

# Ram Pal Singh vs The State Of Uttar Pradesh on 24 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2773, 2018 (5) ALJ 116

**Author: Madan B. Lokur**

**Bench: Madan B. Lokur, Deepak Gupta**

REPORTAB

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 31990 OF 2017

Ram Pal Singh

... Pet

Versus

State of U.P. & Ors.

....Respo

JUDGMENT

Madan B. Lokur, J.

1. Pursuant to a Notification issued by the State Election Commission, U.P. on 21st September, 2015 elections were held to the Kshettra Panchayat, Jasrana, District Ferozabad (U.P.) on 7 th February, 2016. Apparently, the results were declared on the same day by the State Election Commission and 63 candidates were declared elected. It may be mentioned that the elections were held under the provisions of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as the Adhiniyam).

An elected member

2. The Adhiniyam does not define the expression ‘elected member’. For the purposes of the present petition we are proceeding on the basis Page 1 that an ‘elected member’ is a person who has been duly elected. The ‘elected member’ might or might not have taken the oath of office in terms of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Oath of Office of Adhyaksha or Pramukh Etc.) Rules, 1994 (hereinafter referred to as the Rules). We say this even though there is some sanctity attached to taking the oath of office, which we will advert to later.

3. Rule 2(2) of the Rules defines ‘Members’ in the following terms, which is also without reference to taking the oath of office:

“2(2) “Members” means in case of Zila Panchayats Members elected under clause (b) of sub-section (1) of Section 18 and in case of Kshettra Panchayat Members elected under clause (b) of sub-section (1) of Section 6 of the Act.”

4. Section 6(1) of the Adhiniyam provides that a Kshettra Panchayat shall consist of a Pramukh, who shall be its Chairperson. Section 6(1)(b) provides that all the Pradhans of the Gram Panchayats in the Khand shall constitute the Kshettra Panchayat. Section 6(1)(b) provides that ‘elected members’ of the Kshettra Panchayat shall be chosen by direct election from territorial constituencies in the Panchayat areas. In other words, it appears that despite the sanctity attached to taking the oath of office, an ‘elected member’ is one who is elected to the Kshettra Panchayat in accordance with Section 6(1)(b) of the Adhiniyam regardless of whether she or he takes the oath of office.

Page 2

5. The only adverse consequence of an ‘elected member’ not taking the oath of office is provided in Rule 3(3) of the Rules. The adverse consequence is that if the member of the Kshettra Panchayat does not make or subscribe the oath or affirmation, then he or she cannot take the seat in the Kshettra Panchayat. Rule 3(3) reads :

“3(3). The members of Zila Panchayat and Kshettra Panchayat before taking their seats for the first time as such members shall make or subscribe oath or affirmation in the case of member of Zila Panchayat before the Adhyaksha and in his absence before the Mukhya Adhikari and in the case of members of the Kshettra Panchayat before the Pramukh and in his absence before the Khand Vikas Adhikari in the form set out in the Appendix.”

6. In other words, a person duly elected to a Kshettra Panchayat under Section 6(1)(b) of the Adhiniyam is described as and remains an ‘elected member’ and if that ‘elected member’ does not take the oath of office, he or she does not cease to be an ‘elected member’. The only consequence is that the ‘elected member’ cannot take a seat in the Kshettra Panchayat and therefore cannot participate in the proceedings of the Panchayat. The significance of this discussion will be apparent hereafter. Taking the oath of office

7. After the result of the elections was notified by the State Election Commission, the first meeting of the Kshettra Panchayat took place on 18th March, 2016. In this meeting, the ‘elected members’ elected the Page 3 petitioner (Ram Pal Singh) as the Pramukh. He subscribed to the oath of office before the Sub-Divisional Magistrate/appointee of the District Magistrate. Thereafter, the version advanced by the petitioner is that he administered the oath of office to the ‘elected members’ except 17 elected members who were not present. On the other hand, the version advanced by the contesting private respondents (elected members) as well as the State of U.P. is to the effect that all 63 elected members took the oath of office. We need to decide this factual controversy.

