

1  
**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.1118/2015**  
**Ruksana Patel Vs. State of M.P. and others**

**Gwalior, Dated :18/02/2019**

Shri S.K. Sharma, Advocate for petitioner.

Shri R.K. Soni, Government Advocate for respondents no.1  
and 2/State.

Shri MPS Raghuvanshi, Advocate for respondent no.3.

This petition under Article 226 of the Constitution of India has been filed challenging the first meeting of Municipal Council, Ashoknagar held on 6/1/2015, in which respondent no.4 was elected as Vice President on the ground that clear seven days' notice was not given, as required under Rule 3 of the M.P. Municipalities (Election of Vice-President) Rules, 1998 (hereinafter referred to as "the Rules of 1998").

It is submitted by the counsel for the petitioner that the Full Bench of this Court in the case of **Farooq Mohammad Vs. State of M.P. and others** reported in **2015 (4) MPLJ 450** has held that the Rule 3 of the Rules 1998 is mandatory and dispatch of notice to every councillor prior to seven clear days is mandatory. It is further submitted that in the present case the notice was issued on 2/1/2014, whereas the meeting was held on 6/1/2015, in which respondent no.4 was elected as Vice-President. Since the meeting was bad, therefore, the election of respondent no.4 is also liable to be set aside.

**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.1118/2015**  
**Ruksana Patel Vs. State of M.P. and others**

*Per contra*, the petition is opposed by the counsel for the State as well as the counsel for respondent no.3. It is submitted by the counsel for the State that the meeting was attended by all the councillors who had exercised their voting right without any objection. It is further submitted that although the provisions of Rule 3 of Rules 1998 and Sections 55 and 56 of the M.P. Municipalities Act are the mandatory provisions, but the mandatory provisions of law can also be waived by the parties. In the present case, the petitioner had also participated in the meeting convened on 6/1/2015. She had participated in the voting without any objection and after having participated in the voting and after having waived her right to challenge the convening of meeting without notice of clear seven days, now the petitioner cannot challenge the election of respondent no.4 on the ground of violation of mandatory provisions of Rule 3 of the Rules 1998 and Sections 55 and 56 of the M.P. Municipalities Act.

Heard learned counsel for the parties.

So far as the nature of provisions of Sections 55 and 56 of the Municipalities Act and Rule 3 of the Rules of 1998 are concerned, the question is no more *res integra*. The Full Bench of this Court by judgment passed in the case of **Farooq Mohammad (supra)** has held

**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.1118/2015**  
**Ruksana Patel Vs. State of M.P. and others**

as under:-

“23. Be that as it may, on the first part of the question as formulated by the learned Single Judge, we answer the same by upholding the decision of the Division Bench in the case of *Awadh Behari Pandey* (supra); and further hold that the said decision does not require any reconsideration.”

Thus, the provisions are mandatory in nature.

The next question for consideration is that “whether the petitioner can waive her right or she is estopped from challenging the election of respondent no.4 or not?”

This question raised by the petitioner is also no more *res integra*. The Full Bench of this Court in the case of **Smt. Bhulin Dewangan Vs. State of M.P. and others** reported in **2001 (2) MPLJ 372** has held as under:-

“14. An incidental question arose is whether non-compliance of the second part of sub-rule (3) of Rule 3 of the Rules of 1994, which we have held as mandatory, would as a necessary corollary invalidate the proceedings held in the meeting called for passing the no-confidence motion. This question has not directly been posed, but as the learned Single Judge appears to have noticed some conflict or cleavage of opinion between several Single Bench decisions of this Court, we find it necessary to express our opinion on the same.

15. The general rule is that non-compliance of mandatory requirement results in nullification of the Act. Thereare, however, several exceptions to the same. If certain requirements or conditions are provided by statute in the interest of a

**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.1118/2015**  
**Ruksana Patel Vs. State of M.P. and others**

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 **Mahavir 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 **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

**THE HIGH COURT OF MADHYA PRADESH****Writ Petition No.1118/2015****Ruksana Patel Vs. State of M.P. and others**

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

**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.1118/2015**  
**Ruksana Patel Vs. State of M.P. and others**

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.”

Thus, it is clear that unless and until non-compliance of the mandatory provisions has caused any serious prejudice or has resulted in failure of justice, the proceedings of first meeting held on 6/1/2015 cannot be quashed. Except mentioning that clear seven days' notice was not given, the petitioner has not pointed out as to what prejudice was caused specifically when all the elected councillors had participated in the first meeting held on 6/1/2015 and even petitioner had exercised her voting right without raising any objection to the meeting convened on 6/1/2015. Thus, this Court is of the considered opinion that participation in the meeting without raising any objection with regard to its validity, the petitioner had waived her right of challenging the proceedings of first meeting dated 6/1/2015.

It is next contended by the counsel for the respondents that the petitioner has an alternative remedy, therefore, this petition should not be entertained.

So far as the question of alternative remedy is concerned, as

**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.1118/2015**  
**Ruksana Patel Vs. State of M.P. and others**

this Court has already come to a conclusion that no prejudice has been caused to the petitioner, therefore, it is not necessary for this Court to dismiss this petition on the ground of not availing the alternative remedy available to the petitioner.

Accordingly, the petition fails and is hereby **dismissed**.

**Arun\***

**(G.S. Ahluwalia)**  
**Judge**