

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.545 of 2019**

(Arising out of order dated 18.10.2019 passed in Writ Petition (C) No.3723 of 2019 by the learned Single Judge)

Rajkumar Sahu S/o Madhav Ram Sahu Aged About 50 Years Sarpanch
Gram Panchayat Agesara, R/o Gram Panchayat Agesara, Janpad
Panchayat Patan, Block And Tahsil Patan, District Durg Chhattisgarh.,
District : Durg, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh.
2. Commissioner Durg Division, Durg, District Durg Chhattisgarh.
3. Collector Durg, District Durg Chhattisgarh.
4. Sub Divisional Officer (Revenue), Patan, District Durg Chhattisgarh.
5. Tahsildar Patan, District Durg Chhattisgarh.
6. Chief Executive Officer Janpad Panchayat Patan, District Durg Chhattisgarh.
7. Gopi Lal Sahu S/o Anek Ram Sahu Aged About 42 Years Ex Acting Sarpanch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
8. Ganeshiya Bai W/o Sukhit Ram Sahu Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
9. Manuram S/o Sadaram Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.

10. Smt. Kusum Bai W/o Sukhnandan Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
11. Smt. Satobai Patel W/o Girdhar Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
12. Chandrahas S/o Latkhor Pancha, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
13. Smt. Shanti Bai W/o Khusat Patel Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
14. Smt. Shailu Patel W/o Poshan Patel Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
15. Rajendra Kumar Sahu S/o Jaituram Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.
16. Narendra Kumar Sahu S/o Awadhram Sahu Panch, R/o Village Agesara, Post Agesara, Post Agesara, Block And Tahsil Patan, District Durg Chhattisgarh.

---- Respondents

For Appellant	: Shri Praveen Dhurandhar, Advocate
For Respondent No.7	: Shri Vikas Dubey, Advocate
For Respondent/State	: Shri Ghanshyam Patel, Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Parth Prateem Sahu, Judge

09.12.2019

1. Challenge in this appeal is to the order dated 18.10.2019 passed in Writ Petition (C) No.3723 of 2019 whereby the writ petition filed by Respondent

No.7 has been allowed and the order passed by the Collector in reference has been set aside.

2. The case of the Appellant is that he was an elected Sarpanch of the village Panchayat, Agesara, Tahsil Patan, District Durg. Elected members of the Gram Panchayat have forwarded an application to the prescribed authority i.e. Sub Divisional Officer (Revenue) for bringing the no confidence motion against him. The subsequent reminder notice was also submitted by them on 03.08.2018 vide Annexure P/3. The Sub Divisional Officer (Revenue) after considering the contents of the notice, has fixed the date for no confidence motion on 21.08.2019 and the notices were also issued to the Panchas as well as the Petitioner. The notice sent by the Sub Divisional Officer (Revenue) was received by the Petitioner and he also participated in the no confidence motion proceedings.
3. In the no confidence motion, out of 12, 10 Panchas have voted in favour of the motion and one against the motion, whereas one vote was declared invalid. The Presiding Officer after recording the proceedings of no confidence motion, held that no confidence motion to be carried out. He forwarded the proceedings to prescribed authority by recording that the motion of no confidence is carried out (passed) against the Petitioner. Consequently, the Prescribed Authority passed order of removal of the appellant.
4. The Petitioner dissatisfied with the manner of proceedings of no confidence motion took place against him, has challenged the same under Section 21(4) of the Panchayat Raj Adhiniyam, 1993 in reference before

the Collector and in that reference, he has raised a ground that there was violation of Rule 3 of 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 (hereinafter referred to as 'Rules of 1994') and thereby the whole proceedings of no confidence motion is vitiated. The sum and substance of the reference of the Petitioner is that the proceedings of no confidence motion has been fixed beyond the period of 15 days, which is contrary to sub-rule (3) of Rule 3 of the Rules of 1994. The Collector after considering the submissions made by the respective parties before him and also considering the provisions of the Rules pointed out by the Petitioner, has allowed the reference and set aside the order of no confidence motion passed against the Petitioner mentioning that the proceedings of no confidence motion was held contrary to Rule 3(2) and Rule 3(3) of the Rules of 1994. The order of Collector was challenged by Respondent No.7 before the Commissioner, Durg Division, Durg in a revision, which came to be dismissed vide order dated 26.09.2019.

5. The order of the Commissioner was challenged by Respondent No.7-Gopi Lal Sahu, before this Court by filing Writ Petition (C) No.3723 of 2019 and after considering the facts and submissions presented before the Court by the respective parties as well as considering the Rules and the verdict passed by Full Bench of Madhya Pradesh High Court in **Bhulin Dewangan v. State of Madhya Pradesh and Others, (2000) 4 MPHT 69**, and the verdict passed by Division Bench of the Madhya Pradesh High Court in **Muku Bai v. State of Madhya Pradesh and Others, 1998 (2)**

MPLJ 661, as well as the verdict passed by this Court in **Sahasram Jangde and Others v. State of Chhattisgarh and Others, (2013) 4 CGLJ 526**, has allowed the writ petition by holding that the Petitioner has failed to point out that what prejudice has been caused to him, if the meeting has been held beyond the period of 15 days. The learned Single Judge after considering the fact that as the no confidence motion has been passed with majority and therefore, the Petitioner cannot be permitted to occupy the office of Sarpanch when he has lost the confidence of the Panchas of the village Panchayat.

6. Shri Praveen Dhurandhar, learned counsel for the Appellant submits that Rule 3 of the Rules of 1994 are mandatory. He has placed reliance on the case of **Bhulin Dewangan (supra)** and submits that when the meeting itself has been fixed to be conducted beyond the period of 15 days, therefore, the whole proceedings have been vitiated. He submits that the Rule 3(3) of the Rules of 1994 envisages the meeting of no confidence to be fixed not beyond fifteen days and as word 'shall' has been used under Rule 3(3), it makes the provision to be mandatory.
7. Per contra, Shri Vikas Dubey, learned counsel for Respondent No.7 submits that the Sub Divisional Officer (Revenue) has proceeded with the matter in accordance with the Rules and after considering the fact that there is compliance of sub-rule (1) of Rule 3 of the Rules of 1994 and also that, there was an application by 1/3rd majority for calling no confidence against the Petitioner as well as no confidence motion was passed with more than 3/4th majority of the Panchas present in the voting. He submits

that the Appellant lost the confidence of majority of Panchas, the learned Single Judge has not committed any error in allowing the writ petition.

8. Shri Ghanshyam Patel, learned counsel for the State submits that requirement of the provisions of Rule 3(3) of the Rules of 1994 insofar as issuance of notice of no confidence meeting has been made to be mandatory in all the circumstances. He further submits that in the reference filed by the Petitioner before the Collector itself, he has not raised any ground or not made any pleading with respect to the prejudice caused to him for fixing the meeting beyond the period of 15 days by the Sub Divisional Officer (Revenue) in holding meeting of no confidence motion.
9. We have heard the learned counsel for the respective parties and perused the records.
10. For better understanding, the provision of Rule 3(3) of the Rules of 1994, relevant provision of it, is reproduced herein-below :

“3.Notice.-(1) * * *

(2) * * *

(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.”

11. Sub-rule (3) of Rule 3 of the Rules of 1994 has been considered dealt with by the Full Bench of the Madhya Pradesh High Court wherein the Hon'ble High Court has held that though in Rule 3, the word 'shall' has been used, but it cannot be deemed to be a mandatory provision, but it will have its effect as a directory and it can be interdicted only when the Petitioner or the affected party put-forth his case by showing that some prejudice has been caused to him or her by not following the rules as provided under Rule 3(3) of the Rules of 1994.
12. In the present case, the Petitioner has not pleaded or submitted in the reference or made submission before this Court in very specific terms that as to what prejudice has been caused to him, but he has made his submission only with regard to the provisions by referring that in the provisions of Rule 3(3) of the Rules of 1994, the word 'shall' has been used and therefore, it is mandatory in nature, non-compliance of the same will vitiate the entire proceeding of no confidence motion.
13. Learned counsel for the Appellant submits that the proceedings of no confidence motion itself has been vitiated, therefore, the appeal should be allowed. We are not convinced with the submission made by learned counsel for the Appellant for the reason that the Full Bench of the Mahya

Pradesh High Court has already held that merely non-compliance of the provisions of sub-rule (3) of Rule 3 of the Rules of 1994 will not automatically held the whole proceedings to be vitiated, but it is for the Petitioner to show that what prejudice has been caused to him in non-compliance of the same or non-compliance is resulted in any failure of justice or has caused any serious prejudice to the parties.

14. The Hon'ble Full Bench of High Court of Madhya Pradesh has held that even where the provisions are mandatory, every non-compliance of the same need not necessarily result in nullification of the whole section. The authority or Court even for non-fulfillment of mandatory requirement may refuse to nullify the action on the ground no substantial prejudice is caused to the party.
15. Similar issue with respect to non-compliance of sub-rule (3) of Rule 3 of the Rules, 1994 has been dealt with by this Court in Writ Appeal No.73 of 2019, in which, this Court has held that once the Appellant who was an elected Sarpanch lost confidence of the majority of the Panchas, then under a democratic set up, he has no right to hold the post any further.
16. In the case at hand, the fixing of the notice beyond period of 15 days was not challenged, there is no specific ground taken as to what prejudice was caused to the Appellant and it led to failure of justice.
17. In case of **Dhumadandhin (Smt.) v. State of M.P. and Others, 1997 (1) Vidhi Bhasvar 49**, the High Court of Madhya Pradesh has dealt with the provisions of Rule 3(3) of the Rules of 1994 and held thus :

“5. Question which falls for consideration is as to whether the passing of a no-confidence motion beyond a period of 15 days can be said to be vitiated only on this account. Rule 3(3) of the Rules casts duty upon the prescribed authority to fix the date, time and place of the meeting which shall not be more than 15 days from the date of receipt of the notice. The question, therefore, is as to whether failure on part of the prescribed authority to fix the meeting within time stipulated shall render the motion of no-confidence vitiated in the eye of law. Rule 3(3) of the Rules casts duty on the prescribed authority, the member who would have given the notice for consideration of the no-confidence motion has no control over the same. In my opinion, the will of the members in relation to the no-confidence motion cannot be defeated on account of inaction or late action of the prescribed authority. Holding otherwise, will lead to nullifying the wish of the members on the no-confidence motion for an act over which they have no control. In my opinion, Rule 3(3) of the Rules relates to the purpose of a public duty and to hold null and void acts in neglects of his duty in work serious injustice to persons who have no control over those who are entrusted with the duty and at the same time would not promote the main object of the legislature. Accordingly I am of the considered view, that a motion of no-confidence passed against the petitioner beyond a period of 15 days from the date of notice cannot be held to be illegal. Accordingly I negative this submission of the learned counsel for the petitioner.

6. There is yet another reason which disentitles the petitioner from the relief sought for in the present writ application. The petitioner did not challenge the notice issued by the Prescribed Authority fixing the date of the meeting beyond 15 days. She took chance and ultimately when the motion of no-confidence has been passed against her, she has turned her head and chosen to approach this Court, challenging the no-confidence motion. In case the petitioner was aggrieved by fixing of a date beyond the period of 15 days from the date of notice, she could have very well approached this Court impugning the said notice. She has not chosen to do the same. Further, nothing has been shown to demonstrate that the petitioner in any way was prejudiced by holding of the meeting beyond a period of 15 days. These are additional reasons which disentitle the petitioner for the relief sought in the present writ application. By way of abundant caution I may state that in case the meeting is not held within 15 days, the members have the right to approach this Court for its compliance and this judgment may not be construed to have held that the prescribed authority has the discretion to fix the meeting beyond 15 days from the date of receipt of notice. However, the no-confidence motion cannot be invalidated on account of the fact that meeting was convened beyond 15 days of the notice.”

18. The Division Bench of High Court of Madhya Pradesh again considered the provision of Rule 3(3) of the Rules of 1994 in case of **Muku Bai** (supra) and held thus :

“12. However, in the present case, since no-confidence motion has been passed by majority; therefore, we will not like to interfere in such writ petition on facts irrespective of fact that the meeting was not called within 15 days as the petitioner/appellant has already lost the majority; therefore, we will not issue a direction for setting aside of that so called passing of no-confidence motion.”

19. The Full Bench of High Court of Madhya Pradesh in case of **Bhulin Dewangan** (supra) dealt with the requirement of the compliance of the provision of Rule 3(3) of the Rules of 1994 and held thus :

“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 (1) Vidhi Bhasvar 49) which was followed by R.S. Garg, J., in *Mahavir Saket v. Collector, Rewa* (1998 (1) J LJ 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 Mahavir 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.

16. We get some support in our conclusion on the construction of the provisions contained in the Rule from Statutory Construction by Francis J. McCaffrey, 1953 Edition, Article 52, Page 110 where it stated :

"Where a statute regulates the time at or within which an act is to be done by a public officer or body, it is generally construed to be permissive only as to the time, for the reason "that the public interests are not to suffer by the laches of any public officer" (Looney v. Hughes, 26 N.Y., 514). While the Courts are inclined to hold such provisions to be directory only as to time, they will be read as mandatory if the nature of the act to be performed or the phraseology of the statute indicates an intention on the part of the legislature to exact a literal compliance with the requirement of time. The Courts seek to achieve a just result in not ascribing an invalidating effect to the failure of public officers to observe the time provisions of statutes; a contrary rule would operate unfairly

in prejudicing the rights of persons who have no control over the conduct of the public officer."

and from the following passage in Statutory Interpretation by Francis Bennion, Second Edition, Part I, Section 10 page 34 :

"Even where the duty is mandatory, the Court will not now-a-days hold it to be contravened because of a purely formal or technical defect. This may be described as a defect that does not materially impair the remedy intended to be provided by the enactment for the mischief to which it is directed."

18. We also hold that the learned Single Judge in *Dhumadhandin v. State of M.P. and Ors.* (1997 (1) *Vidhi Bhasvar* 49) rightly in exercise of his discretion declined to invalidate the no-confidence motion passed in a meeting held beyond 15 days of the receipt of the no-confidence motion and the case is distinguishable on its facts."

20. In view of the above discussion and in the light of the law laid down by Full Bench of High Court of Madhya Pradesh, we do not find any merit in the submission made by learned counsel for the Appellant. The appeal being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge