

PETITIONER:
OM NARAIN AGARWAL AND ORS. ETC.

Vs.

RESPONDENT:
NAGAR PALIKA SHAHJAHANPUR AND ORS. ETC.

DATE OF JUDGMENT 19/02/1993

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
YOGESHWAR DAYAL (J)

CITATION:
1993 AIR 1440 1993 SCR (2) 34
1993 SCC (2) 242 JT 1993 (4) 483
1993 SCALE (1) 663

ACT:
United Provinces Municipalities Act 1916: Section 9 First and Fourth provisos-Nominated women members to the Municipal Board-Cancellation of their nomination without notice by State Government-Whether Article 14 of the Constitution attracted-Doctrine of pleasure-Application of.
Constitution of India, 1950: Article 14-Nominated Women members to the Municipal Board under Section 9 of the United Provinces Municipalities Act 1916-Cancellation of their nomination without notice by State Government-Constitutionality of-Doctrine of pleasure-Application of.

HEADNOTE:

In January, 1989, in accordance with First Proviso to Section 9 of the United Provinces Act, 1916 one Smt. Sarla Devi was nominated by the State Government as the sole woman member for the Municipal Board. On 15.2.1990 U.P. Ordinance No. 2 of 1990 later on replaced by U.P. Act No. 19 of 1990 amended the proviso of Section 9 of the Act substituting a new proviso, providing for the nomination of two women members by the State Government. The Amendment Act also added a fourth proviso to the Section which provided that the nomination of the two women members was at the pleasure of the State Government.

On 19.2.1990 the Government issuing a general notification and cancelled nominations of women members in several Municipal Boards. Cancelling the nomination of Smt. Sarla Devi, Smt. Abida and Smt. Hazra Khatoon were nominated by the Government on 19.4.1990.

On 22.7.1991 under Section 87-A of the Act a no-confidence motion against one Mohd. Iqbal, the President of the Board was initiated by some members before the District Magistrate.. The District Magistrate fixed 12.8.1991 for consideration of the confidence motion.

On 2.8.1991, the Government nominated Smt Shyama Devi and Smt. Baijanti Devi as the two women members of the Board, cancelling the nominations of Smt. Abida and Smt Hazra Khatoon.

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On 9.8.1991 Mohd. Iqbal, President of the Municipal Board, against whom the non-confidence motion was pending, filed a

writ petition in the High Court challenging the constitutional validity of the fourth proviso to Section 9 of the Act and also challenged the notification dated 2.8.1991. Further he challenged the proceedings of no-confidence motion initiated against him.

The High Court did not grant any stay of no-confidence proceedings, but ordered that the outcome of the no-confidence proceedings shall be subject to the result of the writ petition.

In the meeting fixed on 12.8.1991 by the District Magistrate to consider the no-confidence motion 20 members of the Board voted in favour of the no-confidence motion, out of the total strength of 37 members of the Board. The newly nominated Women members by notification dated 2.8.1991 participated in the meeting, whereas Smt Abida and Hazra Khatoon neither attended the meeting nor claimed any right to attend the same.

The no-confidence motion dated 12.8.1991 was passed against Mohd. Iqbal. One Om Narain, The appellant No. 1 in C.A. Nos. 714-16 of 1993) who was the Vice-President of the Board was elected as the President in the vacancy. The appellant-Om Narain took charge of the office of the President of the Board and continued to function as the president.

Mohd. Iqbal, the former President filed another writ petition challenging the no-confidence motion dated 12.8.1991 passed against him. Smt. Abida and Smt Hazra Khatoon also filed a writ petition, challenging the notification dated 2.8.1991, which cancelled their nominations and nominated Smt. Shyama Devi and Smt. Baijanti Devi in their places.

A Division Bench of the High Court considered all the three writ petitions two by the former President and one by the former women members. Agreeing with the decision in Dr. Smt. Rama Mishra v. State of U.P. (Writ Petition No. 11114 of 1990 disposed on 9.12.1991) allowed the writ petitions, quashing the notification dated 2.8.1991 and declaring Mohd. Iqbal to be the president of the Board.

The review application filed by the appellants was dismissed by the High Court.

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Being aggrieved against the High Court's decision, the former Vice President and the Women members nominated by notification dated 2.8.1991 approached this Court in these appeals (C.A.Nos. 714-716 of 1993) by special leave. The C.& No. 717 of 1993 was by another Woman member of another Municipal Board, having aggrieved against the judgment of the High Court dated 9.12.1991 passed in Dr. Rama Mishra's case.

The appellants contended that the view taken in Dr. Rama Mishra's case was not correct and the view taken in Prem Kumar Balmiki v. State of U.P. (W.P. No. 1067 of 1991, disposed of on 13.11.1991) was correct; that the State Legislature was competent to insert fourth proviso and to lay down that the nominated members shall hold office during the pleasure of the State Government; that if the initial appointment by nomination was made on political considerations, political considerations should be allowed to operate in terminating such appointments made by nomination; that there was no violation of any principle of natural justice nor such provision was arbitrary so as to be violative of Article 14 of the Constitution; and that the only requirement under the second proviso to Section 9 of the Act was that if none or only one of the members elected under clause (b) was a woman, the State Government was to nominate by notification two Women members or one more Woman

member, as the case may be, so that the number of Women members in the Board was not less than two, and that the State Government did not violate the provision.

The private respondents submitted that once the power of nominating the Women members was exercised by the State Government, such nominated members could not be removed prior to the completion of the term of the Board, unless they were removed on the grounds contained under section 40 of the Act; that the State Government could not be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause; that once a Woman member was nominated, she got a vested right to hold the office of a member of the Board and the State Government could not be given an uncanalised, uncontrolled and arbitrary power to remove such member; that such arbitrary power without any guidelines would be contrary to the well established principles of democracy and public policy and that it would hamper the local bodies to act independently without any hindrance from the side of the Government.

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Allowing the appeals, this Courts,

HELD: 1.01. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two Women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place.

[50G-H]

1.02. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed, But so far as the nominated members are concerned, the Legislature in its wisdom has proved that they shall hold office during the pleasure of the Government. [51B]

1.03. Such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations. [51D]

1.04. In Dr. Rama Mishra's case, the High Court wrongly held that the pleasure doctrine incorporated under the fourth proviso to Section 9 of the Act was violative of the fundamental right of equality as enshrined in Article 14 and Article 15(3) of the Constitution. [51E]

Dr. Smt. Rama Mishra v. State of U.P. Writ Petition No. 11 114 of 1990 decided on 9.12.1991 by the Allahabad High Court, over-ruled.

Prem Kumar Balmiki v. State of U.P. Writ Petition No. 1067 of 1991 decided on 13.11.1991 by the Allahabad High Court, approved.

1.05. The special provision contained for nominating one or two

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women members as the case may be provided in Section 9 of the Act would be protected from challenge under clause (3) of Article 15 of the Constitution. [52B]

1.06. The provision of pleasure doctrine incorporated by adding proviso four does not, in any manner, take away the right to representation of women members in the Board, but it only permits the State Government to keep the nominated women members of its own choice. [52C]

1.07. The right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. [52E]

1.08. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office. [52G]

1.09. The motion of no-confidence being supported by 20 members which admittedly constituted a majority of the total strength of the members of the Board being 37, the no-confidence motion has been rightly carried out and as a result of which Mohd. Iqbal was not entitled to continue as President of the Board. Similarly, Smt. Abida and Smt. Hazra Khatoon having been rightly removed as nominated members, they are no longer entitled to continue as nominated members of the Municipal Board, Shahjahanpur and in their place Smt. Shyama Devi and Smt. Baijanti Devi shall be entitled to continue as nominated members of the Board. [53C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 714-16 of 1993.

From the Judgment and Order dated 14.9.92 of the Allahabad High Court in Civil Misc. W.P. Nos. 20731, 23861 & 24353 of 1991.

AND

Civil Appeal No. 717 of 1993.

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From the Judgment and Order dated 9.12.91 of the Allahabad High Court in Civil Misc. W.P.No. 11114 of 1990.

D.V. Sehgal, Ravi Kiran Jain, Sunil Gupta, Jamshed Bey, H.K. Puri, Mrs. Rani Chhabra and R.B. Misra for the Appellants. Sabir Hussain Saif, Shakeel Ahmed Syed, Bahar U. Barqi, Anis Suhrawardy and Vijay Hansaria for the Respondents.

The Judgment of the Court was delivered by KASLIWAL, J. Special leave granted.

As common questions of fact and law are involved in all the above cases, as such they are disposed of by one single order. First proviso to Section 9 of the United Provinces Municipalities Act, 1916 (hereinafter referred to as 'the Act') provided for nomination of only one woman as a member of the Municipal Board by the State Government. Further, there was no provision permitting the State Government to cancel the nomination of such member at its pleasure. One Smt. Sarla Devi was nominated by the State Government as the sole woman member for the Shahjahanpur Municipal Board (hereinafter referred to as 'the Board') in January, 1989.

By U.P. Ordinance No. 2 of 1990 later on succeeded by Ordinance No. 8 of 1990 and eventually replaced by U.P. Act No. 19 of 1990, the aforesaid first proviso to Section 9 of the Act was substituted by another proviso which made provision for the nomination of two women members by the State Government. Further, a fourth proviso was also added to Section 9 of the Act which provided that the nomination of the aforesaid two members was at the pleasure of the State Government. The aforesaid Ordinance No. 2 of 1990 was promulgated on 15.2.1990.

Soon thereafter on 19.2.1990, a general notification was issued by the State Government cancelling of nominations of Women members in several Municipal Boards in Uttar Pradesh. The nomination of Smt. Sarla Devi also stood cancelled. On 19.4.1990, the State Government nominated Smt. Abida and Hazra Khatoon as members of the Board under the newly introduced fourth proviso to Section 9 of the Act. The total strength of the Board was 37 including two nominated women members. On 22.7.1991 Mohd. Iqbal was the President of the Board and Shri Om Narain Agarwal was the Vice-President of the Board. Some members of the Board on

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22.7.1991 initiated no-confidence motion against Mohd. Iqbal before the District Magistrate in accordance with the procedure prescribed under Section 87-A of the Act. The District Magistrate fixed 12.8.1991 for consideration of the no-confidence motion. In the meantime, the State Government on 2.8.1991 in exercise of its powers under the fourth proviso to Section 9 of the Act issued notification cancelling the nominations of Smt. Abida and Hazra Khatoon and in their place nominated Smt. Shyama Devi and Smt. Baijanti Devi as the two women members of the Board. On 9.8.1991 Mohd. Iqbal filed a Writ Petition No. 20731 of 1991 in the High Court challenging the constitutional validity of the fourth proviso to Section 9 of the Act as well as the notification dated 2.8.1991 whereby the nominations of Smt. Abida and Hazra Khatoon were cancelled and in their place Smt. Shyama Devi and Smt. Baijanti Devi were nominated. Mohd. Iqbal also challenged the proceedings of no-confidence motion initiated against him. The High Court in the aforesaid Writ Petition passed an interim order stating that outcome of the no-confidence proceedings shall be subject to the result of the Writ Petition but did not grant any stay of no-confidence proceedings. Smt. Shyama Devi and Smt. Baijanti Devi participated in the meeting held on 12.8.1991 and so far as Smt. Abida and Hazra Khatoon are concerned, they neither attended the said meeting nor claimed any right to attend the same. In the aforesaid meeting held on 12.8.1991, 20 members of the Board voted in favour of the no-confidence motion out of the total strength of 37 members of the Board. After the no-confidence motion dated 12.8.1991 having been passed against Mohd. Iqbal, a casual vacancy arose in the Office of the President of the Board by virtue of Section 47-A of the Act and Shri Om Narain the then Vice-President was elected as President of the Board. Om Narain took charge of the said Office and continued to function as President thereafter. Mohd. Iqbal then filed another Writ Petition No. 23861 of 1991 on 20th August, 1991 challenging the no-confidence motion dated 12.8.1991 passed against him. The High Court refused to pass any stay order in favour of Mohd. Iqbal. Smt. Abida and Smt. Hazra Khatoon also filed a Writ Petition No. 24353 of 1991 on 12.9.1991 challenging the cancellation of their nominations and nominating Smt. Shyama Devi and Smt. Baijanti Devi in their place.

A Division Bench of the Lucknow Bench of the Allahabad High Court in Writ Petition No. 1067 of 1991 Prem Kumar Balmiki v. State of U.P. by order dated 13.11.1991 held that the fourth proviso to Section 9 of the Act was constitutional and valid and any notification issued by the State

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Government under the said provision was also valid. Another Division Bench of the Allahabad High Court sitting at Allahabad in Writ Petition No. 11114 of 1990 Dr. Smt. Rama Mishra v. State of U.P. by order dated 9.12.1991 held that the fourth proviso to Section 9 of the Act was arbitrary, unreasonable, unconstitutional and invalid and any notification issued thereunder cancelling the nomination of any woman member of the Board and nominating a new member was invalid. A Division Bench of the Allahabad High Court considered all the three Writ Petitions, two filed by Mohd. Iqbal and one by Smt. Abida and Smt. Hazra Khatoon and by a common order dated 14.9.1991 recorded its agreement with the decision in Rama Mishra's case and quashed the notification dated 2.8.1991 whereby Smt. Abida and Smt. Hazra Khatoon were ousted and in their place Smt. Shyama Devi and Smt. Baijanti Devi were nominated and also declared Mohd. Iqbal to be the President of the Board. In this judgment the High Court though followed Rama Mishra's case but failed to take notice of the decision of the Lucknow Bench of the High Court dated 13.11.1991 given in Prem Kumar Balmiki's case. A review application filed by Om Narain and others was also dismissed by the High Court by order dated 21.9.1992.

Aggrieved against the aforesaid decision of the High Court, Om Narain Agarwal former Vice-President, Smt. Shyama Devi and Smt. Baijanti Devi have come in appeal by Special Leave Petition Nos. 13621-23 of 1992. Smt. Bashiran who was a nominated woman member in the Municipality of Varanasi and whose nomination was subsequently cancelled has filed Special Leave Petition No. 13004 of 1992 against the judgment of the Allahabad High Court dated 9.12.1991 passed in Dr. Rama Mishra's case.

The Division Bench of the High Court in the impugned order dated 14.9.1992 has agreed with the view taken in Dr. Rama Mishra's case. After taking the aforesaid view the High Court held that the State Government had no power to cancel the nominations of Smt. Abida and Smt. Hazra Khatoon and to nominate Smt. Shyama Devi and Smt. Baijanti Devi in their place. The High Court as a result of the above finding held that the notification dated 2.8.1991 was a nullity and that being so, the earlier notification dated 19.4.1990 nominating Smt. Abida and Smt. Hazra Khatoon remained operative. The High Court then considered the next question as to what was the effect of the notification dated 2.8.1991 and the motion of no-confidence passed on 12.8.1991. The High Court in this

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regard took the view that the total strength of the members was 37 and the motion of no-confidence was carried out by 20 members including the two nominated members Smt. Shyama Devi and Smt. Baijanti Devi. As nomination of these two women members was declared to be invalid, their participation and voting right shall have to be ignored and in that view of the matter, proceedings dated 12.8.1991 shall be considered as having been attended only by 18 eligible members and the motion cannot be deemed to have been carried by a majority of the members consisting of at least 19 members. The High Court thus held that the provision of Section 87-A (12) of the Act being mandatory and the

resolution of no-confidence having not been passed by a requisite majority the entire proceedings held on 12.8.1991 relating to the motion of no-confidence was non est and as such the resolution of no-confidence passed therein was void. The High Court also repelled the contention that till the nomination of Smt. Shyama Devi and Smt. Baijanti Devi was declared void, all acts done by them will be protected by de facto doctrine. The High Court also repelled the contention that the nomination of Smt. Abida and Smt. Hazra Khatoon vide notification dated 19.4.1990 should also be declared invalid on the analogy on which the notification dated 2.8.1991 nominating Smt. Shyama Devi and Smt. Baijanti Devi has been declared invalid. The High Court in this regard held that the notification dated 19.4.1990 shall remain operative unless the same is challenged and declared to be void. It was also held by the High Court that in view of the interim order passed on 9.8.1991 in Writ Petition No. 20731 of 1991 to the effect that the result of no-confidence motion shall be subject to the decision of the Writ Petition, Section 47-A(1)(b) of the Act cannot be invoked against the writ petitioner. The High Court after recording the above findings passed the following operative order:-

"In the result the Writ Petition No. 20731 of 1991 is partly allowed and the notification dated 2.8.1991 (Annexure No. 3 to the Petition) is quashed. The Writ Petition No. 23861 of 1991 succeeds and is allowed and the entire proceedings taken up in the meeting dated 12.8.1991 including the resolution of no-confidence passed against the petitioner are quashed. Annexures No. 1 and 1 A to this petition are quashed. The respondents are directed not to interfere with the petitioner's working as President of the Municipal Board, Shahjahanpur. The Writ Petition No. 24353 of 1991 succeeds and is allowed. Notification dated 2.8.1991 (Annexure No. 1 to this petition having been quashed, the respondents are directed to treat the petitioners as members of the Municipal Board, Shahjahanpur and permit them to act as such. No order as to costs."

Before considering the arguments advanced on behalf of the appellants, it would be necessary to state the relevant provisions of the Act namely, Sections 9, 47-A and 87-A of the Act. Section 9 of the Act including the amendment added from 15.2.1990 is reproduced as under:-

"[Section 9. Normal composition of the board.- Except as otherwise provided by Section 10, a Board shall consist of-

- (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

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Board shall stand varied to that extent]

[Provided that if none or only one of the members elected under clause (b), is a woman, the State Government may, by notification, nominate two women members or one more woman member, as the case may be, so that the number of women members in the Board is not less than two and thereupon the normal composition of the Board shall stand varied to that extent]

[Provided further that if any member of the State Legislative 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] :

[Provided also that a member nominated under this section, whether before or after February 15, 1990 shall hold office during the pleasure of the State Government, but not beyond the term of the Board.]"

"[47-A. Resignation of President of vote of non-confidence.-

(1) If a motion of non-confidence in the President has

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been passed by the board and communicated to the President in accordance with the provisions of Section 87-A, the President shall

(a) With three days or the (receipt) of such communication, either resign his office or represent to the State Government to (supersede) the board stating his reasons therefore, 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.']

"[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

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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.]

(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-section (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 of 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.

(4) The District Magistrate shall arrange with the District Judge for a stipendiary civil judicial officer to preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour from the time appointed for the meeting, the judicial officer is not present

to preside at the meeting, the meeting shall stand adjourned to the date and the time to be appointed and notified to the members by that officer under sub-section (5).

(5) If the judicial officer is unable to preside at the meeting, he may, after recording his reasons adjourn the meeting to such other date and time as he may appoint, but not later than fifteen days from the date appointed for the meeting under sub-section (3). He shall without delay communicate in writing to the District Magistrate the

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adjournment of the meeting. It shall not be necessary to send notice of the date and the time of the adjourned meeting to the members individually, but the District Magistrate shall give notice of the date and the time of the adjourned meeting by publication in the manner provided in sub-section (3).

(6) Save as provided in sub-sections (4) and (5) a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(7) As soon as the meeting convened under this section has commenced, the judicial officer shall read to the board the motion for the consideration of which it has been convened and declare it to be open for discussion.

(8) No discussion on any motion under this section shall be adjourned.

(9) Such discussion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting, unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of three hours, as the case may be, the motion shall be put to the vote of the board.

(10) The judicial officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(11) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall on the termination of the meeting, be forwarded forthwith by the judicial officer to the [President and the] District Magistrate [Provided that if the President refuses or avoids to take delivery of the copies so forwarded, the same shall be affixed at the outer door of his last known residence and he shall be deemed to have received the same at the time such affixation is made.]

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[(11-A.) As soon as may be after three days of the receipt of the copies mentioned in sub-section (11), the District Magistrate shall forward the same to the State Government, together, in the event of the motion of non-confidence having been carried, with a report whether or not the President has forwarded his resignation in accordance with the provisions

of Sections 47 and 47-A;]

[(12) The motion shall be deemed to have, been carried only when it has been passed by a majority of [more than one-half] of the total number of members of the Board.]

[(13) If the motion is not carried by a majority as aforesaid, or if the meeting cannot be held for want of quorum which shall not be less than two-thirds of the total number of members of the Board, for the time being, no notice of any subsequent motion of no-confidence in the same President shall be received until after the expiry of a period of two years from the date of the meeting.]

[(14) No Notice of a motion of no-confidence under this section shall be received within two years of the assumption of office by a President.]

[(15) Nothing done by any member of the board, the District Magistrate, the judicial officer or the [State Government] in pursuance of the provisions of this section shall be questioned in any Court.]"

It was contended on behalf of the appellants that the view taken in Dr. Rama Mishra's case was not correct and the view taken by the Lucknow Bench of the Allahabad High Court in Prem Kumar Balmiki's case was correct. It was submitted that the State Legislature was fully competent to insert fourth proviso and to lay down that the nominated members shall hold office during the pleasure of the State Government. It was submitted that the pleasure doctrine also finds place in several other enactments including the Constitution of India. It was submitted that under Article 75 (2) of the Constitution, Ministers of the Central Government hold office during the pleasure of the President. Similarly, under Article 164 (1), the Ministers in the States of the Indian Union hold office during the pleasure

49 of the Governor. Similarly, under Article 76 (1), the President appoints Attorney General for India and in view of clause 4 of the said Article this office is held during the pleasure of the President. It was also submitted that Governors for the States are appointed by the President under Article 155 and under Article 156 (1), the Governor holds office during the pleasure of the President. It was also contended that the Office of member of Municipal Board is a political office. It was further argued that if the initial appointment by nomination is made on political considerations, there appears no reason why political consideration should not be allowed to operate in terminating such appointments made by nomination. In these circumstances if the Legislature has itself added the fourth proviso to Section 9 of the Act authorising the State Government to allow the nominated member to hold the Office during the pleasure of the State Government, there is no violation of any principle of natural justice nor such provision is arbitrary so as to be violative of Article 14 of the Constitution. It was contended that the only requirement under the second proviso to Section 9 of the Act was that if none or only one of the members elected under clause (b) is a woman, the State Government may by notification, nominate two women members or one more woman member as the case may be, so that the number of women members in the Board is not less than two. It was submitted that the State Government has not violated the aforesaid

provision inasmuch as Smt. Shyama Devi and Smt. Baijanti Devi were nominated in place of Smt. Abida and Smt. Hazra Khatoon and the number of two women members in the Board was kept intact.

Learned counsel for the private respondents submitted that once the power of nominating the women members is exercised by the State Government, such nominated members cannot be removed prior to the completion of the term of the Board unless they are removed on the grounds contained under Section 40 of the Act. It was also contended that the State Government cannot be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause. Once a woman member is nominated she gets a vested right to hold the office of a member of the Board and the State Government cannot be given an uncanalised, uncontrolled and arbitrary power to remove such member. It is contended that such arbitrary and naked power without any guidelines would be contrary to the well established principles of democracy and public policy. It would hamper the local bodies to act

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independently without any hindrance from the side of the Government.

Section 10-A of the Act prescribes the term of the Board which is five years. Section 38 prescribes the term of office of members elected or nominated to fill casual vacancies and reads as under:-

"The term of office of a member elected to fill a casual vacancy or a vacancy remaining unfilled at the general election shall begin upon the declaration of his election under the Act and shall be the remainder of the term of the Board."

Section 39 deals with resignation by a member of the Board. Section 40 provides the grounds for removal of a member of the Board. Sub-section (5) of Section 40 deals with suspension of a member. From a perusal of the above provisions it is clear that the term of an elected or nominated member is con-terminous with the term of the Board. The normal term of the Board is five years, but it may be curtailed as well as extended. If the term of the Board is curtailed by dissolution or supersession, the term of the member also gets curtailed. Similarly, if the term of the Board is extended, the term of the member is also extended. Apart from the curtailment of the term of a member of the Board by dissolution or supersession of the Board itself, the term of a member also gets curtailed by his resignation or by his removal from office. Section 40 specifically provides the grounds under which the State Government in the case of a city, or the prescribed authority in any other case, may remove a member of the Board. The removal under Section 40 applies to elected as well as nominated members. In respect of a nominated member, power of curtailment of term has now been given to the State Government under the fourth proviso to Section 9 added after the third proviso through the amending Act of 1990. In the cases before us, we are concerned with the removal of nominated members under the fourth proviso to Section 9 of the Act and we are not concerned with the removal as contained in Section 40 of the Act. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by

nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature

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authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the Legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations. In Dr. Rama Mishra's case, the High Court wrongly held that the pleasure doctrine incorporated under the fourth proviso to Section 9 of the Act was violative of the fundamental right of equality as enshrined in Article 14 and Article 15 (3) of the Constitution. We are unable to agree with the aforesaid reasoning of the High Court. Clause (3) of Article 15 is itself an exception to Article 14 and clauses (1) and (2) of Article 15 of the Constitution. Under Article 14, a duty is enjoined on the State not to deny any person equality before the law or the equal protection of the laws within the territory of India. Article 15 (1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15 (2) provides that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainments; or
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the

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use of the general public.

Thereafter Article 15 (3) provides that nothing in this Article shall prevent the State from making any special provision for women and children. This means that in case any special provision is made for women, the same would not be violative on the ground of sex which is prohibited under clauses (1) and (2) of Article 15 of the Constitution. Thus, the special provision contained for nominating one or two women members as the case may be provided in Section 9 of the Act would be protected from challenge under clause (3) of Article 15 of the Constitution. It may also be worthwhile to note that the provision of pleasure doctrine incorporated by adding proviso four does not, in any manner, take away the right of representation of women members in

the Board, but it only permits the State Government to keep the nominated women members of its own choice. The High Court in Dr. Rama Mishra's case took a wrong view in holding that the fourth proviso to Section 9 of the Act was violative of Article 15 (3) of the Constitution under an erroneous impression that this provision in any manner curtailed the representation of women members in the Board. We are not impressed with the reasoning given by the High Court that the fourth proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article 14 of the Constitution. It is well established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralise the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office. Thus, in the circumstances mentioned above, we are clearly of the

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view that the decision in Dr. Rama Mishra's case does not lay down the correct law and is overruled and the view taken by the High Court in Prem Kumar Balmiki's case (supra) is held to be correct. We do not consider it necessary to dwell upon other arguments made before us or made and dealt with by the High Court, as the above appeals can be disposed of on the point already dealt and decided by us. Thus, as a result of the view taken by us, we hold that Smt. Shyama Devi and Smt. Baijanti Devi, the two women members had been rightly nominated in place of Smt. Abida and Smt. Hazra Khatoon and were entitled to take part in the meeting held on 12.8.1991 for considering the motion of no-confidence against Mohd. Iqbal, the President of Nagar Palika Shahjahanpur. Further, the motion of no-confidence being supported by 20 members which admittedly constituted a majority of the total strength of the members of the Board being 37, the no-confidence motion has been rightly carried out and as a result of which Mohd. Iqbal was not entitled to continue as President of the Board. Similarly, Smt. Abida and Smt. Hazra Khatoon having been rightly removed as nominated members, they are no longer entitled to continue as nominated members of the Municipal Board, Shahjahanpur and in their place Smt. Shyama Devi and Smt. Baijanti Devi shall be entitled to continue as nominated members of the Board.

In the result, all the above appeals are allowed, the judgment of the High Court dated 14.9.1992 in Writ Petition Nos. 20731 of 1991, 23861 of 1991 and 24353 of 1991 and dated 9.12.1991 in Writ Petition No. 11114 of 1990 are set aside and all the aforesaid Writ Petitions stand dismissed. No order as to costs.

V.P.R.

Appeals allowed.

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JUDIS