8. In this regard, we have been shown two documents in the first instance, one by the petitioner and another by the contesting private respondents (elected members). According to the document

produced by the petitioner, the Sub Divisional Officer/Pramukh reported that in the proceedings of the Kshettra Panchayat of 18 th March, 2016 of the elected members 17 of them did not take the oath of office. The other document has been filed by the private contesting respondents to the effect that proceedings were held on 18th March, 2016 in which they participated but there is an interpolation in the document to the effect that 17 elected members did not take the oath of office. The submission is that they could have participated in the proceedings only after they had subscribed to the oath of office.

9. Accordingly, we have two conflicting versions of the proceedings Page 4 of 18th March, 2016. The submission of the petitioner is that the 17 elected members did not take the oath of office and did not participate in the proceedings held on 18th March, 2016. The submission of the private contesting respondents is that did take the oath of office, they were entitled to and did participate in the proceedings of 18 th March, 2016 and an interpolation has been made in the record of proceedings only to suggest that they did not take the oath of office. Learned counsel for the contesting private respondents made an additional submission and drew our attention to the averments made in the counter affidavit to the effect that these elected members were paid their daily allowance as well as their travelling allowance for subsequent meetings and this payment could have been made only if they had attended the meetings of the Kshettra Panchayat after taking the oath of office. This averment has not been specifically denied by anybody.

10. In view of this serious factual controversy, we are of opinion that it would be appropriate to rely on the counter affidavit filed by the State. It is stated in the counter affidavit that in a communication of 12th January, 2018 issued by the office of the Block Development Officer, it is stated that all 63 members of the Kshettra Panchayat had taken the oath of office on 18th March, 2016.

11. Our attention has also been drawn to a communication dated 11th January, 2018 issued by the Deputy Collector, Shikohabad. This Page 5 communication is in the nature of an inquiry into the events of 18 th March, 2016 and it is addressed to the Chief Development Officer, District Ferozabad. In the communication, it is stated inter alia, that a perusal of the attendance register of 18 th March, 2016 indicates that all 63 members of the Kshettra Panchayat had signed it. Further, oath was also taken by all the elected members on 18 th March, 2016. The conclusion of the Deputy Collector, therefore, is quite clear that all the elected members of the Kshettra Panchayat had taken the oath of office on 18th March, 2016. There is nothing to suggest that the affidavit filed by the State is false or that the report referred to above is incorrect.

12. The petitioner has relied upon two other documents in support of his case that 17 elected members did not take the oath of office on 18 th March, 2016. The first such document is a communication of 28 th March, 2016 issued by the Block Development Officer, Jasrana, addressed to the 17 elected members requiring them to remain present in his office on 31 st March, 2016 to take the oath of office and fill the requisite form confirming that oath of office has been taken.

13. As a follow up to the communication dated 28 th March, 2016 reference was made by the petitioner to another document dated 31 st March, 2016 in which it is stated that 3 of the 17 elected

members took the oath of office. This document also requires the Assistant Page 6 Development Officer (West) to take appropriate steps for completing the formalities of oath being taken by the remaining 14 elected members.

14. On the other hand, in the communication/report of 11th January, 2018 the Deputy Collector, Shekohabad, has specifically stated that there is nothing on record to suggest that any communication was sent to the 17 elected members on 28th March, 2016. There is no record of the communication having been despatched nor is there any document showing receipt of the communication by the 17 elected members. It appears that the Block Development Officer, Jasrana, was also contacted but he was unable to give any evidence or proof of any official record of the communication of 28th March, 2016.

15. In the communication of 12th January, 2018 sent from the office of the Block Development Officer, Jasrana, to the District Panchayat Raj Office, Ferozabad, it is stated that no receipt or despatch relating to the communication of 28th March, 2016 is available on record.

16. The counter affidavit filed on behalf of the State confirms that there is nothing on the record of the Kshettra Panchayat to indicate that any communication dated 28th March, 2016 was sent to the 17 elected members. We accept the submission and categorical averment of the State based on the record and conclude that no communication dated 28 th March, 2016 was sent to the 17 elected members for taking oath of office. Page 7

17. It was then submitted by learned counsel for the petitioner that if in fact no communication was sent on 28th March, 2016 there was no reason for 3 of the 17 elected members to take the oath of office on 31 st March, 2016 since they had earlier taken the oath of office on 18 th March, 2016. It is not necessary for us to go into this issue and it is entirely for the 3 elected members to explain why they took the oath of office once again on 31st March, 2016 having already taken the oath of office on 18th March, 2016.

18. Our conclusion in this regard is that all 63 elected members of the Kshettra Panchayat took the oath of office on 18th March, 2016. No Confidence Motion

19. As time went by, it appears that there was a souring of relations between the petitioner and other elected members of the Kshettra Panchayat. Consequently, a No Confidence Motion was moved against the petitioner on 12th June, 2017. The No Confidence Motion was moved by 39 elected members including 13 elected members who had allegedly not taken the oath of office. It was therefore submitted by the petitioner that the No Confidence Motion was signed by only 26 elected members which is less than half the total number of 63 elected members of the Kshettra Panchayat. As such, in view of Section 15 of the Adhiniyam the No Confidence Motion was not maintainable in law and the requisition Page 8 deserved to be rejected at the threshold. This provision reads as follows:-

15. Motion of non-confidence in Pramukh- (1) A motion expressing want of confidence in the Pramukh or any 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) to (10) XXX XXX XXX (11) If the motion is carried with the support of more than half of the total number of elected members of the Kshettra Panchayat for the time being –

(a) the Presiding Officer shall cause the fact to be published by affixing a notice thereof on the notice board of the office of the Kshettra Panchayat and also by notifying the same in the Gazette, and

(b) the Pramukh or as the case may be, (sic) shall cease to hold office as such and vacate the same on and from the date next following that on which the said notice is fixed on the notice board of the office of the Kshettra Panchayat.

(12) If the motion is not carried as aforesaid or if the meeting could not be held for want of quorum, no notice of any subsequent motion expressing want of confidence in the same Pramukh or (sic) shall be received until after the expiration of one year from the date of such meeting. (13) No notice of a motion under this section shall be received within one year of the assumption of office by a Pramukh or (sic) as the case may be.

20. We find a fallacy and a dichotomy in the submission of learned counsel for the petitioner with regard to the status of elected members of the Kshettra Panchayat who have allegedly not taken the oath of office.

21. The fallacy and dichotomy arises in this manner: either the 13 elected members continue to be elected members of the Kshettra Page 9 Panchayat, despite their not having taken the oath of office or they cease to be elected members of the Kshettra Panchayat. If they are not elected members for the purposes of signing the No Confidence Motion, then the number of signatories to the No Confidence Motion would drop from 39 to 26. Correspondingly, the number of elected members of the Kshettra Panchayat would also get reduced from 63 to 50. Consequently, it would have to be concluded that since 26 out of 50 elected members of the Kshettra Panchayat have signed the No Confidence Motion, more than 50% of the elected members. Therefore, the No Confidence Motion would be maintainable under the provisions of Section 15 of the Adhiniyam.

22. In other words, it is not correct on the part of learned counsel for the petitioner to contend that for the purposes of signing the No Confidence Motion, the 13 elected members are not elected members but for the purposes of the composition of the Kshettra Panchayat they are elected members thereby maintaining the strength of the Kshettra Panchayat at 63. If the 13 elected members are not elected members for one purpose, they cannot have a different status for another purpose. Their status must remain the same as that of an elected member (or not an elected

member) both at the time of signing the No Confidence Motion and for the composition of the Kshettra Panchayat. Page 10

23. That apart, there is nothing in the law to indicate that an elected member ceases to be a member of the Kshettra Panchayat if he or she does not take the oath of office.

