

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(C) No. 1720 of 2019**

Ramdayal Sahu, S/o. Phool Singh Sahu, Aged About 52 Years, Vice President, Janpad Panchayat Nagri, R/o. Village & Post Amli, District- Dhamtari, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Panchayat & Rural Development, Indaravati Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
2. Collector Dhamtari, District- Dhamtari, Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Nagri, District- Dhamtari, Chhattisgarh.

---- Respondents**&****W.P.(C) No. 1721 of 2019**

Smt. Pinky Shivraj Shah, W/o. Shri Shivraj Shah, Aged About 41 Years, President, Janpad Panchayat Nagri, District Dhamtari, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Panchayat & Rural Development, Indravati Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. Collector Dhamtari, District Dhamtari, Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Nagari, District Dhamtari, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Yashwant Thakur, Advocate
For State Respondents	:	Mr. Alok Bakshi, Add. A.G.
For Intervener	:	Mr. Awadh Tripathi, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10.05.2019**

Heard on Admission.

1. Both the petitions are being heard together and decided by this common order as similar question of law arises for consideration.

2. The present petitions are against the order dated 30.04.2019 whereby a notice of no confidence motion has been issued by the prescribed authority under Rule 3 of the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Viruddh Avishwas Prastav) Niyam, 1994 (*for short "the Rules, 1994"*). The no-confidence motion was moved against the petitioner Ramdayal Sahu, who is Vice President, Janpad Panchayat Nagri and Smt. Pinky Shivraj Shah, who is President of Janpad Panchayat Nagri.
3. The facts of this case are that initially a no-confidence motion was moved by the Janpad Panchayat members of Nagri on 21.12.2018 on which the prescribed authority i.e. Collector had issued a notice of no-confidence to be held on 03.01.2019. The said notice was subject of challenge by the petitioner in earlier round of litigation i.e. W.P.(C) Nos.2 & 4 of 2019 wherein this Court by an order dated 02.01.2019 had directed that no further steps be taken in respect of motion of no confidence brought against the petitioner. In the said petition, primary one of the major ground which was urged that the signature of the members who moved the no confidence motion should have been verified by the Collector before issuance of any notice for hearing in no-confidence motion. The said writ petition were finally adjudicated on 20.03.2019 and the Court held that Rule 3 (1) of Rules, 1994 do not speak about necessity of personal satisfaction of the Collector as to whether the application is actually signed by three-fourth of the members or not. It was laid down that sub-rule 3 of Rule 3 enjoined to satisfy the prescribed authority about the admissibility of the notice with reference to Section 28(3) in respect of Janpad Panchayat. After

such orders were passed, the present notice of no confidence motion has been issued by the prescribed authority wherein the date of motion has been fixed on 13.05.2019.

4. Mr. Yashwant Thakur, learned counsel for the petitioner would submit that issuance of notice for no confidence motion fixing the date of 13.05.2019 violates the mandate prescribed under sub-rule 3 of Rule 3 of the Rules, 1994. It is contended that the order of the High Court dismissing the earlier writ petition was on 20.03.2019, therefore, the prescribed authority i.e. the Collector was bound under sub-rule 3 of Rule 3 of the Rules, 1994 to issue notice fixing the meeting not beyond the period of 15 days of initial move by members. It is stated that if the statute prescribes a specific act to be done in specific way, there cannot be a deviation and consequently the issuance of notice of hearing on no-confidence motion would be without jurisdiction as per sub-rule 3 of Rule 3 of the Rules, 1994. He further submits that even the no-confidence motion has been fixed after a period of 52 days, the prescribed authority, if at all, wanted to do the no-confidence motion, it was completely to be *de novo* if at all after fresh move is made by members.
5. Per contra, learned State counsel submits that the original notice of no-confidence motion was fixed on 03.01.2019 and since on 02.01.2019 with the intervention of the Court, the no-confidence motion was stayed as such it could not be carried out. He further submits after the order of the Court passed on 20.03.2019, again hearing of no confidence motion has been issued by the prescribed authority fixing the date of 13.05.2019 is completely legal and justified. He placed his reliance in case of

Dhumadandhin v. State of Madhya Pradesh reported in 1997 (2) M.P.L.J. 175.

6. Mr. Awadh Tripathi, learned counsel appearing for the intervener who intervenes also opposes the argument of the petitioner.
7. Heard learned counsel for the parties and perused the documents.
8. Perusal of the record would show that initial notice of meeting of no confidence was on 24.12.2018 whereby the date of hearing for meeting of no confidence was fixed for 03.01.2019 by the Collector. The said notice of hearing was subject of challenge by the petitioner and as per the interim order dated 02.01.2019 passed by this Court in W.P.(C) No.2 & 4 of 2019, it was directed that no further steps be taken in respect of motion of no confidence brought against the petitioner. Consequently, by such order, hearing by Collector on no confidence motion could not be held. Eventually by the order dated 20.03.2019, this Court dismissed the writ petition and rejected the grounds taken by the petitioner, which was the Collector has to arrive at personal satisfaction of signature of members before the notice of hearing of no confidence motion is issued. Meaning thereby, the writ petition was dismissed.
9. At this juncture Rule 3 of the Rules, 1994 would be of relevance, which is quoted herein below :

“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, they 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 dispatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janpad or Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before the meeting. ”

10. Perusal of sub-rule (3) of Rule 3 of the Rules, 1994 purports that on receiving a notice under sub rule 1, the prescribed authority, who is Collector in the instant case as it pertains to Janpad Panchayat, would satisfy himself about the admissibility of such move and thereafter, shall fix a date, time and place which shall not be more than 15 days from the date of receipt of said notice.

The notice are issued by members. Admittedly, in this case, earlier the notice of hearing on no confidence motion under sub rule (3) of Rule 3 of the Rules, 1994 was fixed on 03.01.2019 before the Collector. The said notice was issued on 24.12.2018. Thereafter pursuant to move made by members with the intervention of the interim order dated 02.01.2019 the process of hearing of no confidence could not take place and eventually the writ petition was finally dismissed on 20.03.2019.

11. Thereafter, the impugned notice dated 30.04.2019 (Annexure P-1) is issued wherein the date of hearing of no confidence is fixed on 13.05.2019. Though the word “shall” has been used in sub-rule (3) of Rule 3 of the Rules, 1994, which mandates that the Collector after receipt of the notice under sub-rule 1 shall not extend the time more than 15 days from the date of receipt of the notice but while interpreting the word 'shall' the background of the Rule in it's entirety have to be looked into. The perusal would show that when a move of no confidence notice is moved by members and a notice of no confidence is received under sub-rule (1) of Rule 3 by the Collector, the Collector would not sit over the matter beyond specific period of time. Therefore, the legislative intent is that if the members are not satisfied to continue with their President or Vice President, as the case may be, the Collector would not shelve the same beyond a period of 15 days against wish & will of the members. Therefore, the word “shall” though normally in the context raises a presumption that it is imperative but such inference can be rebutted by the other consideration such as object and scope of the subject and the consequence following from such construction.

12. In the facts of this case, the word “shall” therefore has to be constructed in other way round. The use of word 'shall' in sub-rule (3) of Rule 3 giving an outer limit to the Collector is for restraining him to hold back any hearing of motion of no confidence of President or Vice President as the case may be. The necessary interpretation would be that if the notice of no confidence is moved by the members of Janpad Panchayat, the Collector would be under bounden duty to act on it within 15 days. Therefore, the use of word 'shall' if are examined with intention of legislature, by careful attending the whole scope of sub-rule (3) of Rule 3 of the Rules, 1994, it shows that is meant for upholding the democratic will of the members of particular Panchayat as the case may be and it cannot be made interdependent on Collector. Therefore, sub rule (3) read along with sub rule (1), it would lead to show that the interpretation of the word 'shall' deems the intention otherwise and would compel the Collector to act on it within a time frame.
13. In the likewise situation, in a law laid down in case of ***Dhumadandhin v. State of Madhya Pradesh*** reported in **1997 (2) M.P.L.J. 175**, the Court held that sub rule 3 of the Rules 1994 wherein the period of 15 days has been fixed, it cast a duty upon the prescribed authority to fix the date, time & place of the meeting. By application of the ratio of the case, when it is translated into this case, it shows the members who have given the notice they do not have control over the date of hearing and in the instant case because of operation of stay, the hearing of motion of no confidence could not take place at earlier point of time. In the instant case when the members have issued the notice for no confidence motion and the Collector is satisfied for hearing, then it cannot be presumed to hold *de novo* proceeding a

fresh and to proceed again from the beginning. In view of the reasons stated in foregoing paras, I am not inclined to admit this petition for hearing.

14. In view of the above, both the writ petitions being devoid of merit are dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Ashok