# Gopi Lal Sahu Vs State Of Chhattisgarh And Ors

**Court:** Chhattisgarh High Court

**Date of Decision:** Oct. 18, 2019

**Acts Referred:** Chhattisgarh Panchayat Niyam, 1994 â€" Rule 3, 3(3)

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** Vikas Dubey, Sunita Jain, N. S. Dhurandhar

**Final Decision:** Allowed

## Judgement

P. Sam Koshy, J

1. With the consent of the parties matter heard finally at motion stage.

2. The challenge in the present writ petition is to the order Annexure P-1 dated 26.09.2019 passed by the Commissioner, Durg Division, District Durg

in Revision Case No. 205 A-89/2018-19. Vide the said impugned order, the Commissioner has affirmed the order Annexure P-6 dated 27.07.2019

passed in Panchayat Case No. 74 /A-89/2017-18.

3. The facts of the case in nut shell is that the respondent No.7 was an elected Sarpanch of the Gram Panchayat, Agesara, Tahsil, Patan, District

Durg. The panches of the said Gram Panchayat filed a complaint against respondent No.7 in respect of irregularities and misconduct that he had

committed in the course of discharging his duties as a Sarpanch. Subsequently, motion of no confidence was put forward on 03.08.2018. The

Prescribed authority took cognizance of the matter and issued notice for holding no confidence motion on 21.08.2019. The notice was duly served

upon the respondent No.7 the Elected Sarpanch on 18.08.2018. The elected Sarpanch respondent No.7 participated in the no confidence motion on

21.08.2018 and motion was passed with a thumping majority of 10:1. Ten votes casted in favour of the motion and solitary one vote of respondent

No.7 went against motion. One vote was declared invalid.

4. The motion of no confidence passed against the respondent No.7 was immediately challenged before the Collector. The Collector vide Annexure P-

6 dated 27.07.2018 allowed the appeal of the petitioner on the ground that it appears to be violation of Rule 3 of the Chhattisgarh Panchayat (Gram

Panchayat ke Sarpanch Thatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat ke President Thatha Vide-President Ke Virudh Avishwas

Prastav) Niyam, 1994 (in short 'the Rules of 1994') wherein it was held that firstly there has to be a clear seven days notice to the Panches. The

meeting of no confidence motion also ought to have been held within 15 days from the date of receipt of motion by the Panches. The order of

Collector was subjected to revision by the petitioner and revisional authority also vide the impugned order Annexure P-1 dated 26.09.2019 has rejected

the revision affirming the order passed by the Collector. It is this order of revisional authority and the order passed by the Collector which is under

challenge in the present writ petition.

5. Contention of the counsel for the petitioner is that there was apparently no prejudice which has been caused to the interest of the respondent No.7

in conducting of the no confidence motion and meetings thereafter. Therefore, the finding of the Collector as well as the Revisional Authority is perse

bad. Contention of the petitioner further is that admittedly the complaint was firstly lodged on 03.08.2018 and prescribed authority issued notice on

14.08.2018 which was duly served upon the respondent No.7 well in advance on 18.08.2018 in respect of meeting that was to be held on 21.08.2018.

Further contention of the petitioner is that he had duly participated in the proceedings and had all the reasonable opportunity to defend himself and

therefore the decision of the no confidence motion cannot be under any circumstances held to be bad in law. It was also the contention of the

petitioner that since respondent No.7 has miserably failed in the no confidence motion itself shows that he has lost confidence and also he has lost

confidence of the other Panches. Therefore, it would not had been in the public interest to permit respondent No.7 to come back in office as that

would be detrimental to the society at large.

6. Counsel for the petitioner referred to the Full Bench Decision of the Madhya Pradesh High Court in the case of Bhulin Dewangan V. State of M.P.

& Others, 2000 (4) MPHT 69 and also other judgments of this High Court wherein Full Bench decision of the M.P. High Court has been followed.

7. Per contra counsel appearing for respondent No.7 defending the two orders submitted that plain reading of the two impugned orders would clearly

reflect that there is a clear violation of Rule 3 of the the Rules of 1994 (Supra) and therefore the two orders cannot be held to be bad in law. He

further contended that since there is a concurrent finding of fact by the two statutory authorities, the scope of interference by the writ Court therefore

gets reduced substantially and writ petition therefore deserves to be rejected.

8. Counsel for the respondent No.7 referred to the judgment of the Division of the Madhya Pradesh High Court in the case ofM uku Bai Vs. State of

Madhya Pradesh and Others, 1998 (2) MPLJ 661 wherein it has been held that the provisions under Rule 3 of the Rules of 1994 (Supra) has to be

mandatorily complied with. In the event of non compliance, the entire proceedings of the no confidence motion gets vitiated.

9. Having heard the contentions put forth on either side and on perusal of the record, it would be relevant to refer to the Full Bench Decision of the

Madhya Pradesh High Court in the case of Bhulin Dewangan(supra) wherein considering the aspect of consequences of the non compliance of the

statutory provisions as in Paragraph 15 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 (1) Vidhi Bhasvar 49)

which was followed by R.S. Garg, J., in Mahavir Saket v. Collector, Rewa (1998 (1) 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 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.

10. The aforesaid view of the Full Bench decision of the Madhya Pradesh High Court stands reiterated by this Court in the case of Sahasram Jangde

and Others Vs. State of Chhattisgarh & Others, 2013 (4) CGLJ 526 wherein in paragarph 6 it has been held as under :-

6.When the law laid down by the full Bench of M.P. High Court and Division Bench of this Court is applied to the facts of the present case, it is to be

seen that respondent No.6 Sarpanch has not raised any ground before the Additional Collector that because of the fact that meeting was convened on

8th day from the date of dispatch of notice and not on 9 th day, and thus clear 7 days notice was not issued, she has suffered grave prejudice in

preparing herself for the meeting and there being no such finding by the Additional Collector in the impugned order, it will be taken as if no prejudice

has been caused to respondent No.6 Sarpanch and thus in absence of prejudice or failure of justice, the Additional Collector has wrongly set aside the

resolution of the Gram Panchayat declaring the no-confidence motion to be passed. It is also to be seen that once this Court in the earlier writ petition

has held that the earlier resolution of the Gram Panchayat passing no-confidence motion in May, 2011 having been annulled on technical grounds, the

bar against moving of another motion within one year would not apply, the SDO(Revenue) should not have sought opinion from the Chief Executive

Officer, Janpad Panchayat or from the Deputy Director Panchayat. However, by doing so, he wasted 7 days in the process. Therefore, once the no

confidence motion has been passed the democratic norms and the statutory provisions cannot be left at the mercy of the prescribed authority whetn

the law is well settled in the case of Bhulin Dewangan(Supra). Declaring the resolution of the Gram Panchayat which has passed the no confidence

motion by majority as illegal would render the wish of the house nugatory and the Sarpanch who has lost the confidence of the house shall be allowed

to function without any mandate in her favour. Such interpretation of Rule is neither permissible nor contemplated and this Court will not allow such

effort of the prescribed authority to frustrate the will of the house by adopting dilatory tactics on the pretext of seeking legal opinion or opinion from

the higher authorities. Learned counsel for respondent No.6 has relied on judgment of M.P. High Court in the matter of Jugraj Singh Markam Vs.

Dhannalal Maravi and others : 2003 (4) MPLJ 378. However, in view of the discussion made above, and particularly the law laid down by the Full

Bench of the M.P. High Court and the peculiar facts of this case, the said judgment relied upon by respondent No.6 has no application and is

distinguishable. In the result, the writ petition succeeds and is allowed. The impugned order dt. 28.06.2012 passed by the Additional Collector is set

aside. Consequently respondent No.6 no longer remains as Sarpanch of Gram Panchayat, Dahida, Tahsil Sarangarh District Raigarh.

11. It would be relevant also to take notice of the judgment passed by this Court in WPC 591/2018 decided on 27.11.2018 wherein in paragraph 12 to

14 it has been held as under :-

12.In the case at hand, the resolution clearly records that the meeting began at the scheduled time and place. Moreover, the Sarpanch has not stated

before the Court as to what prejudice has been caused to him if any particular provision has not been followed.

13. In a matter where the outgoing Sarpanch has lost the confidence of the house, it is necessary for him to prove the prejudice caused to him, which

has resulted in vitiation of the entire process as has been recorded by the Full Bench of the HighCourt of Madhya Pradesh in Smt. Bhulin Dewangan

v State Of M.P. And Ors.4 The no confidence motion having been passed by the required majority, the Commissioner has wrongly interfered with the

order passed by the Collector.

14.In the result, the impugned order dated 5-2-2018 passed by the Additional Commissioner, Bilaspur Division, deserves to be and is hereby set aside.

Consequently, the motion of no confidence carried against the Sarpanch on 9-3-2017 is sustained and the respondent No.7/Smt. Karuna Sarve,

Sarpanch, shall cease to hold the office forthwith.

12. In view of the aforesaid authoritative decision firstly by the Full Bench of Madhya Pradesh High Court which is further been reiterated by this

Court in a couple of decisions referred above, this Court finds that facts of the instant case are also if not identical almost similar. Here also the Notice

was issued on 14.08.2018 it was duly served upon the respondent No.7 on 18.08.2018 and meeting was held on 21.08.2018. All the panches of the

Gram Panchayat were available on the date when the meeting was convened i.e. on 21.08.2018. Respondent No.7 had also fully participated in the

proceedings and had also casted his vote on the motion. The result shows that the respondent No.7 lost miserably inasmuch as the 10 out of the 12

panches voted in favour of the motion and only one vote of the respondent No.7 was against the motion. Another vote was declared invalid. Thus, the

motion was passed with a ratio of 10:1. The fact that out of 12, 10 Panches voted against respondent No.7 shows that he has admittedly lost

confidence of the Panches and in the light of the judgment referred in the preceding paragraphs, it would not be in the larger public interest permitting

the respondent No.7 to continue on the post of Sarpanch.

13. So far as the judgment referred to by the counsel for the respondent No.7 in the case of Muku Bai(supra) is concerned if we read the Full Bench

decision subsequently decided, the decision of Muku Bai also has been referred by the Full Bench and they have approved of the law as it stands but

have further gone to decide the issue on the ground of the person loosing public confidence and also that it would not be in the public interest to permit

somebody against whom there is no confidence of the other panches. The Full Bench judgment also went to hold that it was necessary to show the

prejudice caused on account of the alleged non compliance of the statutory requirement i.e. the requirement as is envisaged under Rule 3 of the Rules

of 1994 (Supra).

14. Given the aforesaid facts and circumstances of the case ,this Court is compelled to allow the present writ petition. Accordingly, the impugned

orders Annexure P-1 dated 26.09.2019 & Annexure P-6 dated 27.07.2019 stands set aside/quashed with consequences to follow.

15. With the aforesaid observations, the writ petition stands allowed.