24. To get over this fallacy and dichotomy, it was submitted by learned counsel for the petitioner that it would be strange and illogical that the 13 elected members could sign the No Confidence Motion even though they had not taken the oath of office but they could not actually vote in the Panchayat because they were not entitled to a seat in the Panchayat, not having taken the oath of office. While this may appear to be illogical and irrational, there is no challenge to the provisions of the Adhiniyam and we must proceed on the basis that if the requisition for the No Confidence Motion was numerically valid, the discussion on that would take place in the Panchayat and the requisition would meet its appropriate fate. We, therefore, reject this contention of the learned counsel for the petitioner.

25. Although we are loathe to adjudicate on factual disputes, we have been compelled to do so in this particular case due to the nature of the conflicting claims and the fact that we are concerned with democratically elected representatives of a Kshettra Panchayat. That being said, our conclusion on facts is that all 63 elected members of the Kshettra Panchayat took the oath of office on 18 th March, 2018 and no communication was sent on 28th March, 2018 to or received by any of the Page 11 17 elected members of the Kshettra Panchayat who were alleged not to have taken oath of office on 18th March, 2018. Consequently, the No Confidence Motion against the petitioner was a numerically valid requisition having been signed by more than 50% of the elected members of the Kshettra Panchayat.

#### Position in law

26. The legal position having been settled for over 100 years, we see no dire necessity or any necessity at all of over-turning the law laid down.

27. In Bhupindra Nath Basu v. Ranajit Singh Bahadur<sup>1</sup> the question related to the election of two non-official additional members of the Council of the Governor-General. It was alleged that two electors had not taken the oath of allegiance and therefore the election of the non-official additional members was void. An unsuccessful candidate in the election questioned the validity of the election and sought the recounting of votes after excluding the votes of two electors who had not taken the oath of allegiance.

28. The Calcutta High Court referred to *In re Mayor of Penryn*<sup>2</sup> and *Rex v. Swyer*<sup>3</sup> which noted that a person is admitted to a public office (which requires the oath of allegiance) only when that oath is taken. 1 A.I.R. 1914 Calcutta 152 2 1 Strange 582 = 93 E.R. 714 3 10 B. & C. 486 = 8 L.J. (o.s.) K.B. 221 = 109 E.R. 531 Page 12 However, the relevant Regulation did not address this issue. It was held that for the purpose of performing 'legislative functions' conferred by the Regulation, it was a necessary requirement that the oath of allegiance is taken. The mere fact of omission to take an oath

of allegiance did not ipso facto cause a member to vacate his seat. Additionally, Regulation 8(1)(b) gave discretion to the Governor-General to declare a seat as void if the elected person fails to take the oath of allegiance. In the cited case, the Governor-General had not exercised such an option. Therefore, the mere fact that two elected members did not take the oath of allegiance did not result in their participation in the electoral process as illegal.

29. A somewhat similar situation arose in *Pashupati Nath Sukul v. Nem Chandra Jain & Ors.*<sup>4</sup> In this case, a member of a Legislative Assembly who had not taken the oath of office had proposed a candidate for election to the Rajya Sabha. Approving the law laid down in *Bhupindra Nath Basu* this Court held that as long as the name of the elected member appears in the notification published under the provisions of Section 73 of the Representation of the People Act, 1951 that member can take part in all 'non-legislative activities' of an elected member. Reference was made to Article 188 of the Constitution which provides that every member of the Legislative Assembly shall, before taking his seat, make and subscribe an oath or affirmation according to the form set out for the purpose in the Third Schedule of the Constitution.

Article 188 of the Constitution reads as follows:

“Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.” In this context, it was held by this Court in paragraph 20 of the Report as follows :

“We are of the view that an elected member who has not taken oath but whose name appears in the notification published under Section 73 of the Act can take part in all non-legislative activities of an elected member. The right of voting at an election to the Rajya Sabha can also be exercised by him. In this case since it is not disputed that the name of the proposer had been included before the date on which he proposed the name of the appellant as a candidate in the notification published under Section 73 of the Act and in the electoral roll maintained under Section 152 of the Act, it should be held that there was no infirmity in the nomination. ....”

30. In view of the above, it was held that since the name of the proposer appeared in the notification published under Section 73 of the Representation of the People Act, 1951 there was no infirmity in the nomination of the candidate to the Rajya Sabha.

31. The decision of the Calcutta High Court as well as of this Court were referred to and relied upon in *Smt. Kamla Devi v. State of U.P.* & Page 14 Ors.<sup>5</sup> In this case a somewhat similar situation as in the present proceedings before us had arisen. A No Confidence Motion was signed and carried against the Block Pramukh. Challenging this, the submission of the Block Pramukh was that 11 elected members of the Kshettra Panchayat had not subscribed to the oath of office after being elected.

Therefore, they were ineligible to participate in the meeting convened for the No Confidence Motion and to cast their vote. It was contented that these 11 elected members could not be treated as members of the Kshettra Panchayat and if their votes are disregarded, the No Confidence Motion would fail. The Allahabad High Court rejected the contention following the decisions mentioned above.

32. Learned counsel for the petitioner sought to make a distinction between the performance of 'legislative functions' and 'non-legislative functions' of an elected member of the Kshettra Panchayat. It was submitted that the Kshettra Panchayat does not have any legislative functions and its duties and responsibilities are circumscribed by Chapter IX of the Constitution. The submission of learned counsel may not be strictly correct since the Panchayat can be empowered by the State Legislature to levy, collect and appropriate taxes, duties, tolls and fees. However, without going into this issue, the broad intent of the decision of the Calcutta High Court, the Allahabad High Court as well as this Court 5 2014 (8) ADJ 525 Page 15 is that if an elected member does not take the oath of office, he or she cannot participate in the proceedings of the Kshettra Panchayat, unless there is something to the contrary in a statute, which is not the case here. Consequently, there is no prohibition against an elected member from being a signatory to a No Confidence Motion. It is quite possible that in the absence of the signatory to the No Confidence Motion – an elected member – the No Confidence Motion might get defeated in the Panchayat due to his or her inability to vote, but that is not relevant for our purposes. Sanctity of oath of office

33. The case law that has emerged over the years suggests that subscribing to the oath of office is not being taken very seriously. It must be appreciated that taking the oath of office is not a mere ritual but there is a degree of seriousness and sanctity attached to it. Different laws provide different consequences (some quite mild) for not taking the oath of office. We have already referred to the Adhiniyam and the Rules. We are of opinion that since subscribing to the oath of office is a solemn occasion, failure to do so ought to result in serious consequences, such as the seat being declared vacant after a specified time. In fact, Section 40 of the Tamil Nadu Panchayat Act, 1994 provides in Section 40 as follows:

“40. Oath or affirmation to be made by members - (1) Notwithstanding anything contained in the Oaths Act, 1969 (Central Act X of 1969), every person who is elected to be a Page 16 member or who becomes a member shall, before taking his seat, make, at a meeting of the Panchayat an oath or affirmation in the following form, namely:-

“I, A.B, having been elected a member/having become a member of this Village Panchayat/Panchayat Union Council/District Panchayat do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter”.

(2) Any person who, having been elected to be a member or who, having become a member, fails to make within three months of the date on which his term of office



commences or at one of the first three meetings held after the said date, whichever is later, the oath or affirmation laid down in sub-section (1), shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) Any person who has been elected to be a member or who has become a member shall not take his seat at meeting of the Panchayat or do any act as such member unless he has made the oath or affirmation as laid down in sub-section (1). (4) Notwithstanding anything contained in sub-section (3), the President or the Chairman of a Panchayat or the member of a Committee constituted under this Act, who has not made the oath or affirmation as a member, shall be entitled to act as such President, Chairman or member provided he makes the oath or affirmation and takes his seat at the first meeting of the Panchayat which he attends within two months after he is elected or appointed as, or becomes entitled to exercise the functions of the President, Chairman or member, as the case may be.”

34. We are of the view that elected representatives be visited with serious consequences for not taking the oath of office within a specified time, mainly because even the Constitution attaches a great degree of solemnity to the oath of office. For example, Article 60 of the Constitution provides that before entering upon his office, the President shall make and subscribe the oath or affirmation. Similarly, Article 69 of the Constitution requires the Vice President to make and subscribe the oath or affirmation before entering upon his office.

35. Article 84 of the Constitution requires that a person shall not be qualified to be chosen to fill a seat in Parliament unless he makes and subscribes the oath or affirmation according to the forms set out for the purpose in the Third Schedule. We have already referred to the oath or affirmation by a member of the Legislative Assembly or the Legislative Council as required by Article 188 of the Constitution. If the Constitution has attached importance to the oath of office, why cannot legislations provide something similar to what Tamil Nadu has?

36. Additionally, it should be appreciated that apart from requiring elected representatives of a Panchayat attaching seriousness to taking the oath of office, an unimpeachable record of the elected representatives taking the oath of office should be maintained by the concerned officials of the State Government. Unless the sanctity of the oath of office is appreciated and appropriate documentation kept, we will continue to be faced with situations such as the present where a dispute is raised whether an elected member of a body has taken the oath of office. Such controversies are completely avoidable.

#### Page 18 Conclusion

37. In view of the factual conclusions that we have arrived at as well as the law on the subject, we have no hesitation in holding that the 13 signatories to No Confidence Motion against the petitioner were elected members of the Kshettra Panchayat and were entitled to sign the No Confidence Motion and that there was no infirmity in this regard.

38. The petition is accordingly dismissed and interim orders vacated. There will be no order as to costs.

.....J (Madan B. Lokur) New Delhi;

April 24, 2018 Page 19 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION SPECIAL LEAVE PETITION (C) NO. 31990 OF 2017 RAM PAL SINGH ...PETITIONER (S) Versus THE STATE OF UTTAR PRADESH & ORS. ...RESPONDENT(S) JUDGMENT Deepak Gupta, J.

1. I have perused the erudite judgment of my esteemed brother. Though I agree with the conclusion that the petition should be dismissed and interim order be vacated, I am unable to pursue myself to agree with my learned brother on the issue “whether an elected member of a Kshettra Panchayat, who has not subscribed to the oath of office, can sign or move a Page 20 no-confidence motion against Pramukh of the Kshettra Panchayat”.

2. The facts as well as the relevant rules and provisions of law have been set out in detail in the judgment of my learned brother, which I need not refer to in detail. Rule 2(2) of the U.P. Kshettra Panchayats and Zila Panchayats (Oath of Office of Adhyaksha or Pramukh Etc.) Rules, 1994 (hereinafter referred to as ‘the Rules’) defines ‘Members’. In case of Kshettra Panchayat, ‘Members’ means those persons elected under clause (b) of sub-section (1) of Section 6 of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (for short “the Adhiniyam”). The Adhiniyam provides that a Kshettra Panchayat shall consist of a Pramukh, who shall be its Chairperson and elected members, who shall be chosen by direct election from territorial constituencies in the Panchayat areas. It is out of these elected members that a Pramukh is elected in terms of Section 6(1)(b) of the Adhiniyam. According to Rule 3(3) of the Rules, which has been set out in the judgment of my learned brother, a member of the Kshettra Panchayat, before taking his seat for the first time as such member, shall make or subscribe oath or affirmation before the Pramukh and in his absence before the Khand Vikas Page 21 Adhikari in the form set out in the appendix to the Adhiniyam. Rule 3(3), therefore, envisages that before taking seat for the first time the member must make or subscribe oath or affirmation (emphasis supplied). The words ‘first sitting’ have to be given some significance and the significance is that these elected members can vote without taking oath only while electing the Pramukh from amongst themselves because thereafter, the Pramukh administers oath to them and then, the sitting of the House takes place.

3. The language of Rule 3 indicates that a member must subscribe to the oath before he can take part in the sitting of the Panchayat. No doubt, an elected member continues to be member because no disqualification has been provided for not taking oath, but the seminal issue is whether such member can take part in the proceedings of the Panchayat. Reference in this regard has been made to the judgment of this Court in the case of Pashupati Nath Sukul v. Nem Chandra Jain & Ors.<sup>6</sup>, judgment of the Calcutta High Court in the case of Bhupendra Nath Basu v. Ranjit Singh<sup>7</sup> and the judgment of the Allahabad High Court in the case of Kamla Devi v. State of U.P. & Ors.<sup>8</sup> 6 (1984) 2 SCC 404 7 AIR 1914 Cal.152 8 2014 (8) ADJ 525 Page 22

4. Before dealing with these judgments, I feel that it would be apposite to deal with two judgments referred to by the Calcutta High Court in Bhupendra Nath Basu's case (supra). The first judgment is the case of the Mayor of Penryn 9. In this case, the Mayor of Penryn was elected to the office but had not subscribed to the oath and without being sworn in, he had exercised the power of the office of Mayor. On a writ of quo warranto being entertained, it was found that though the Mayor had been duly elected, since he had acted as a Mayor without having subscribed to the oath, he had usurped the power of Mayor and a judgment ousting him from office was passed. It had been urged that at best a writ of mandamus be issued directing him to take oath, but this prayer was rejected on the ground that once the Mayor had usurped the office, judgment had to be pronounced against him.

5. Judgment in Rex v. Swyer<sup>10</sup> is not very relevant. In this case it was held that the period of the office of the Mayor would commence only from the date he took oath.

6. The Calcutta High Court in Bhupendra Nath Basu's case (supra) was dealing with a case where election was held for the 9 93 ER 714 [ Kings Bench] 10 109 E.R. 531 (Kings Bench) Page 23 non-official additional members to the Governor General's Council from the constituency of the non-official members of the Bengal Legislative Council. There were four candidates in the election and the petitioner Bhupendra Nath Basu got 17 votes and was at 3rd place. The successful candidates, viz. Moharaja Ranajit Singh Bahadur and Surendra Nath Banerjee had secured 18 and 22 votes respectively. Petitioner Bhupendra Nath Basu first filed an appeal before the Governor General in Council, which was rejected and thereafter, he filed a suit before the High Court questioning the validity of the election mainly on the ground that two of the members of the Bengal Legislative Council who had cast their votes, had not taken oath of allegiance and, therefore, their votes should be excluded. The Calcutta High Court, on the basis of the regulations relating to elections in question, held that the voters had a right of exercising their vote even by means of registered letters and, therefore, even if they were elected and not subscribed to the oath of office, they could take part in the elections to the non-official members of the Governor General in Council. The High Court observed as follows:

"It is only for the purpose of exercising the legislative functions governed by the regulations Page 24 and by the Act that the oath of allegiance is required."

7. In the case of Pashupati Nath Sukul (supra), election to the U.P. State Legislative Assembly took place and the Election Commission of India, on 9th June, 1980 notified the names of the elected members. A notification was issued that they would take oath as required under Article 188 of the Constitution at the session of the Assembly which had been summoned on 27 th June, 1980. In the meantime, the Election Commission issued a notification on 17th June, 1980 calling upon the elected members to elect a person for filling up vacancy in the Rajya Sabha.

Nominations were to take place on 24 th June, 1980; polling, if necessary, on 4th July, 1980. One of the objections taken against the nomination of Pashupati Nath Sukul was that his name had been proposed by a person, who had not taken oath as member of the Legislative Assembly. Various other grounds were taken with which we are not concerned but, this Court, after discussing the entire law

held as follows:

“20. We are of the view that an elected member who has not taken oath but whose name appears in the notification published under Section 73 of the Act can take part in all non-legislative activities of an elected member. The right of voting at an election to the Rajya Sabha can also be exercised by him.....” Page 25

8. However, it would be pertinent to refer to certain other observations of the apex Court in the same case:

“18 .....Now the question is whether the making of oath or affirmation is a condition precedent for being eligible to act as a proposer of a valid nomination for election to the Rajya Sabha. The rule contained in Article 193 of the Constitution, as stated earlier, is that a member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words ‘sitting and voting’ in Article 193 of the Constitution imply the summoning of the House under Article 174 of the Constitution by the Governor to meet at such time and place as he thinks fit and the holding of the meeting of the House pursuant to the said summons or an adjourned meeting. An elected member incurs the penalty for contravening Article 193 of the Constitution only when he sits and votes at such a meeting of the House. Invariably there is an interval of time between the constitution of a House after a general election as provided by Section 73 of the Act and the summoning of the first meeting of the House. During that interval an elected member of the Assembly whose name appears in the notification issued under Section 73 of the Act is entitled to all the privileges, salaries and allowances of a member of the Legislative Assembly, one of them being the right to function as an elector at an election held for filling a seat in the Rajya Sabha. That is the effect of Section 73 of the Act which says that on the publication of the notification under it the House shall be deemed to have been constituted. The election in question does not form a part of the legislative proceedings of the House carried on at its meeting. Nor the vote cast at such an election is a vote given in the House on any issue arising before the House. The Speaker has no control over the election. The election is held by the Returning Officer appointed for the purpose.”

9. When we read both the observations together, it is obvious that a member who is elected to a House, does not cease to be a Page 26 member only because he had not subscribed to the oath unless there is a specific provision in this regard. However, both from the judgments of this Court and the Calcutta High Court, it is apparent that such an elected member who has not taken oath, can only take part in those proceedings which are not proceedings of the House. The Calcutta High Court was dealing with the election of non-official members of the Governor General in Council. The voters were the members of the Bengal Legislative Council and, therefore, the election to the House of the Governor General in Council had no connection with the business of the Bengal Legislative Council. As far as the judgment of this Court is

concerned, the members of the Legislative Assembly, who had not taken oath, were taking part in elections to the Rajya Sabha, which was definitely not part of the business of the Legislative Assembly.

10. As far as the present case is concerned, as pointed out earlier, Rule 3(3) prescribes that before taking their seat for the first time, the members must subscribe oath or affirmation.

What is the consequence of a member not taking oath? He does not cease to be a member but, at the same time, he cannot take part in the business of the House. In my view, a motion of no confidence is part of the proceedings of the Panchayat, as such a motion is governed by the provisions of the Adhiniyam and, therefore, this is part of the business of the Panchayat. An elected member who has not taken oath, cannot move and be a signatory to such a no confidence motion. Such motion has to be moved in terms of Section 15 of the Adhiniyam. In my view, those members who have not taken oath and are, therefore, not entitled to vote at such no confidence motion, cannot be held to be entitled or eligible to sign such motion. Otherwise, it would lead to a very odd situation where such members can sign a motion but cannot vote when the said motion is put to vote. This could not have been the intention of the Legislature. Section 15 (12) and (13) of the Adhiniyam provide that a no-confidence motion cannot be moved within one year of the election having taken place or within a year of the rejection of the motion. Thus, the Legislature intended that a no-confidence motion should not be moved at drop of a hat. Therefore, according to me, members who have not taken oath and, therefore, do not have a right to vote for the no-confidence motion cannot be permitted to sign such a motion.

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11. As far as the judgment of the Allahabad High Court in Kamla Devi (supra) is concerned, that only purports to follow the judgment of this Court. Considering the fact that my view is different, neither the Calcutta High Court judgment nor the judgment of this Court is applicable to the facts of the instant case. The judgment of the Allahabad High Court, according to me, does not lay down the correct position of law.

12. I, therefore, respectfully differ with my respected learned brother on the question as to whether the signing of a no- confidence motion is part of the business of the House. However, I am in agreement with my learned brother that the petition ought to be dismissed. There are disputed question of facts as to whether certain members had taken oath or not, which questions cannot be decided at this stage and the petitioner has failed to discharge the heavy burden on him to prove that these members have not taken oath. I also agree with my learned brother that sanctity must be attached to the oath. Various articles of the Constitution of India and various other laws provide that persons holding public office must subscribe to an oath of allegiance. This oath cannot be rendered meaningless and the Legislature would be well advised to provide Page 29 consequences for not subscribing to such an oath of office. To avoid such controversy in future, it would also be advisable if the swearing in/oath taking is videographed so that no such dispute arises in future.

