

HIGH COURT OF CHHATTISGARH, BILASPURWPC No. 1359 of 2021

Smt. Urmila Dhruv W/o- Ramesh Dhruv Aged About 31 Years
Sarpanch Gram Panchayat Khapradih Tehsil Simga, District-
Bhatapara-Balodabazar,(Chhattisgarh). **--- Petitioner**

Versus

1. State of Chhattisgarh through Secretary Panchayat and Rural Development Department Mahanadi Bhawan, New Raipur, District : Raipur, Chhattisgarh
2. Collector Bhatapara-Balodabazar District : Balodabazar-Bhathapara, Chhattisgarh
3. Sub-Divisional Officer (Revenue) and Prescribed Authority (Panchayat) Simga, District Bhatapara-Balodabazar (Chhattisgarh),
4. Chief Executive Officer Janpad Panchayat Simga District Bhatapara-Balodabazar (Chhattisgarh).
5. Tahsildar Simga District Bhatapara Balodabazar (Chhattisgarh),
--- Respondents

For the Petitioner	: Mr. Anoop Majumdar, Advocate
For the State	: Mrs. Richa Shukla, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam BhaduriOrder on Board03.03.2021

1. Heard.
2. Learned counsel for the petitioner would submit that according to *Rule 3 Sub-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* after the notice is given by the competent authority, if it crosses the prescribed limit of 15 days, then it loses its efficacy and the entire motion of no confidence will come to an end. He refers to a

case law reported in **1998 2 MPLJ 661 Muku Bai Vs. State of M.P.** and would submit that the impugned notice of no-confidence motion against the petitioner is contrary to law.

3. Perused the judgment rendered in *Muku Bai Vs. State of M.P.* (*supra*). Para 9 of the said judgment is relevant and quoted below :

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 interference may be rebutted by other considerations such as object and scope of the enactment and the 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 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 to 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, I 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 (supra) appears to be correct”.

4. After going through the decision of the M.P. High Court

reported in **1998 2 MPLJ 661** as also the principles laid down by this Court in WPC No. 1720 of 2019 (*Ram Dayal Sahu Vs. State*) decided on 10.05.2019 and after reading the Rule 3 of the Rules, 1994, the submission of the petitioner does not appear to be logical. The period of notice is 15 days cannot be used in the negative sense to drop the entire proceedings, which would be against the interpretation as relied on by the petitioner in 1998 (2) MPLJ 661 (supra). In such a case, the democratic object of Rule 3 of Niyam 1994 would be defeated.

5. Accordingly, I do not find any merit in this petition and it is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE