Mohan Lal Tripathi

Vs

District Magistrate, Rae Bareilly and others

Civil Appeal No. 2425 of 1992

(R. M. Sahai, N. M. Kasliwal JJ)

15.05.1992

JUDGEMENT

R. M. SAHAI, J.:-

1. Validity of the no-confidence motion passed, on 28th March, 1990, under S. 87A of the U.P. Municipalities Act (in brief 'the Act') by the Board against the appellant, who was elected in November, 1988 by the electorate, directly under S. 43(2) of the Act, as President of Rae Bareilly City Municipal Board, having population of less than one lakh, was assailed as violative of the democratic concept of removal or recall of an elected representative by a smaller and different body than the one that elected him, in this appeal directed against the judgment and order of the Allahabad High Court rendered in a Writ Petition filed under Art. 226 of Constitution of India. Statutory arbitrariness, arising out of application of Ss. 47A and 87A of the Act to the Presidents of the Municipalities either elected by the Board of electorate as irrational and invalid of Art. 14 of the Constitution was, yet, another ground of attack. Reduction of period from two to one year 'during which a vote of no-confidence could be tabled against a President by ordinance issued in 1990 which later became Act was challenged for absence of any discrenible and reasonable principle and resorted to as 'spoil system' thus constitutionally invalid.

2. Democracy is a concept, a political philosophy an ideal practised by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But electing representatives to govern is neither a 'fundamental right' nor a 'common law right' but a special right created by the statutes,*1 or a 'political right' or 'privilege' and not a 'natural' 'absolute' or 'vested right' *2. 'Concepts familiar to common law and equity must remain stranger to Election Law unless statutorily recognised'.*3 Right to remove an elected representative, too, must stem out of the statute as 'in the absence of a constitutional restriction it is within the power of a legislature to enact a law for the recall of officers'*4. Its existence or validity can be decided on the provision of the Act and not, as a matter of policy. In the American Political Dictionary*5 the right of recall is defined as, 'a provision enabling voters to remove an elected official from offence before his or her term expired'. American jurisprudence explains it thus, 'Recall is a procedure by which an elected officer may be removed at any time during his term or after a specific time by vote of the people at an election called for such purpose by a specified number of citizens*6. It was urged that recall gives dissatisfied electors the right to propose between elections that their representatives be removed and replaced by another more in accordance with popular*7 will' therefore the appellant could have been recalled by the same body, namely, the people who elected him. Urged Shri Sunil Gupta, learned counsel, that since, 'A referendum involves a decision by the electorate without the intermediary of representatives and, therefore, exhibits form of direct democracy'*8 the removal of the appellant by a vote of no-confidence by the

Board which did not elect him was subversive of basic concept of democracy. Academically the submission appeared attractive but applied as a matter of law it appears to have little merit. None of the political theorists, on whom reliance was placed, have gone to suggest that an elected representative can be recalled, only, by the persons or body that elected him. Recall expresses the idea that 'public officer is indeed a "servant of the people" and can therefore be dismissed by them'*9. In modern political set up direct popular check by recall of elected representative has been universally acknowledged in any civilised system. Efficacy of such a device can hardly admit of any doubt. But how it should be initiated, what should be the procedure, who should exercise it within' ambit of constitutionally permissible limits falls in the domain of legislative power. 'Under a constitutional provision authorizing municipalities of a certain population to frame a charter for their own Government consistent with and subject to the Constitution and laws of the State, and a statutory provision that in certain municipalities the mayor and members of the municipal council shall be elected at the time, in the manner, and for the term prescribed in the charter, a municipal corporation has authority to enact a recall provision'*10. Therefore, the validity of otherwise of a 'no-confidence motion for removal of a President, would have to be examined on applicability of statutory provision and not on political philosophy. The Municipality Act provides in detail the provisions for election of President, his qualification, resignation, removal etc. Constitutional validity of these provisions was not challenged, and rightly, as they do not militate, either, against the concept of democracy or the method of electing or removing the representatives. The recall of an elected representative therefore, so long it is in accordance with law cannot be assailed on abstract notions of democracy.

*1. (1952 SCR 218: (AIR 1952 SC 64)) N. C. Ponnuswami v. Returning Officer, Namakkal Constituency, (AIR 1984 SC 210) Jagan Nath v. Jaswant Singh.

*2. American Jurisprudence 2nd Edn. Vol. 63 p. 771.

*3. Jyoti Basu v. Debi Ghosal (AIR 1982 SC 983), Arun Kumar Bose v. Mohd. Furkan Ansari (AIR 1983 SC 1311).

*4. American Jurisprudence Vol. 63 2nd Edn. p. 238.

*5. Jack C Plano/Milton Greenberg.

*6. American Jurisprudence Vol. 63 2nd Edn. p. 770.

*7. Modern Political Constitution, 8th Edn. by C. S. Strong.

*8. Dictionary of Political Thought by Roger Scrutton 1982.

*9. Dictionary of Political Science and Law by Audolph Heimanson.

*10. American Jurisprudence 2nd Edn. Vol. 63, p. 771.

3. Legality of the motion of no-confidence was attacked for absence of any specific provision applying Ss. 47-A and 87-A of the Act to President elected by the electorate. as also for being irrational if the provisions were held to apply by interpretation as it would result in substituting confidence of people with confidence of Board which had no concern with expression of confidence in electing the President consequently it would be unreasonable and against public interest. Even the concept of democracy being basic feature of the Constitution was invoked to urge that provisions

relating to elections should be construed so as to be in consonance with it rather than violative of it. Legislative history of S. 43 dealing with election of President, S. 87-A providing for passing a vote of no-confidence against him, Section 47-A directing him to resign within three days from the date of communication of the result that no confidence motion had been passed and S. 48 empowering the Government to remove a President if he failed to resign were placed with dual purpose of demonstrating that these sections could not apply to a President elected by the electorate and to urge that even if they applied they were rendered arbitrary as no safeguard or protection has been provided to such President as existed prior to introduction of the proviso to S. 47-A. It was submitted that operation of the proviso to S. 47-A was confined to a President elected by the Board therefore the protection to a President against arbitrary action of the Board of passing a resolution against him could be available to such President only. And a President elected by the electorate despite recommending supersession of Board would be exposed to fresh election due to non-avail ability of the proviso therefore it was submitted that S. 47-A itself should be held to be inapplicable to a President elected by the electorate otherwise it would lead to illogicity and irrationality, It was submitted that if there was a choice between democratic purpose and others the court should accept a construction which may advance constitutional tenets of political philosophy and justice rather than subverse it.

4. Force of these submissions or their merit may not be as doubtful as its applicability to the circumstances of the present case. Misapprehension appeared to be the foundation for vehement submission that removal of a President, elected by the electorate, by the Board would be substituting confidence of people by a much smaller body which would, apart, from violating the basic norm of recall of an elected representative by the same body which elected him would be unreasonable, irrational and against public interest. Vote of no-confidence against elected representative is direct check flowing from accountability. Today democracy is not a rule of 'Poor' as said by Aristotle or of 'Masses' as opposed to 'Classes' but by the majority elected from out of the people on basis of ,broad franchise. Recall of elected representative is advancement of political democracy ensuring true, fair, honest and just representation of the electorate. Therefore, a provision in a statute for recall of an elected representative has to be tested not on general or vague notions but on practical possibility and electoral feasibility of entrusting the power of recall to a body which is representive in character and is capable of projecting views of the electorate. Even though there was no provision in the Act initially for recall of a President it came to be introduced in 1926 and since then it has continued and the power always vested in the Board irrespective of whether the President was elected by the electorate or Board. Rationale for it is apparent from the provisions of the Act. Under sub-sec. (2) of S.87-A the right to move the motion of no-confidence vests in the members of the Board which under S. 9,*11 normally, comprises of elected representatives. A person removed from office of President for loss of confidence, from the very nature of the Constitution of Board, is recall by the electorate themselves. An elected representative is accountable to its electorate. That is the inherent philosophy in the policy of recall. For the President his electorate, to exercise this right, is the Board as it comprises of representatives of the same constituency from which the President is elected. Purpose of S. 87-A of the Act is, to remove elected representative who has lost confidence of the body which elected him. It may be by people themselves or they may entrust their power through legislation to their representatives. In Act it is the latter. Members of the Board are elected from smaller constituencies. They represent the entire electorate as they are representatives of the people although smaller in body. A President who is elected by the entire electorate when removed by such members of the Board who have also been elected by the people is in fact removal by the electorate itself. Such provision neither violates the spirit nor purpose of recall of an elected representative. Rather ensures removal by a responsible body. It cannot be criticised either as irrational or arbitrary

or violative of any democratic norm. In fact construing the provision as suggested would render it unreasonable. A President of a Municipal Board of more than one lakh population would be removable by the Board comprising of elected representatives whereas a President of smaller Board would virtually get immunity from removal. It would be contrary to scheme of the Act and against public interest.

> *11. "9. Normal composition of the Board -Except as otherwise provided by S. 10, a Board shall consist of:
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> (a) The President;
>
> (b) The elected members who shall not be less than 10 and not more than 40, as the State Government may by notification in the Official Gazette specify;
>
> (c) The ex officio members comprising all members of the House of People and the State Legislative Assembly whose constituencies include the whole or part of the limits of the Municipality;
>
> (d) Ex-officio members comprising all members of the Council of States and the State Legislative Council who have their residence within the limits of the Municipality.

Explanation - For the purposes of this clause, the place of residence of a member of the Council of States or the State Legislative Council shall be deemed to be the place of his residence mentioned in the notification of his election or nomination, as the case may be :

Provided, that if none of the members elected under clause (b), is a woman, the State Government may by a like notification nominate one woman as a member of the Board and thereupon, the normal composition of the Board shall stand varied to that extent.

Provided further that if any member of the State Legislature Council representing the Local Authorities Constituency does not have his residence within the limits of any Municipality, he will be deemed to be ex-officio member of the board of such one of the Municipalities situated within his constituency as he may choose.

Provided also that if none of the members elected under clause (b) belongs to safai mazdoor class, the State Government may, by notification, nominate a person belonging to the said class a member of the Board, and thereupon the normal composition of the Board shall stand varied to that extent.

Explanation - A person shall be deemed to belong to the Safai Mazdoor class if he belongs to such a class of scavengers by occupation or to such of the Scheduled Castes traditionally following such occupation as may be notified by the State Government.

Commencement of Boards' term - The term of a Municipal Board (including the President) begins from the date of notification issued under S. 56 and the term of the old Board ends on that date."

5. Further S. 50 of the Act empowers the President, without making any distinction between the two, to discharge certain powers, duties, and functions of the Board. Section 52(1) of the Act authorises the Board to require the President to furnish it with any return, statement, estimate, statistics, or other information regarding any matter appertaining to the administration of the

municipality; a report or explanation on any such matter; and a copy of any record, correspondence or plan or other document which is in his possession or control as (President) of which is recorded or filed in his office or in the office of any municipal servant. Sub-section (2) of S. 52 makes it obligatory on the President to comply with every requisition.. made under sub-section (1) without unreasonable delay. The Board is thus visualised as a body entrusted with responsibility, to keep a watch on the President whether elected by it or the electorate. Any arbitrary functioning by the President or disregard of provision of the Statute or acting contrary to the interest of electorate could be known to the Board only. Therefore, it was not only proper but necessary to empower the Board to take action, if necessary. In fact the power of the board to remove a President by vote of no-confidence under S. 87-A and right of the President to recommend its supersession under S. 47A (1)(a) are a check on each other's functioning. Comparison with provisions in Panchayat Raj Act where a Pradhan is removable by the Gaon Sabha was odious as a Gaon Sabha is a very small body as compared to a Municipality. The provision consequently cannot be held to be bad either because the Board is a smaller or different body. Nor it can be characterised as irrational or arbitrary. It would be unrealistic to say so. Any challenge founded on violation of democratic norm thus cannot be accepted.

6. Another offshoot of the same submission was that when removal was by a smaller body the Legislature in 1949 provided a safeguard that a Chairman elected by people removed by vote of no-confidence if reelected could not be removed again by a vote of no-confidence. According to the learned counsel in absence of such safeguard the provision in Section 47A, as it stands now, becomes arbitrary and in absence of clear language it should be held inapplicable to president elected by the electorate. The approach does not appear to be sound. Legislature's power to enact such provision is derived from Entry 5 of List II of VIIth Schedule which is couched in very wide terms. In absence of any challenge of legislative competence, the omission of the proviso to sub-section (5) of (sic) Act 7 of 1949 by amendment since 1955 can neither be characterised as irrational nor arbitary. Moreover whether a President should be elected by the people directly or by the Board was for the legislature to decide. These are matters of policy which cannot be examined by court. Legislature being the best judge of the needs of the people it is for the legislature to decide which system lot electing representatives to the elective bodies and in what manner they should he removed would be best suitable for governance of the State. So long the policy is not vitiated by any mala fide or extraneous consideration the courts have neither jurisdiction nor adequately furnished with material to adjudicate upon its validity or correctness.

7. Value of 'historical evolution'*12 of a provision or 'reference to that preceded the enactment'*13 as an external aid to understand and appreciate meaning of a provision, its ambit or expanse has been judicially recognised*14 and textually recommended*15. But this aid to construe any provision which is 'extremely hazardous' should be resorted to, only, if any doubt arises about the scope of the Section or it is found to be 'sufficiently difficult and ambiguous to justify the construction of its evaluation in the statute book as a proper and logical course and secondly the object of the instant enquiry' should be 'to ascertain the true meaning of that part of the section which remains as it was and which there is no ground for thinking the substitution of a new proviso was intended to alter'*16. But 'considerations stemming from legislative history must not, however, override the plain words of a statute'. (Maxwell on Interpretation of Statutes, p. 65). Neither Section 47-A nor 87-A on plain reading suffer from such defect as may necessitate ascertaining their intent and purpose from the earlier sections as they stood. That shall be clear when relevant part of the sections are extracted. But even otherwise there appears no merit in the submission and for that purpose it appears appropriate to narrate, in brief, the history of these sections. When Act 2 of 1916 was enacted it provided for election of Chairman of the Board by a special resolution passed by the

members under Section 43(1) of the Act. Sub-section (2) provided for ex-officio nomination by the government of the Chairman in some municipality. Section 48 empowered the government to remove a Chairman after hearing and giving reasons. It did not contain any provision for removal of a chairman by a vote of no-confidence. Ten years later Act 2 of 1926 brought about a very significant change in the Act by introducing Section 47A and conferring power of removal of chairman, other than the ex-officio, by the members of the Board by expressing a vote of no-confidence against him. Section 48, too, was amended and a chairman who failed to resign after a vote of no-confidence was liable to be removed, by the State Government. Thus it was as far back as 1926 that removal of the chairman by elected representative found its way in the Act. In 1933 by Act No. 9 another important section 87A was added providing for tabling of no-confidence motion against the Chairman. In 1942 Section 47-A was omitted as the provision for resigning by the Chairman was provided for in Section 87-A itself. And hearing of the chairman by State Government under Section 48 before removal in consequence of vote of no-confidence was deleted. Act 7 of 1949 introduced major changes in Sections 43 and 47A, of the Act. Section 43 was substituted altogether and, it for the first time, provided for election of the chairman simultaneously with members of the board by the electorate directly Section 47-A which had been omitted by Act 13 of 1942 was reintroduced and a chairman against whom a vote of no-confidence was passed was required to resign. In the alternative he was permitted to recommend to State Government that the Board itself may be dissolved. And if the State Government agreed with the president then it was the Board which was to go. The intention apparently was to keep a check on the power of Board, too, while taking action against the chairman as if it was found that exercise of power by the Board was arbitrary and president was being removed for extraneous reasons then the Government could interfere and direct dissolution of the Board itself. Both the sections were amended once again in 1955 and by Act 1 the election of chairman, known now as President, by the members of the Board was reintroduced, as, 'The experience of the working of the Boards since their constitution at the last general elections has generally been one of continuing conflict between presidents elected by the popular vote on the one hand and the members on the other. This has greatly prejudiced the normal working of the Boards' (Objects & Reasons of U.P. Act 1 of 1955). Section 47-A of the Act was substituted completely and it is in this shape that the section stands today. Section 43(l) was amended, once again, by Act 47 of 1976 and election of President by electorate was revived. In 1982 another change was made in this Section by Act 17 and election of President by the members of Board was confined to Municipalities other than a city declared as such under Section 3 having a population of less than one lakh inhabitants. Sub-section (2) provided for election of President of Board of such a city Municipality by the electorate directly. From 1982 onwards, therefore, the direct election of President by the electorate is confined to smaller municipalities.

*12. (1984) 2 SCC 183 : (AIR 1984 SC 684) - R. S. Nayak v. A. R. Antulay.

*13. (1987) 1 SCC 424 (450): (AIR 1987 SC 1023 at p. 1042) - Reserve Bank of India v. Peerless Gen. Finance & Investment Co. Ltd.

*14. & *16. AIR 1949 PC 172 (176) Tumahole Bereng v. The King.

*15. Statutory Interpretation by Rupert Cross, p 29 Maxwell Interpretation of Statutes p. 47 & 64.

8. The pattern that is, clearly, discernible from these provisions is that even though the manner of electing president has been changing from time to time the method of his removal by a vote of no-confidence by the board has remained unchanged. The Legislature never opted for removal of a

president elected directly by the electorate itself. That would have been practical impossibility. Subsections (1) and (2) of Section 87-A which are relevant are extracted below:

> "87-A. Motion of non-confidence against President
>
> (1) Subject to the provisions of this section, a motion expressing non-confidence in the President shall be made only in accordance with the procedure laid down below.
>
> (2) Written notice of intention to make a motion of no-confidence in its president signed by such number of members of the Board as constitute no less than (one-half) of the total number of members of the Board together with a copy of the motion which it is proposed to make shall be delivered in person together by any two of the members signing the notice to the District Magistrate."

No doubt is cast about its applicability to the President which under Section 43, means a president elected by the Board or electorate. Neither the language nor context excludes its operation to the President elected under Section 43(2) nor is there any indication to confine it to a president elected under Section 48(1). Right to move a motion of no-confidence under sub-section (2) against a President vests in the Board. There is no indication that the word president or the Board used in the sub-section has to be understood in any sense which may exclude from its operation one or the other type of president or the Board of city municipality. In fact it could not be as the Act does not make any distinction between the two presidents, one elected by the Board and the other by the electorate. Both of them become ex-officio members of the Board under Section 49 of the Act if they are already not a member. Duties and functions discharged under Section 7 or 8 of the Act do not make any distinction. Except for the manner of election the Act does not envisage any difference between the two. Wilful default or abuse of power by the Board may lead to its supersession or dissolution under Section 30 of the Act. And under Sections 31 and 31 -A one of the consequences of dissolution or supersession is that the President too has to vacate the office. In other words the functioning envisages joint working of the Board and its President with checks and balances. Any other construction would be artificial and against explicit language of the section. In absence of any indication to the contrary there appears no warrant for the submission that Section 87-A does not empower a Board to pass a vote of no-confidence against a President elected directly.

9. Same reasoning applies to Section 47-A of the Act which is extracted below:

> "47-A. Resignation of President on vote of non-confidence -
>
> (1) If a motion of non-confidence in the President has been passed by the Board and communicated to the president in accordance with the provisions of Section 87-A, the president shall -
>
> (a) within three days of the (receipt) of such communication, either resign his office or represent to the State Government to (supersede) the board stating his reasons therefor; and
>
> (b) unless he resigns under clause (a), cease to hold office of president on the expiry of three days after the date of receipt of such communication, and thereupon a casual vacancy shall be deemed to have occurred in the office of the President within the meaning of Section 44-A:

Provided that if a representation has been made in accordance with clause (a) the board shall not elect a President until an order has been made by the State Government under sub-section (3).

(2)************

(3) If a representation has been made in accordance with sub-section (1), the State Government may after considering the same (either supersede the board for such period, not exceeding the remainder of the term of the board, as may be specified, or reject the representation.)

(4)***********

(5)***********

(6) If the State Government supersedes the board under sub-section (3) the consequences mentioned in section 31 shall follow as if there had been a supersession under Section 30."

No part of the section lends support to the submission that its applicability should be confined to president elected by the board, only. Much was attempted to be made out of the proviso. It was urged that since it could not apply to a president elected by the people, the legislature should be deemed to have intended that it did not desire a president elected by the people to be removed by vote of no-confidence. This section comes into operation after a vote of no-confidence has been passed. Law of expressing no-confidence against a president has been provided for in Section 87-A relevant part of which has been extracted earlier. It applies uniformally to every president whether elected by the Board or electorate. A president elected by the electors has been treated at par with the president elected by the Board. There appears no rationale to treat them differently for any purpose. In absence of any indication Section 87-A applies to either of the president a and a motion of no-confidence passed against any one of them in accordance with procedure provided therein Could not be said to suffer from any infirmity. It cannot be legitimately urged that the applicability of S. 87-A stands controlled by S. 47-A. The former is a substantive provision authorizing the board to initiate action against a president for loss of confidence. Whereas latter is a procedural section coming into operation after communication to the president of the decision of the Board. The two operate in different fields. One is the right of the Board, representative body of the electors of the Municipal Board, to remove a person for loss of confidence, the other is a duty of the president to act with grace and lay down his office in keeping with democratic tradition on mandate of recall. Section 47-A has to be read and construed so as to advance the purpose of Section 87-A and not to frustrate it. On plain reading of the section or provision there does not appear to be an ambiguity. True from 1926 to 1942 no-confidence motion could be brought against elected president under Section 43(l) only and not the ex-officio one nominated under Section 43(2). But from that it cannot be held, as urged, that Section 47-A should be held to apply to president elected under Section 43(1) only. The ex-officio chairman was excluded from operation of Section 47-A not by implication but express provision. That cannot furnish any historical basis to construe Section 47-A as applying to only those presidents who were elected by the board. A clear and unambiguous proviso cannot be inter-preted by taking an analogy from earlier provision as it stood in the past. A legislature while amending, substituting or deleting any provision acts in presenti drawing from past experience and providing for future. That cannot be defeated by projecting into it the past by interpretation. Nor can the provisions be held to be vague because they do not provide any safeguard against moving a no-confidence motion against the president who is re-elected as was in 1949. In fact the history goes

against appellant. In 1949 Section 43 was amended and president of either Municipality was to be elected by the electors directly as sub-section (2) of Section 43 was substituted and it provided as under:

> "(2) Simultaneously with the general election of the members of a Board, or whenever the Provincial Government so considers necessary, separately, the electors of a municipality shall in the manner prescribed, elect a person as the president of the Board."
>
> The sub-section now reads as under:
>
> "(2) The president of a Board other than a Board referred to in sub-section (1) shall be elected by the electors in the municipality".

But the procedure for removal of the chairman under Section 87-A by vote of no-confidence by the Board remained same. Therefore, even in 1949 a president elected from electors was liable to be removed by the Board. As seen earlier Section 43 underwent change in 1955 and 1982 and at present both the system are in vogue depending on the population of the municipality. The legislative intention as gathered from history of the provision indicates that removal of president by vote of no-confidence passed by the Board was always considered to be proper. irrespective of whether the president was elected by the Board or the electors. Removal by Board, of president is not only feasible but in public interest.

10. Even the strained construction of the proviso does not result in coming to the conclusion that there was a legislative omission of not providing for removal, by vote of no-confidence of a president elected by the electors. Merely because the proviso to Section 47-A prevents a Board from holding election of the president in those cases where he had made representation to the Government to supersede the Board, it cannot be stretched to mean that sub-section (a) of Section 47-A cannot apply to a president elected under Section 43(2). The proviso is intended as check to prevent the Board from taking any step which may render the representation made by the president infructuous as if the government accepts the representation then it is the Board under subsection (3) which stands dissolved and not the president. That situation may not arise in election of a president under Section 43(2) as election of president by electors cannot take place immediately, therefore, there is no danger involved, of putting at naught the representation made by the president to State Government, as is in the case of Section 43(l). The proviso cannot be so construed as to nullify the operation of Section 47-A to a president elected by electorate. A proviso or an exception is incapable of controlling the operation of principal clause. Result of such construction would lead to absurdity as if Section 47-A is held not to apply to president elected under Section 43(2) he will not be liable to resign even though a vote of no-confidence has been passed against him under Section 87-A and it has been communicated to him. Merely because the proviso cannot apply to one of the situations that may arise. cannot be reason to hold that S. 47-A(1)(a) did not apply to president elected by the electorate. If the language of the enacted part of the Statute does not contain provision which are said to occur on it, you cannot derive those provisions by implication from a proviso' (West Derby Union v. Metropolitan Life Assurance Society, 1897 AC 647). Proviso could be used for adopting a construction as suggested either when there was some doubt about the scope of the section or there would have been at least some reasonable doubt about accepting one or the other construction as became necessary in Jennings v. Kelly, (1939) 4 All ER 464, on which reliance was placed by the learned counsel for appellant.

11. Reduction of period, during which a no-confidence motion could be tabled against the president, from two to one year was challenged and it was urged that in absence of disclosure of any discernible and reasonable principle which is necessary for every State action the ordinance, which later on became Act, was liable to be struck down. Motive was also imputed to the legislature and it was urged that recourse was taken by the new political party as 'spoils system' of the election which was arbitrary and violative of Article 14 (Kumari Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212: (AIR 1991 SC 537)). No assistance can be derived from Srilekha Vidyarthi case. A Legislature does not act on extraneous consideration. Ordinance issued in 1990 was replaced by Act 19 of 1990. The Act came into force on 24th July 1990 but it was made retrospective with effect from 15th February 1990, the date when the ordinance was issued. But for lack of legislative competence or for being arbitrary a legislative action cannot be struck down on ground of mala fide, State of Himachal Pradesh v. Kailash Chand Mahajan, 1992 (2) JT 144 (p 165) : (1992 AIR SCW 1247). Further it may be noticed that this amendment was not introduced for the first time. Period of moving a motion within 12 months from the date of assumption of office was introduced in 1942. It was increased to two years by act 41 of 1976. It was brought down to one year again by Act 19 of 1990. What was urged by learned counsel was that since no election had taken place of local bodies, from 1976 to 1988, the period of two years was never given a trial, therefore, there was no occasion for the legislature to have reduced this period. The argument does not appear to have been advanced before the High Court. Necessary averments were not made even in the Special Leave Petition. There was thus no occasion for other side to explain, that its action in reducing the period did not suffer from any infirmity. It may be mentioned that elections in the Municipal Board both of members and presidents were held in December 1988 whereas general elections of the State Assembly leading to change of political power were held in 1989. In absence of any factual foundation the argument appears to be ,devoid of any merit. Moreover what persuaded the legislature to reduce the period is again a matter of legislative policy the wisdom of which cannot be scanned by this court.

12. In the result, this appeal fails and is dismissed. But there shall be no order as to costs.

Appeal dismissed.

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