

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1979 of 2017

(Arising out of resolution dated 10-7-2017 of Nagar Panchayat,
Baramkela, Distt. Raigarh)

Manish Parmanand Nayak, S/o Parmanand Nayak, aged about
30 years, Vice President, Nagar Panchayat, Baramkela, Distt.
Raigarh (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of
Town & Urban Administration, Mahanadi Mantralaya, Naya
Raipur, Post Office & Police Station Naya Raipur, District Raipur
(C.G.)
2. Collector, Raigarh (C.G.)
3. Sub Divisional Officer (Revenue)-cum-Prescribed Authority,
Sarangarh, District Raigarh (C.G.)
4. Nagar Panchayat, Baramkela, Through the Chief Municipal
Officer, Nagar Panchayat, Baramkela, District Raigarh (C.G.)
5. Smt. Varsha Shaleekram Nayak, President, Nagar Panchayat,
Baramkela, District Raigarh (C.G.)
6. Hiramati Sidar, Councilor, Ward No. 1
7. Kalawati Ganpat Sidar, Councilor, Ward No. 2
8. Kumari Nayak, Councilor, Ward No. 3
9. Kolamani Sidar, Councilor, Ward No. 4
10. Babulal Yadav, Councilor, Ward No. 5
11. Ramkumar Nayak, Councilor, Ward No. 6
12. Dilip Kumar Choudhary, Councilor, Ward No. 7
13. Sudha Tarun Agrawal, Councilor, Ward No. 9
14. Pradeep Agrawal, Councilor, Ward No. 10
15. Manoj Patel, Councilor, Ward No. 12
16. Aitwarin, Councilor, Ward No. 13

17. Thakur Ram Chouhan, Councilor, Ward No. 14

18. Guruwari Sahani, Councilor, Ward No. 15

Respondents No.6 to 18 are Councilors, Nagar Panchayat, Baramkela, District Raigarh (C.G.)

---- Respondents

For Petitioner:	Mr. B.D. Guru, Advocate.
For State/Respondents No.1 to 3: -	Mr. Dhiraj Kumar Wankhede, Govt. Adv.
For Respondent No.4:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Itu Rani Mukherjee, Advocate.
For Respondents No.5 to 18:	Mr. Dhani Ram Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/09/2017

1. This writ petition has been preferred by the petitioner calling in question the meeting of no confidence by notice dated 30-6-2017 convened against the petitioner for removing him from the post of Vice President, Nagar Panchayat, Baramkela, stating that ten days' clear notice as contemplated under Section 43-A (2) (ii) of the Chhattisgarh Municipalities Act, 1961 (for short, 'the Act of 1961') has not been given, therefore, the impugned notice is unsustainable and bad in law.
2. Return has been filed by the State / respondents No.1 to 3 and also by respondents No.5 to 18.
3. Learned counsel for the petitioner would submit that the impugned no confidence motion dated 10-7-2017 has been passed by the Nagar Panchayat, Baramkela, District Raigarh against the petitioner. He would further submit that under Section 43-A(2)(ii) of the Act of 1961, notice of no confidence

motion against the post of Vice President of Nagar Panchayat must be given ten days before the date of meeting and, thereafter, no confidence motion should be passed. But in the instant case, notice was issued on 30-6-2017 and meeting of no confidence motion was held on 10-7-2017, which is contrary to Section 43-A(2)(ii) of the Act of 1961 and in teeth of the decision rendered by the Supreme Court in the matter of **Pioneer Motors Ltd. v. Municipal Council, Nagercoil**¹ as well as in the matter of **Jai Charan Lal Anal v. State of U.P. and others**². He would also submit that the word 'clear' has been used by the Legislature in clause (ii) of sub-section (2) of Section 43 of the Act of 1961, whereas in the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994, the word 'clear' is absent and therefore, the decision in the matter of **Smt. Bhulin Dewangan v. State of M.P. and others**³ would not be applicable in the present case.

4. Learned State counsel would submit that such a notice is strictly in accordance with law.
5. Learned Senior Counsel appearing for respondent No.4 would support the impugned notice.
6. Learned counsel for respondents No.5 to 18 would also support the impugned notice.

1 AIR 1967 SC 684

2 AIR 1968 SC 5

3 2001 (2) MPLJ 372

7. I have heard learned counsel for the parties and considered their rival submissions and also gone through the records with utmost circumspection.
8. In order to consider the plea raised at the Bar, it would be appropriate to notice the provision contained in Section 43-A(2) (ii) of the Act of 1961. Section 43-A of the Act of 1961 provides for No-confidence motion against the Vice-President. Sub-section (2) provides for manner in which meeting of No-confidence motion has to be conducted. Section 43-A (2) of the Act provides as under:-

43-A. No confidence motion against Vice-President.-

(1) ****

(2) For the purpose of sub-section (1), a meeting of the Council shall be convened and presided over by the Collector or a Class I Officer in case of a Municipal Council and a Class II Officer in case of Nagar Panchayat as nominated by him, in the following manner, namely:-

(i) the meeting shall be convened forthwith on a requisition signed by not less than one-sixth of the total number of elected Councillors constituting the Council for the time being;

(ii) the notice of such a meeting specifying the date, time and place shall be despatched to the President and every Councillor ten clear days before the meeting;

(iii) the no-confidence motion moved under this section shall be decided through secret ballot.”

9. The above-stated provision clearly provides that meeting for No-confidence has to be convened on requisition signed by not less than one sixth of the total Councillors, the notice of the meeting has to be dispatched to the President and every Councillor “ten

clear days” before the meeting and that is to be decided through a secret ballot. Thus, Section 43-A(2)(ii) of the Act of 1961 is a provision which deals with the provision of notice, which requires dispatch of notice to the President or Councillor “ten days before” the meeting and does not mandate service of notice ten clear days before the meeting.

10. The aforesaid provision “**ten clear days**” phrase has been employed. According to *Stroud’s Judicial Dictionary of Word and Phrases* the phrase “**ten clear days**”, means that the time is to be reckoned exclusive of both the first and last days (*R. Herefordshire Justices*, 3 B. & Ald. 581; *Liffin v. Pitcher*, 1 Dowl. N. S. 767; *R. v. Long* [1960] 1 Q.B. 681). See AT LEAST; BETWEEN; INTERVAL; AFTER; BEFORE; FROM; NOT LESS; OF TIME; WITHIN. See also *Browne v Black* [1911] 1 K. B. 975; affirmed [1912] 1 K.B. 316, cited Delivery.
11. “**Two clear days**” in R.S.C. Ord. 8, r.2, which provides that this period must elapse between service of notice of motion and the day for hearing, is to be computed without reckoning Sunday (*Brammall v. Mutual Industrial Corporation*, 84 L.J. Ch. 474).
12. A Division Bench of the Nagpur High Court had the occasion to consider this question in little detail in the case of **Rambharoselal Gahoi v. State of Madhya Pradesh and others**⁴, in which the meaning of the expression “clear days” has been explained and it has been unequivocally held that in case of use of such expression the two terminal days must be

4 AIR 1955 Nagpur 35

excluded. Relevant portion of the judgment reads as follow:-

“9. The rule of law is that when words such as so many “clear days” or so many days “at least” are used, the two terminal days must be excluded. This rule is summarized by Maxwell on the Interpretation of Statutes, 10th Edn., at page 351, in these words:

“Again, when so many ‘clear days’, or so many days ‘at least’, are given to do an act, or not ‘less than’ so many days are to intervene, both the terminal days are excluded from the computation. In other cases, it would seem, the rule is to exclude the first and include the last days.”

13. Thereafter, in the matter of **Pioneer Motors Ltd.** (supra), the Supreme Court has held that when the statute uses the expression ‘not more than so many days’ both the terminal days have to be excluded and the number of days mentioned must be clear days. Here the statute itself has used the word seven clear days and, therefore, both the terminal days have to be excluded. Relevant passage from paragraph 8 of the judgment reads as follows:-

“.....the words “not being less than one month” do imply that clear one month’s notice was necessary to be given, that is, both the first days and the last days of the month had to be excluded. To put it in the language used by Maxwell on Interpretation of Statutes, 10th Edition, p. 351:-

“When.....‘not less than’ so many days are to intervene, both the terminal days are excluded from the computation.”

14. Aforesaid view has been reiterated by the Supreme Court in the matter of **Jai Charan Lal** (supra).

15. A Division Bench of the Madhya Pradesh High Court in the matter of **Raghuvans Prasad v. Mahendra Singh and others**⁵,

while dealing with the provisions contained in Section 56(3) of

the Act of 1961 has held that provision about the seven clear days' notice for meeting is a mandatory requirement. The relevant portion of the judgment is as under:-

“The Provision about seven clear days' notice for the meeting is a mandatory one and in the computation of that period both the terminal days have to be excluded. See *Rambharoselal v. The State*.”

16. The principle of law laid down in **Raghuvans Prasad** (supra) was followed by a subsequent decision of a Division Bench of the Madhya Pradesh High Court in the matter of **Awadh Bihari Pandey v. State of Madhya Pradesh and others**⁶ and it was held as under:

“These observation only reinforce the view taken in *Rambharoselal v. The State* and *Raghuvans Prasad v. Mahendra Singh* that in the computation of seven clear days' notice period, both the terminal days have to be excluded. As, in the present case, seven clear days did not intervene between the date of despatch of the notice and the holding of the meeting on 22nd July, 1967, that meeting was clearly invalid; and consequently the election of the respondent No.4 as the President of the Council as that meeting was also invalid.”

17. The correctness of the principle of law laid down in **Awadh Bihari Pandey** (supra) was doubted in the matter of **Farooq Mohammad v. State of Madhya Pradesh**⁷ and the matter was ultimately referred to a Full Bench of the Madhya Pradesh High Court on following question of law:-

“Whether the Division Bench decision in the case of *Awadh Bihari Pandey v. State of Madhya Pradesh and ors.* reported in 1968 MPLJ 638=1969 JLJ 144 was correct to the extent of holding the provision of Sec. 56(3) of M.P. Municipalities Act 1961 as mandatory to the extent of vitiating the duly held

6 1968 M.P.L.J. 638

7 2015 (4) M.P.L.J. 450

elections to the office of Vice-President despite the petitioner not only participating but also contesting the election without demur.”

18. The Full Bench of the Madhya Pradesh High Court held that the decision of the Division Bench in **Awadh Bihari Pandey** (supra) has been impliedly affirmed by the Full Bench in **Smt. Bhulin Dewangan** (supra), and it is not open to doubt the correctness of the view expressed in the case of **Awadh Bihari Pandey** (supra) and affirmed the principle of law laid down therein.

19. Answering the second part of the question it was held that it is essentially about the discretion of the Court and followed the Full Bench decision of **Smt. Bhulin Dewangan** (supra), in which it was held as under:-

“15. The general rule is that non-compliance of mandatory requirement results in nullification of the Act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest are involved and in such a case the act done will be valid even if the requirements or conditions have not been performed. This appears to be the reason for learned C.K. Prasad, J., in *Dhumadhandin v. State of M.P.*, 1997(2) MPLJ 175=1997 (1) Vidhi Bhasvar 49 which was followed by R.S. Garg, J., in *Mahaveer Saket v. Collector, Rewa*, 1998 (2) JLJ 113 for holding that mere non-compliance of first part of the rule in fixing a meeting beyond the prescribed days of the motion of no-confidence would not invalidate the whole proceedings. In case of *Dhumadhandin* (supra), the Sarpanch did not question the validity of the notice calling the meeting of no-confidence and in fact had taken chance by facing the motion. R.S. Garg, J., in *Mahaveer Saket* (supra) placed reliance on the decision of C.K. Prasad, J., in *Dhumadhandin* (supra) to up-hold the passing of the no-confidence motion in the adjourned meeting as in the meeting called within the prescribed fifteen days the Presiding Officer was not

available. Sub-section (4) of Section 21 permits reference of a dispute to the Collector by Sarpanch or Up-Sarpanch against whom a notice of no confidence motion had been passed. The proceedings of the no-confidence motion or other proceedings under the Act are also assailable in this Court as Constitutional Court under Article 227 of the Constitution of India. As has been construed by us, even though second part of the rule requiring dispatch of notice of the meeting to the member is mandatory, yet in every case of challenge to the proceeding of no-confidence motion either before the Collector or this Court, it would still be open to the Collector or this Court to find out whether in a given case non-compliance of any part of the rule has in fact resulted in any failure of justice or has caused any serious prejudice to any of the parties. The general rule is that a mandatory provision of law requires strict compliance and the directory one only substantial. But even where the provision is mandatory, every non-compliance of the same need not necessarily result in nullification of the whole action. In a given situation even for non-fulfillment of mandatory requirement, the authority empowered to take a decision may refuse to nullify the action on the ground that no substantial prejudice had been caused to the party affected or to any other party which would have any other substantial interest in the proceeding. This Court under Article 227 of the Constitution has also a discretion not to interfere even though a mandatory requirement of law has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused. This is how various Single Bench decisions in which even after finding some infraction of the second part of Rule 3 (3) of the Rules of 1994, the resolution of no-confidence motion passed was not invalidated on the ground that no substantial prejudice thereby was caused to the affected parties. The intention of the legislature has to be gathered from the provisions contained in Section 21 and the Rule 3 (3) framed thereunder. The provisions do evince an intention that a meeting of the no-confidence motion be called within a reasonable period of not later than 15 days and every member has to be informed of the same seven days in advance. A notice of no-confidence motion is required to be moved by not less than 1/3rd of the total number of elected members as required by first Proviso to Sub-rule (1) of Rule 3 and can be lawfully carried by a resolution passed by majority of not less than 3/4th of the Panchas present and voting

and such majority has to be more than 2/3rd of the total number of Panchas constituting the Panchayat in accordance with subsection (1) of Section 21 of the Act. This being the substance of the provisions under the Act and the rules, a mere non-compliance of second part of Sub-rule (3) would not in every case invalidate the action unless the Collector while deciding the dispute under Sub-section (4) of Section 21 or this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution comes to the conclusion that such non-compliance has caused serious prejudice to the affected office bearer or has otherwise resulted in failure of justice.”

20. Going by the principle of law laid down in above-stated judgments (*supra*) and examining the facts of the case it is quite *vivid* that in the instant case, notice under Section 43-A(2)(ii) of the Act of 1961 was issued to the Vice-President and Councillors on 30-6-2017 and No-confidence motion was fixed to be held on 10-7-2017 and as such ten clear days did not intervene between the date of dispatch of notice and the date of holding of No-confidence on 10-7-2017, and as such the meeting proposed was clearly invalid. Now, the question of prejudice comes in, which the petitioner has to establish in order to get the result of No-confidence quashed. The petitioner has stated that he has suffered prejudice on account of not giving clear ten days of convincing the Councillors about his work and to demonstrate that his work is more than satisfactory and No-confidence motion does not lie against him which has been deprived of, but the fact remains that petitioner has taken a calculated chance in participating in the meeting of No-confidence without demur and protest knowing fully well that he has not been given ten clear days which he was entitled to convince the Councillors about his

working and non-maintainability of No-confidence motion and thereafter, finding the decision of No-confidence held on 10-7-2017 unpalatable, decided to challenge the No-confidence motion as late as on 14-7-2017 stating that on account of not dispatching the notice ten clear days before the date of meeting, the no confidence motion is unsustainable.

21. Petitioner's participation in the meeting of No-confidence motion held on 10-7-2017 and not raising any such plea during the course of discussion is a circumstance to shut him out from disputing the validity of meeting on the ground of infirmity in convening meeting as the principles of acquiescence and estoppel would apply. [See **Madras Institute of Development Studies v. K. Sivasubramaniyan**⁸.]

22. In the considered opinion of this Court, the petitioner has failed to establish the prejudice in terms of decision rendered in **Smt. Bhulin Dewangan** (supra) followed in **Farooq Mohammad** (supra), therefore, I do not consider it as an appropriate case to exercise the jurisdiction under Article 226/227 of the Constitution of India.

23. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma