of notice dated 12.07.2024, the petitioner was holding the office of President, Zila Parishad, Kaithal and the copy of notice as prescribed

in the Rules, was also pasted on the notice board of the office of the petitioner i.e. in Zila Parishad Office, Kaithal.

- ii) The notice was sent to all the sitting – working members of Zila Parishad, Kaithal through Registered Post on 13.07.2024. True copies of postal receipts are being annexed herewith as Annexure R.3/1 for the kind consideration of this Hon’ble Court.
- iii) The communication through WhatsApp was also sent to all the sitting members. It is pertinent to mention here that the copy of the notice (Annexure P.12) was also sent on phone number of the petitioner. True copy of the screen shot of the Whatsapp is being annexed herewith as Annexure R.3/2 for the kind consideration of this Hon’ble Court.
- iv) That the answering respondent also informed/endorsed the notice to DIRPO, Kaithal for publication in the press – print media about the meeting dated 19.07.2024 and resultantly detailed news to this effect was published in the Hindi Newspaper – Kaithal Bhaskar, Dainik Jagran, Hari Bhoomi and Punjab Kesari on 13.07.2024 for wide publicity and for information of all concerned. True copies of the newspaper cuttings dated 13.07.2024 are being annexed herewith as Annexure R.3/3 for the kind consideration of this Hon’ble Court.”

27. On the date of the issuance of the notice, the petitioner was holding the office of the President of Zila Parishad. It has not been disputed by the petitioner that the notice was affixed on the notice board of the office. If it was so, there is no question to infer that the petitioner did not have the

knowledge of the proposed meeting to be held on 19.07.2024. The respondents have also pleaded that the notice dated 12.07.2024 was also circulated in the Whatsapp group of the members of the Zila Parishad and on the individual mobile/Whatsapp number of the petitioner.

28. The second part of Rule 10(2) stipulates about the modalities and as noticed above, there are as many as 6 modes, through which the communication of the notice was to be effected. Barring two modes i.e. sending the notice through Registered Post to the members, including the petitioner on 13.07.2024 and its publication in the newspapers on 13.07.2024, all other modes were put into service on 12.07.2024 itself. It is the case of the petitioner himself that notice under the Registered cover was received by him on 16.07.2024 i.e. well before the date of meeting i.e. 19.07.2024. Apart from that, the respondents have specifically pleaded in their written statement that the notice was also affixed on the notice board of the Office of the petitioner on 12.07.2024 itself. As on the date of issuance of notice, the petitioner was very much holding the office, therefore, he cannot be heard saying that he had no knowledge of the issuance of the notice about the meeting of No Confidence. Hence, the second part of Rule 10(2), which is directory in nature, was substantially complied with by the authorities.

29. The petitioner along with his writ petition has annexed affidavits of 15 members of Zila Parishad, Kaithal, deposing therein that they wanted to bring No Confidence Motion against the petitioner. Out of the said affidavits, 14 are

dated 09.07.2024, whereas one is dated 12.07.2024. Thus, it is apparent that the petitioner was well aware of the move of No Confidence Motion being brought against him. The issuance of notice regarding no confidence motion, coupled with the substantial compliance of the second part of Rule 10(2) if read with the circumstances preceding the issuance of notice, would lead to an inescapable conclusion that the petitioner had due knowledge and intimation about the issuance of notice of the meeting of no confidence fixed for 19.07.2024.

30. We also find that once substantial compliance of second part of Rule 10(2) was done on 12.07.2024, the proceedings leading to No Confidence Motion, cannot be nullified for the reason that partial or part compliance thereof was made on the subsequent day i.e. 13.07.2024.

31. It may be noticed that the no confidence motion is directed against the petitioner, being President of the Zila Parishad. He is the most affected party in the matter. The purpose of issuance of notice to him is to afford him an opportunity to take part in such proceedings and defend himself. Principles of natural justice mandate that he should be given an opportunity to defend himself. As noticed above, grant of such opportunity and receipt of notice on 16.07.2024 under the registered cover by the petitioner, is not denied by him.

32. A Five-Judge Bench judgment of Allahabad High Court in **Sardar Gyan Singh's** case (supra), interpreted the provisions of Section 87-A(3) of the U.P. Municipalities Act,

stipulating motion of no-confidence against the President of a Municipal Board. The said provision reads as under:-

“Section 87-A(3)- The District Magistrate shall then convene a meeting for the consideration of the motion to be held at the office of the Board on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty five days from the date on which the notice under Sub-sec.(2) was delivered to him. He shall send by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time appointed therefor, to every member of the Board at his place or residence and shall at the same time cause such notice to be published in such manner as he may deem fit. Thereupon, every member shall be deemed to have received the notice.”

The Five-Judge, Bench, held as under:-

“5. The question which arises for consideration is whether the provisions of Section 87-A (3) of the Act are mandatory or directory. No universal rule can be laid down for the construction of statutes whether a particular statute is mandatory or directory. The use of the word "shall" or "may" is also not a decisive factor in determining this question, In State of U. P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912, Article 320(3)(c) of the Constitution was held to be directory and not mandatory even though the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. In considering the question the purpose and the object of the provision contained in the statute, the setting and the context in which the provisions occur and the purpose which is sought to be achieved by the provisions and the legislative intent in making the provision are necessary to be considered. In Raza Buland

Sugar Co. v. Rampur Municipality, AIR 1965 SC 895 the Supreme Court while considering the mandatory or directory nature of the provisions contained in Section 131 (3) of the U. P. Municipalities Act, considered this question at length and laid down certain principles. Wanchoo, J., speaking for the majority held:-

"The question whether a particular provision of a statute which on the face of it appears mandatory--inasmuch as it uses the word "shall" as in the present case--or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."

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9. A careful analysis of Sub-section (3) would make it clear that the first part which requires the District Magistrate to convene meeting of the Board for considering the motion of no-confidence against the President is mandatory. The District Magistrate is required to perform a public- duty in convening a meeting of the Board for consideration of the motion at the office of the Board on the date and time as fixed by him, he has no choice in the matter. He has to convene a meeting on a date

within 30 and 35 days from the date of presentation of the motion to him. The District Magistrate is further enjoined to perform a public duty of sending notice of the meeting to the members; this again is a mandatory requirement of law which must be strictly complied with. The second part of the sub-section lays down the manner required to be followed in sending notices to the members. It lays down that notice of the meeting shall be sent by registered post to every member of the Board at his place of residence. The essence of this provision is to give information to the members to enable them to avail opportunity of participating in the meeting convened for the purpose of considering the no-confidence motion. The first part of the section requiring the District Magistrate to convene meeting and to send notices to the members is mandatory, any disregard of that provision would defeat the very purpose of the meeting, but the manner of service of notice and publication of the same is directory in nature, therefore a substantial compliance of the same would meet the requirement of law.

10. . The purpose of service of notice by registered post and publication of the notice otherwise is to ensure that members should get adequate notice, of the meeting to enable them to participate in the debate over the no-confidence motion at the meeting. That purpose is not defeated if the notice is sent to the members not by registered post but by other methods and seven clear days are given to the members. The legislature never intended that unless notice is sent by registered post to the members the proceedings of the meeting would be vitiated. The legislature, no doubt, stressed that if the two steps as laid down in the sub-section are taken by the District Magistrate, i.e., notice of the meeting is sent to members by registered post at their place of

residence and further if it is published in the manner directed by the District Magistrate, a presumption would arise and every member shall be deemed to have received the notice of the meeting. In that case it will not be open to any member to contend that he did not receive notice of the meeting or that the meeting was illegally constituted for want of notice. The purpose of sending notice can be achieved even without sending the same by registered post. There may be a case where the postal system may be disorganised and it may not be possible to send, notice by registered post. I (sic) that situation the District Magistrate may send notice to members of the Board by special messenger giving them seven clear days before the date of the meeting. In that event the legislative intent and purpose requiring sending of notice would be fully achieved, although in that event the rule of presumption as laid down in the sub-section would not be available and if a challenge was made by a member that no notice was received by him, the deeming provision will not be applicable and it would require proof that the notice even though sent by ordinary post or by special messenger was actually served on the member. The emphasis on sending notice to members by registered post and for publication of the same in the manner directed by the District Magistrate, is directed to invoke the presumption as contemplated in the last sentence of the sub-section. In the absence of presumption, it is always open to a party to prove that notice though sent in a different manner was served on the members. In view of the above discussion. I am of the opinion that even if the notice is not sent to the members by registered post the meeting cannot be held to have been illegally convened provided it is proved that the notice was received by the members and they had knowledge of the meeting.”

33. The judgment of the Division Bench of this Court in **Budho Devi's (supra)**, operates in respect of the interpretation of Rule 72-A of the Haryana Municipal Elections Rule 1978, which reads as under:-

“72-A. No confidence Motion against President or Vice President-(1) & (2) ...

(3) The Deputy Commissioner or such other officer not below the rank of Extra Assistant Commissioner, as the Deputy Commissioner may authorize, shall convene a special meeting by giving a notice of not less than fifteen days for the consideration of the motion referred to in sub-rule (1), and shall preside over at such meetings:-

Provided that no such meeting for the purpose shall be convened unless a period of six months has elapsed since the date of last meeting convened for this purpose.”

Since the provisions provided that a meeting shall be convened by giving a notice of not less than fifteen days, the word (giving) will not operate to mean issuance of notice. Therefore, the said judgment being distinguishable is not applicable to the facts of the present case.

34. In **Parmila Yadav Vs. State of Haryana & Ors.** **2013(1) RCR (Civil) 81**, the learned Single Judge of this Court, had the occasion to interpret Rule 10(2) of the Haryana Panchayati Raj Rules, 1995. The argument raised by the learned counsel for the petitioner therein that the word issue would mean to give or dispatch notice, was negated. It was further held

that there was no substance in the argument raised by the counsel for the petitioner therein that the period of seven days will run commencing from the receipt of the notice. The reliance placed by the learned counsel for the petitioner in the said case upon the Full Bench judgment in **Northern India Vs. State of Punjab**, AIR 1963 P&H 290, was held to be against the petitioner to hold that even if the notice served was one day short, then also no injury was caused to the petitioner and no rule of justice was violated. The said observation reads as under:-

“6. In CWP No. 16834 of 2011, titled Ram Rati and Anr. Vs. State of Haryana and Ors decided on 10.01.2012, learned Single Judge of this Court was dealing with a case of short notice in the context of Rule 10 of the Rules. This Court took cognizance of the distinction between “issuance” and “service” and that Rule 10 spoke of “issued” in the context of notice. Full Bench decision of this Court in The Northern India Caterers Private Ltd. V. The State of Punjab and Anr., AIR 1963 P&H 290 was relied upon and specifically para 34 thereof. The Full Bench dealt with the provisions of Section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. Section 4 also used for the purpose of notice the words ‘date of issue’ thereof. Para 34 of the judgment is reproduced :-

“34. I am inclined to hold that the notice served in this case upon petitioner no.1 is bad as it was short by one day. The intention of the Legislature appears to be to give notice of at least ten clear days which

has not been done. But this error is of inconsequential nature for purposes of this petition. NO rule of justice has been violated and in consequence of short notice no injury has resulted. would in the circumstances overlook the short notice."

7. The word 'served' was employed by their Lordship of the Full Bench to hold that the notice served was bad as it was short by one day but that no rule of justice had been violated and no injury caused. The learned Single Judge distinguished the judgment on the ground that the petitioner therein had got stay of proceedings and, therefore, no injury was occasioned. I do not see how either the Full Bench or the judgment rendered by the learned Single Judge would help the petitioner."

35. It may be noticed that in **Parmila Yadav's** case (supra), learned counsel for the petitioner therein, had also placed reliance upon the judgment in **Budho Devi's case** (supra) but the learned Single Judge had negated the said reliance. The said judgment of the learned Single Judge in **Pramila Yadav'** case (supra), was upheld by the Division Bench of this Court.

36. A Division Bench of Gujarat High Court in **Kanubhai M. Patel (HUF) vs. Hiren Bhatt or his Successors to Office & Others**, Special Civil Appl. Nos. 5295 to 5297 of 2010, decided on 13th July, 2010, has while considering the provisions of the Income Tax Act, defined the 'issue' in respect of the notice under Section 149 of the Income Tax Act. In the said case, it was found that the notices were signed on 31.03.2010 and were sent to the speed post centre on 07.04.2010 and therefore, it was held that the date of mere signing of the notices would not be considered the date of issue of said notice. However, the said

judgment is not applicable to the facts of the present case, as in the instant case, the substantial compliance of the statutory provisions was already done on the date of issue of the notice itself.

37. In **Farooq Mohammad's** case (supra), the Full Bench of Madhya Pradesh High Court (Jabalpur Bench), considered and interpreted the provisions of the Municipalities Act, 1961. Section 56(3) of the said Act, stipulated that 'notice of every meeting of the Council, specifying the time and place thereof and the business to be transacted thereat shall be dispatched to every Councillor and exhibited at the Municipal Office seven clear days before an ordinary meeting and three clear days before a special meeting.

38. The argument of the learned Senior counsel for the petitioner that all the modes provided in second part of Rule 10(2) are required to be complied with simultaneously as the said modes are connected by the word 'and' and not 'or', also lacks merit. In this regard, it would be appropriate to quote from 'Principles of Statutory Interpretation, including General Clauses Act, 1897 with Notes' 14th Edition, by Justice G.P. Singh (Chapter 5 Page No. 530), as under:-

“7. Conjunctive and Disjunctive Words ‘OR’ and ‘AND’

The word 'or' is normally disjunctive and 'and' is normally conjunctive, but at times they are read as *vice-versa* to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by SCRUTTON, L.J.... 'You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged

because `or' does not generally mean `and' and `and' does not generally mean `or'. And as pointed out by Lord Halsbury, the reading of `or' as `and' is not to be resorted to, `unless some other part of the same statute or the clear intention of it requires that to be done.'.....

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However, if the literal reading of the words produces an unintelligible or absurd result `and' may be read for `or' and `or' for `and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of `and' as `or' produces grammatical distortion and makes no sense of the portion following `and', `or' cannot be read in place of `and'. The alternatives joined by `or' need not always be mutually exclusive."

In Ishwar Singh Bindra v. State of U.P., (1969) 1 SCR 219, the Hon'ble Supreme Court has held as under:-

"11. Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or". Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to

read the conjunctions ‘or’ and ‘and’ one for the other”.

39. Thus, while answering Question No.2, it is held that there is proper compliance of Rule 10(2) of the Rules.

40. In view of the above, finding no merit in the present writ petition, the same is hereby dismissed. The interim order dated 18.07.2024 passed by this Court also stands vacated.

41. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

12.09.2024
Himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No