

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 80 of 2017****Order reserved on 03.07.2017****Order delivered on 01.08.2017**

1. Ganga Sahu W/o. Dinesh Sahu, Panch – Ward No.1, aged about 30 years.
2. Krishna Patel W/o. Uttam Patel, Panch – Ward No.2, aged about 42 years.
3. Shakun Dhruv W/o. Shatrughan Dhruv, Panch – Ward No.3, aged about 30 years.
4. Nitesh Kumar Sahu S/o. Jeevrakhan, Panch – Ward No.4, aged about 35 years.
5. Horilal Sahu S/o. Bhagat Sahu, Up-Sarpanch, aged about 40 years.
6. Neelu Dhiwar W/o. Tulsi Dhiwar, Panch – Ward No.6, aged about 28 years.
7. Mantoria Dhiwar W/o. Shanbhu, Panch – Ward No.7, aged about 65 years.
8. Sita Dhiwar W/o. Gulal Dhiwar, Panch – Ward No.8, aged about 40 years.
9. Ramkunwar Sahu W/o. Rohit Sahu, Panch – Ward No.9, aged about 35 years.
10. Motim Patel W/o. Lalit Patel, Panch – Ward No.10, aged about 40 years.
11. Purshottam Lodhi S/o. Khorbahara Lodhi, Panch – Ward No.11, aged about 45 years.
12. Ganga Yadav W/o. Fagu Yadav, wrongly written as Khorbahara Lodhi, Panch – Ward No.12, aged about 27 years.
13. Laxmi Banjare W/o. Lileshwar Banjare, Panch – Ward No.13, aged about 32 years.
14. Sushila Dhiwar W/o. Rishi Dhiwar, Panch – Ward No.14, aged about 35 years.
15. Lekhram Patel S/o. Kartik Patel, Panch – Ward No.15, aged about 36 years.
16. Santosh Patel S/o. Tirith Ram Patel, Panch – Ward No.16, aged about 36 years.
17. Tulsi Kosle S/o. Mangnu Kosle, Panch – Ward No.17, aged about 32 years.
18. Baishakhu Burman S/o. Ferha Burman, Panch – Ward No.18, aged about 55 years.
19. Devsharan Yadav S/o. Ramavtar Yadav, Panch – Ward No.19, aged about 36 years.
20. Khileshwari D/o. Suresh Sonwani, Panch – Ward No.20, aged about 25 years.

21.Smt. Yashoda Patel W/o. Mannu Patel, aged about 30 years.
(Present Elected Sarpanch)
All R/o. Village-Gullu, Tahsil Arang, District Raipur
(Chhattisgarh)

---**Petitioners**

Versus

1. State of Chhattisgarh, through Secretary, Panchayat Department, New Mantralaya, Mahanadi Bhawan, Raipur (Chhattisgarh).
2. Collector, Raipur, District - Raipur (Chhattisgarh).
3. Sub-Divisional Officer, Arang, District - Raipur (Chhattisgarh).
4. Chief Executive Officer, Janpad Panchayat, Arang, Tahsil and District - Raipur (Chhattisgarh).
5. Lekhni Sahu W/o. Laxminarayan Sahu, aged about 40 years, Post – Former Sarpanch, R/o. Gullu, Tahsil Arang, District – Raipur (Chhattisgarh).

---**Respondents**

For petitioners : Mr. Rajesh Jain, Advocate.

For respondent/State : Mr. Dheeraj Wankhede, Govt. Advocate.

For respondent No.5 : Mr. Prakash Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order [C.A.V.]

1. Smt. Lekhni Sahu (respondent herein) was elected as Sarpanch of Gram Panchayat Gullu Tahsil Arang, District Raipur. Petitioners herein moved a no confidence motion against the respondent herein in the prescribed proforma under Rule 3 of Chhattisgarh (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 (for short "Rules of 1994") on 18.05.2016. The prescribed authority in accordance with sub-rule (3) of Rule 3 of Rules

of 1994 passed an order on 26.05.2016 and fixed the meeting of no confidence on 08.06.2016 and duly served notices to all the Panchas including petitioner and ultimately motion of no confidence was tabled on 08.06.2016 and same was discussed and motion of no confidence was passed against the respondent. The said respondent raised an dispute under Section 21(4) of the Chhattisgarh Panchayati Raj Adhiniyam, 1993 (hereinafter called as "Act of 1993") before the Collector.

2. The Additional Collector by its order dated 15.07.2016 decided dispute against the respondent holding that procedure followed for holding the no confidence motion was in accordance with law and rejected the reference. The respondent herein challenged said order before the Commissioner, Raipur Division, Raipur by filing revision petition. The said revision has been allowed by learned Commissioner by the impugned order, setting aside the motion of no-confidence passed against the respondent. The petitioners herein aggrieved against that order have filed this writ petition questioning the order of Commissioner.

3. Mr. Rajesh Jain learned counsel for the petitioners would submit that, the order of Additional Collector passed under Section 21(4) of Act of 1993 is final and no revision was maintainable at the instance of respondent herein, he would further submit that the requirement to convene the meeting of no confidence within 15 days under Rule 3(3) is not mandatory therefore, the impugned order passed by learned

Commissioner deserves to be set aside.

4. Mr. Prakash Tiwari learned counsel for the respondent No.5 would support the impugned order. Mr. Dheeraj Wankhede learned counsel for the respondent-State would also take the same stand.

5. I have heard the learned counsel for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

6. In order to resolve the controversy, it would be appropriate to notice Section 21 of the Act of 1993 as well as Rule 3 of Rules of 1994 which states as under:-

“Section 21 of the Act of 1993:-

No-Confidence Motion against Sarpanch and Up-Sarpanch.-

(1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the Panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith.

(2) Notwithstanding anything contained in this Act or the Rules made thereunder a Sarpanch or an Up-Sarpanch shall not preside over a meeting in which a motion of no-confidence is discussed against him. Such meeting shall be convened in such manner as may be prescribed and shall be presided over by an officer of the government as the Prescribed Authority may appoint. The Sarpanch or the Up-Sarpanch, as the case may be, shall have a right to speak at, or otherwise to take part in, the proceeding of the meeting.

(3) No-confidence motion shall not lie against the Sarpanch or Up-Sarpanch within a period of –

- (i) one year from the date of which the Sarpanch or Up-Sarpanch enter their respective office.

- (ii) six months preceding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires;
- (iii) one year from the date on which previous motion of no-confidence was rejected.

(4) If the Sarpanch or the Up-Sarpanch, as the case may be, desires to challenge the validity of the motion carried out under sub-section (1), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him, as his decision shall be final.”

“Rule 3 of the Rules of 1994:-

3. Notice.- (1) Elected members of Gram Panchayat, Janpad Panchayat or Zila Panchayat desiring to move a motion of no-confidence against the Sarpanch or Up-Sarpanch of a Gram Panchayat or President or Vice-President of Janpad or Zila Panchayat, as the case may be, shall give a notice thereof to the prescribed authority in the form appended to these rules:

Provided that such notice shall be signed by not less than one third of the total number of elected members of the concerned Panchayat:

Provided further that where the elected members desire to move the motion of no-confidence against both the Sarpanch and Up-Sarpanch, President and Vice-President of Janpad Panchayat or Zila Panchayat as the case may be, they shall give separate notice.

(2) The prescribed authority, on receiving the notice under sub-rule(1) shall sign thereon a certificate stating the date on which hour and at which the notice has been given to him and shall acknowledge its receipt.

(3) On receiving the notice under sub-rule(1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to Sections 21(3), 28(3) and 35(3), as the case may be. On being thus satisfied, he shall fix the date, time and place for the meeting of the Gram Panchayat, Janpad Panchayat or Zila Panchayat as the case may be, which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof *shall be caused to be despatched* by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janpad Panchayat or Zila Panchayat, as the case may be, to every member of the Panchayat concerned *seven days before the meeting.*”

7. The Rule 3(3) of the Rules of 1994 came to be considered by Division Bench of Madhya Pradesh High Court in the matter of **Muku Bai v. State of M.P. and others**¹ and it has been held that the requirement of convening of meeting within 15 days is mandatory and convened meeting can be adjourned because of the reasons beyond control and it was held as under:-

“8. We have bestowed our best of consideration on this provisions and we are of the opinion that 15 days notice has to be construed as mandatory. The expression is that *he shall fix* the date, time and place for meeting which *shall* not more than 15 days from the date of receipt of the said notice, meaning thereby that it is mandatory because the word ‘shall’ has been used directing the prescribed authority that he shall call meeting within 15 days from the date of receipt of the notice. In democracy, the rule of law is Supreme and once the law says that such important meeting like motion of no confidence should be convened within 15 days from the date of receipt of notice, then it should be given its natural meaning and the intention of the Legislature is that the meeting shall be convened within 15 days. Therefore, the expression ‘shall be convened within 15 days’ has to be interpreted as mandatory and it cannot be construed as directory. It is a different matter that the Court may not interfere in the given case, if it is satisfied that the person has lost the confidence because majority members have voted against him, but that shall not deter from the fact that the provisions should be treated as director. Once the mandate of the law is that the meeting shall be called within 15 days then there is no go from this. No delay could be caused by the prescribed authority, he is under an obligation to convene the meeting within the time fixed by law.

9. In the Principles of Statutory Interpretation by G. P. Singh, Sixth Edition, 1996, at page 259, with reference to the decision of Hon. Supreme Court, G. P. Singh observed:
 “The use of word ‘shall’ raises a presumption that the particular provision is imperative, but this *prima facie* inference may be rebutted by other considerations such as object and scope of the enactment and the

1 1998(2) MPLJ 661

consequences flowing from such construction.” Therefore, it has to be construed that in what context, this expression has been used whether the word ‘shall’ in the present case has been used as a directory or a mandatory. Since it is a matter of no confidence motion, which is one of the very important part of our democracy that a person, who has lost the majority, has no right to rule. Therefore, this provision has to be construed in this background. Since the right of rule depends in democracy on the basis of votes and the incumbent has lost the vote, he cannot be allowed to run the Government; therefore, the Legislature in its wisdom has framed the rules and laid down that the prescribed authority is under an obligation to convene the meeting of no confidence motion within 15 days. Therefore, we are of the opinion that the expression ‘shall’ be construed as a mandatory in the present case and not directory as has been interpreted by the learned Single Judge hence the view taken by the learned Single Judge does not appear to be well founded and the view taken in *Hargovind Johari’s case*² appears to be correct.”

8. The correctness of principles of law laid down in **Muku Bai** (supra) was doubted and matter was referred to the Full Bench. The Full Bench of Madhya Pradesh High Court in matter of **Smt. Bhulin Dewangan v. State of M.P. and others**³ approved the ratio laid down in **Muku Bai**(supra) and held as under:-

“8. The second part of sub-rule (3) of Rule 3 mandates that the prescribed authority after fixing date, time and place of the meeting within the prescribed period not later than 15 days as laid down in the first part of the Rule, shall cause despatch of notice of such meeting to every member of the Panchayat 7 days before the meeting. The said latter part of sub-rule (3) of Rule 3 of 1994 rules is mandatory as intimation of date, time and place of meeting to every member is essential to ensure his presence, if he so desires, in the meeting to be held on such vital issue of passing of no-confidence motion.

17. Consequent to the discussion aforesaid, we respectfully approve the Division Bench decision in *Muku Bai Vs. State of M.P.* [1998(2) MPLJ 661], *Mahesh Pd.*

2 1996 MPLJ 409

3 2000(4) MPHT 69

Choudhary Vs. State of M.P. [1997(2) J.L.J. 397]. We also find no conflict *inter se* in the decisions in *Srinarayan Tiwari Vs. State of M.P.* [1998(1) J.L.J. 124] and *Sharda Bai Khatik Vs. State of M.P.* [1998(1) J.L.J. 399] (both decided by Hon'ble C. K. Prasad, J.).”

9. In the present case, the notice for no-confidence motion was submitted by the Panchas on 18.05.2016 and on which the prescribed authority passed an order on 26.05.2016 and the meeting of no-confidence motion was convened on 08.06.2016 which was admittedly beyond the period of 15 days as contemplated in sub-rule (3) of Rule 3 of Rules of 1994, and provision being mandatory as held in **Muku Bai** (supra) duly approved in **Bhulin Dewangan** (supra) by the Full Bench of the Madhya Pradesh High Court, the motion of no-confidence passed against the respondent was clearly illegal and unsustainable in law. Therefore, learned Commissioner is absolutely justified in setting aside the order of no confidence motion passed against the respondent-Sarpanch.

10. The aforesaid determination would take me to the next submission of learned counsel for the petitioners that the revision petition before the Commissioner was not maintainable in view of finality clause attached to the order of Collector deciding the dispute by virtue of provision contained in Section 21(4) of the Act of 1993.

11. The issue so raised is *no longer res integra*. The Madhya Pradesh High in the matter of **Sadan Kumar v. State of M.P. and others**⁴ speaking through Dipak Misra J. (as then His Lordship then was) has

⁴ 2002(2) MPHT 257

clearly held that a revision before the Commissioner against the resolution of no-confidence would be maintainable. The report states as under:-

“10. It is apposite to state here that the learned Judge had referred to the decision rendered in the case of *Ram Charan Ahirwar Vs. Sub-Divisional Officer, Jatara*, 1997(II) MPJR 357, wherein C. K. Prasad, J., came to hold that when in a statute different words are used, there is presumption that they are not used in the same sense. The learned Judge made a distinction between the orders and the resolutions. Thus, in the case of *Ramnath Kaushik Vs. State of Madhya Pradesh and others*, 1999(2) MPLJ 67 it has been held that a motion of no-confidence cannot be challenged either in appeal or revision but when a motion of no-confidence is passed and the aggrieved party raises a dispute under Section 21(4) of the Act and the authority concerned, namely, the Collector decides the same he passes the order under Section 21(4) of the Act and that becomes a decision which is final. It is submitted by Mr. Jain that as finality is attached to the order passed by the Collector, no revision would lie against the said order. In the case of *Kandhilal Patel and others Vs. State of M.P. and others*, 1999(2) JLJ 109 R. S. Garg, J., after referring to the decisions rendered in the cases of *Naumal Bros. through Gopaldas of Mandsaur Vs. Alihussain Kamarali and others*, 1961 JLJ 450, *Kailashchandra Vs. District Judge, Bhopal*, 1963 JLJ 163, *Surya Prasad Vs. Mohanlal*, 1965 MPLJ SN 26, *Than Singh and others Vs. Board of Revenue and others*, 1967 RN 396, *Indian Homeopathic Medical Association, Calcutta and others Vs. Kanai Lal Pal and another*, AIR 1950 Calcutta 263, *Commissioner of Sales Tax, U.P. Vs. M/s. Super Cotton Bowl Refilling Works*, AIR 1989 SC 922 and *Jetha Bai and Sons Vs. M/s. Sunderdas Rathenai*, AIR 1988 SC 812 came to hold in Paragraph 11 as under:-

"11. Section 91 which relates to appeal and revisions provides that an appeal or revision against the order or proceeding of a Panchayat and other authorities under the Act shall lie to such authority and in such manner as may be described. The State Govt. has framed the M.P. Panchayats (Appeal & Revision) Rules, 95. Rule 3 provides that in case of an order passed by the SDO under any provisions of the Act or Rules or Bye-laws made thereunder, an appeal shall lie to the Collector. In case of an order passed by the Collector, an appeal

shall lie to the Commissioner and in case an order is passed by the Commissioner or Director of Panchayats to the State Government. Rule 5 relating to the revisions provides that the State Govt., the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority Sub-ordinate to it/him call for an examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit. It cannot be disputed that in the hierarchy and according to Rule 3 of the Rules, the Collector is Sub-ordinate to the Commissioner. If an order is passed by the Collector, an appeal shall lie to the Commissioner, therefore, the Commissioner would also have the revisional jurisdiction to call for and examine the records of a matter where an order is made under the Act by the Collector. Reverting back to Section 21 (4), it can clearly be seen that Section 21 (4) does not provide for an appeal. When Section 21 (4) provides for no remedy of appeal then provisions of Section 91 relating to the appeal would not be applicable. Any person aggrieved by the motion carried out under Sub-section (1) of Section 21, has a right to refer a dispute to the Collector who is expected to decide the same possibly within thirty days of submission of the dispute. On face of Section 21 (4), an appeal shall not lie either to the Collector or to the Commissioner or to any other authority. Section 21 (4) if does not refer to an appeal then consideration of the dispute treating it to be an appeal would *prima facie* be illegal and contrary to the provisions of law. In the present case, the Addl. Collector heard the matter as an appeal and disposed of the same without recording any evidence, etc. Whether the procedure adopted by the Addl. Collector was proper or not would be dealt separately but for the purposes of consideration of the maintainability of the revision petition, this Court must hold that against the order passed under Section 21 (4), a revision before the Commissioner shall be maintainable because the order passed by the Collector is an order passed under the Act and the Commissioner being the revisional authority is certainly entitled to call for the records either *suo motu* or on the application of any party for the purpose of satisfying himself as to the legality or

propriety of any order passed by or as to the regularity of the proceeding of the authority Sub-ordinate to him. The Commissioner would certainly be entitled to examine the records of any case pending before or disposed of by an authority Sub-ordinate to him under the Act. The first challenge thrown to the order passed by the Addl. Commissioner deserves to and is accordingly rejected. It is held that the revision before the authority (Addl. Commissioner) was competent."

12. Since, the resolution which was passed an no-confidence motion has been set aside by Commissioner on ground of non-compliance of Rule 3(3) of Rules of 1994, which was passed on majority therefore, it is directed that prescribed authority shall convene a meeting in strict compliance of Rule 3(3) of Rules of 1994, and that meeting of no-confidence motion shall be tabled considered in accordance with law.

13. Thus, the revision petition before the Commissioner was clearly maintainable. Having answered the submissions raised by learned counsel for petitioners in negative I do not find any jurisdictional error in the impugned order, the writ petition deserves to and accordingly dismissed with above-stated observation leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge