HIGH COURT OF MADHYA PRADESH : JABALPUR

WRIT PETITION No. 14549/2015

Farooq Mohammad .....Petitioner

Versus

State of M.P. and others ....Respondent

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Shantanu Kemkar
Hon'ble Shri Justice J.K. Maheshwari

Whether approved for reporting? : Yes.

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Shri M. P. S. Raghuvanshi, Advocate on behalf of Shri J. P. Mishra, Advocate for the petitioner.

Shri Samdarshi Tiwari, Dy. Advocate General for respondents/State.

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Reserved On : 02.09.2015

Date of Decision : 15.09.2015

J U D G M E N T

{15/09/2015}

Per: A.M. Khanwilkar, Chief Justice:

This petition originally filed at Gwalior Bench (numbered as W.P. No.929/2015), has been placed before us

pursuant to the order passed by the learned Single Judge dated 14.8.2015. The learned Single Judge has referred the matter by framing following question :-

> "Whether the Division Bench decision in the case of **Awadh Behari Pandey V. State of Madhya Pradesh and Ors**. reported in **1969 JLJ 144** = **1968 MPLJ 638** was correct to the extent of holding the provision of Sec. 56 (3) of M.P. Municipalities Act 1961 as mandatory to the extent of vitiating the duly held elections to the office of Vice President despite the petitioner not only participating but also contesting the election without demur."

2. The relevant facts for considering the above said question are as follows: That the general elections to the Municipality Council Chanderi, District Ashoknagar was concluded by issuance of notification under Section 45 of Madhya Pradesh Municipalities Act 1961 (hereinafter referred to as the Act), declaring the names of elected Councillors and President. After election the State Government directed the Collector to ensure convening of the first meeting of the Municipal Council within one month from the date of general election, as per Section 55 of the Act. In furtherance thereof, the Collector, District – Ashoknagar, appointed the Sub Divisional Officer as a Presiding Officer and prescribed Authority for convening and conducting the first meeting under Section 55 (2)

of the Act; and fixed the date of meeting as 6.1.2015 at 10:30 a.m. vide notice dated 1.1.2015. The said notice was dispatched on 2.1.2015. The meeting for election to the office of Vice President and two members of the Appeal Committee was proceeded further in which the writ petitioner also participated without any demur or objection.

3. In the said meeting, Rajiv (Ballu) was elected as Vice President and Vishvendra Tiwari (Vicki) and Jabbar Khan (Guddu) were elected as members of the Appeal Committee. Thereafter, the petitioner filed writ petition before the High Court challenging the entire action of election on the ground that the notice period for convening the first meeting after general election was not in conformity with Section 56 (3) of the Act. The sole ground was that the notice was dated 1.1.2015 and was dispatched to the Councillors only on 2.1.2015 for convening meeting on 6.1.2015. As a result, the entire action including election of Vice President and two members of Appeal Committee be declared as vitiated in law. The writ petitioner had relied on the decision of the Division Bench of our High Court in the case of **Awadh Behari Pandey Vs. State of**

Madhya Pradesh and others[1]. The learned Single Judge, however, doubted the correctness of the view taken by the Division Bench that requirement of dispatching the notice to convene first meeting after general election of the Council as per Section 56 (3) of the Act, of seven (7) clear days before the first meeting is mandatory. The learned Single Judge opined that the said view was not correct for the following reasons:-

> "**(A)** Whether breach of procedural provision contained in Sec. 56 (3) of the 1961 Act can vitiate the entire elections duly held to the office of Vice President and two members of Appeal Committee. A mere shortage of notice period, without prejudice following therefrom, cannot unsettle an election held strictly following all the statutory and democratic norms……..
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> **(B)** The office of Vice President filled by indirect elections is not constitutionally provided in Part IX-A of Constitution of India which is an indication that Office of Vice President is not essential for a valid and legal composition, existence and subsistence of a Municipal Council as per section 19 of the 1961 Act which in turn raises necessary inference that all procedures connected to the elections to the Office of Vice President cannot be construed to be mandatory……..
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> **(C)** Procedural provisions are normally directory in nature unless the statute in express terms provides for a penal consequence for it's breach……..
>
> **(D)** Procedural provisions are directory in nature unless prejudice or inconvenience is proved. Moreso the petitioner by his conduct of participating in the first meeting and contesting election without demur waived his right to assail the election…….

[1] 1969 JLJ 144 = 1968 MPLJ 638

> **(E)** Procedural provisions relating to time are normally directory…….
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> **(F)** Procedural provisions are meant to further the cause of substantive provisions. The provision for issuance of notice by giving certain time gap between it's dispatch and holding of meeting is procedural in nature whereas conduction of the election to the office of Vice President is substantive provision……..
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> **(G)** Procedural provisions prescribing public duty to be performed by a public functionary are directory in nature, unless public interest is hampered leading to injustice or inconvenience…….
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> **(H)** After introduction of Part IX-A – 'The Municipalities' in the Constitution of India by way of 74th Amendment w.e.f. 01-06-1993, under Article 243ZG strict bar to interference by Courts in electoral matters has been placed. The provision begins with a non-obstante clause thereby providing in mandatory terms that an election to any municipality ought not to be interfered with while exercising supervisory jurisdiction in a Writ Petition filed under Article 226/227 except in very exceptional cases……."

4. In support of the points delineated by the learned Single Judge for not agreeing with the view expressed by the Division Bench, the learned Single Judge adverted to the following decisions – **Bhag Mal Vs. Ch. Parbhu Ram and others**[2], **Ram Singh Vs. Col. Ram Singh**[3], **Bhim Singh Vs. Election Commissioner of India**[4], **Special Reference No.1 of 2002, In re (Gujarat Assembly Election matter**)[5], **Satyarath Prakash**

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[2] (1985) 1 SCC 61
[3] 1985 Supp SCC 611, (3 J.B)
[4] (1996) 4 SCC 188, (3 J.B.)
[5] (2002) 8 SCC 237, (5 J. CB)

Agrawal Vs. State of M.P. and others[6], **Pradip Kumar Maity Vs. Chinmoy Kumar Bhunia**[7], **Jagan Nath Vs. Jaswant Singh and others**[8], **M. V. "Vali Pero" Vs. Fernandeo Lopez**[9], **Karnal Improvement Trust Vs. Parkash Wanti**[10], **Ram Deen Maurya (Dr.) Vs. State of U.P.**[11], **Deo Prasad Kashyap and another Vs. Chancellor, Indira Gandhi Krishi Vishwavidyalaya and others**[12], **State Bank of Patiala Vs. S.K. Sharma**[13], **Smt. Bhulin Dewangan Vs. State of M.P. and others**[14], **P. T. Rajan Vs. T.P.M. Sahir and others**[15], **Punjab State Electricity Board Ltd. Vs. Zora Singh & others**[16], **Saiyad Mohd. Bakar El-Edross Vs. Abdulhabib Hasan Arab**[17], **Sardar Amarjit Singh Kalra Vs. Pramod Gupta and others**[18], **N. Balaji Vs. Virendra Singh and others**[19], **Kailash Vs. Nanhku and others**[20], **Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another**[21], **Shaikh Salim Haji**

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[6] 2008 (4) MPLJ 485, (MP (DB)
[7] (2013) 11 SCC 122, (3 J.B.)
[8] AIR 1954 SC 210, (5 J CB)
[9] (1989) 4 SCC 671, (3 J. B.)
[10] (1995) 5 SCC 159, (DB)
[11] (2009) 6 SCC 735, (DB)
[12] 1989 MPLJ 285, (MP) (DB)
[13] (1996) 3 SCC 364
[14] 2001 (2) MPLJ 372 (FB), (MP)
[15] (2003) 8 SCC 498 (3 J.B.)
[16] AIR 2006 SC 182, (DB)
[17] (1998) 4 SCC 343 (DB)
[18] (2003) 3 SCC 272 (5 J. CB)
[19] (2004) 8 SCC 312, (3 J.B.)
[20] (2005) 4 SCC 480 (3 J.B.)
[21] (2006) 1 SCC 75 (3 J. B.)

Abdul Khayumsab Vs. Kumar and others[22], **Dattatraya Moreshwar Vs. State of Bombay**[23], **Raza Buland Sugar Co. Ltd. Vs. Municipal Board**[24], **M/s Delhi Airtech Services (P) Ltd. Vs. State of U.P. and another**[25], **State (NCT of Delhi) Vs. Sanjay**[26], **Jaspal Singh Arora Vs. State of M.P. and others**[27], **Kurapati Maria Das Vs. Dr. Ambedkar Seva Samajan**[28], **Ashok Kumar Tripathi Vs. Union of India (UOI) and others**[29].

5. After having considered the oral and written submissions, we may now proceed to analyze the question formulated by the learned Single Judge. The question is in two parts. First part is to doubt the correctness of the view taken by the Division Bench in **Awadh Behari Pandey's** case (supra) – that the procedure specified in Section 56 (3) regarding dispatch of notice to every Councillor seven (7) clear days before the first meeting after general election is mandatory. The second part of the question essentially is about the discretion of the Court to interfere with the challenge to the action at the instance of the

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[22] (2006) 1 SCC 46 (DB)
[23] 1952 SCR 612 (5 J. CB)
[24] (1965) 1 SCR 970 (5 CB)
[25] (2011) 9 SCC 354 (DB)
[26] (2014) 9 SCC 772 (DB)
[27] (1998) 9 SCC 594
[28] (2009) 7 SCC 387 (DB)
[29] 2001 (4) MPLJ 206 (MP (DB)

person who has participated in the election process in the meeting so convened without any demur.

6. For dealing with the first part of the question, we may straightway refer to the principle expounded by the Division Bench of this Court in the case of **Awadh Behari Pandey** (supra). That was also a petition under Article 226 of the Constitution of India by a Councillor of the Municipal Council challenging the legality of the election of non-applicant as President of the Council. The challenge was, *inter alia*, on the ground that the President could be elected only at the first meeting of the Council and not in the subsequent meeting. Secondly, meeting in question could not be said to be properly held as it was presided over not by one of the Vice Presidents as per Section 59 of the Act. Thirdly, the notice issued provided for time for delivery of nomination papers, which was contrary to the mandatory provisions; and lastly, that the meeting in question was invalid as seven clear days' notice before the first meeting was not given as required in Section 56 (3) of the Act.

7. The last of these questions pointedly arose in the case on hand before the learned Single Judge. While dealing with the

said contention, the Division Bench in Awadh Behari Pandey's case (supra) adverted to the earlier decision of the Division Bench in the case of **Raghuvans Prasad Vs. Mahendra Singh and others**[30]**.** That decision has held that the provision about seven clear days' notice for convening of such meeting of the Council "is mandatory" and that in the computation of that period both the terminal days have to be excluded. Further, the Division Bench for the reasons recorded in Paragraphs No.7 to 9 of its decision, distinguished the decision of the Supreme Court in the case of **Narasimhiah Vs. Singri Gowda**[31], while rejecting the argument that the provision about seven clear days notice was not a mandatory one. In Paragraph No.9, the Division Bench unambiguously noted that in the Act of 1961, there is no provision for the curtailment of notice period at the discretion of the Presiding Officer. Similarly, there is also no provision analogous to Section 36 of the Mysore Act. The Division Bench also adverted to Section 81 of the Act and opined that the presumption is rebuttable one. The Division Bench also analysed the decision of the Supreme Court relied by the non-applicant in the case of **Jai Charan Lal Vs. State of**

[30] 1967 MPLJ 941
[31] AIR 1966 SC 330

U.P.[32], on the question of exclusion of terminal days. It has then relied on the dictum in **Rambharoselal Gahoi Vs. State of M.P. and others**[33] and **Raghuvans Prasad** (supra), to hold that the same reinforces the view taken – that in the computation of seven clear days notice period, both the terminal days have to be excluded. Furthermore, as in that case seven clear days did not intervene between the dates of dispatch of the notice and holding of the meeting on scheduled date, the meeting was held to be invalid; and consequently the election of the non-applicant as the President of the Council was annulled.

8. As the Division Bench in the case of **Awadh Behari Pandey** (supra) has relied on the dictum of earlier Division Bench in the case of **Raghuvans Prasad** (supra), we may usefully refer to that decision. In this case also the provisions of Section 56 (3) of the Act were considered, providing for seven clear days notice of the meeting be given to every Councillor and this provision was mandatory. In Paragraph No.7 to 9 the Court observed thus:-

> "7. The second ground on which learned counsel for the petitioner attacked the validity of the

[32] AIR 1963 SC 5
[33] AIR 1955 Nagpur 35

election is that under section 43(2)(c) read with section 52(3) and section 56(3) of the Act, seven clear days' notice of the meeting should have been given to every Councillor and that this provision about seven clear days' notice was mandatory. It was said that according to the notice given by the Collector, the meeting for the purpose of electing the office-bearers commenced on 7th April 1967, the date fixed for the receipt of the nomination papers; that this notice was served on the petitioner on 2nd April 1967; and that consequently the petitioner did not have seven clear days' notice of the meeting. Learned counsel referred us to *Rambharoselal v. The State (1)* for the proposition that in the computation of seven clear days, both the terminal days should be excluded.

8. This contention must be given effect to. By virtue of section 43 (2) (c), the provisions of sub-section (3) of section 55 have been made applicable to a meeting under clause (b) of section 43 (2). The effect of section 55 (3) read with section 43 (2) (c) is to apply all provisions contained in Chapter III regarding meetings of the Council to a meeting held under section 43 (2) (b). Sub-section (3) of section 56, which is contained in Chapter III, prescribes that notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every Councillor seven clear days before an ordinary meeting. A meeting convened under section 43 (2) (b) is an ordinary meeting and not a special meeting within the meaning of section 57.

9. In the present case, the notices of the meeting which the Collector convened, were despatched on 31st March, 1967. In the return filed by the Collector, there is no categorical denial of the averment made by the petitioner that the notices were despatched on 31st March 1967. All that has been said on this point in paragraph 8 of the return is that the notices were despatched within the period prescribed. The election meeting clearly commenced on 7th April, 1967, the date fixed for the filing of the nomination papers and their scrutiny, for it was on that date that the process of election commenced. [(See N.P. Ponnuswami v. Returning Officer, Namakkal (2)].

> The provision about seven clear days' notice for the meeting is a mandatory one and in the computation of that period both the terminal days have to be excluded. See Rambharoselal v. The State (1). It is thus manifest that the mandatory provision contained in Section 56(3) about seven clear days' notice of the meeting was not complied with. It is true that rule 3 of the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962, which provides that the presiding authority shall specify in the notices of the meeting the time and place so fixed, is silent about the period of notice for the meeting at which the election is to be held. But this rule does not in any way override section 56(3). It has to be read with section 56(3) and, so read, it necessarily follows that the presiding authority must dispatch to every Councillor notice of meeting seven clear days before the meeting. As this was not done in the present case, the election meeting which commenced on 7th April 1967 was invalid and so also was the election held at that meeting which continued even on 8th April 1967. The election of the respondents Nos.1, 2 and 3 must, therefore, be declared to be invalid on this ground."
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> *(emphasis supplied)*

9. As this decision essentially relies on the principle expounded in the case of **Rambharoselal Gahoi (supra),** we deem it apposite to reproduce the relevant discussion in this decision in paragraphs 10 and 11, which reads thus **:**

> "(10) It is contended that the rule must be regarded as merely directory, at least in so far as the president is concerned, and reference is made to a passage in Maxwell at page 376 'ibid' to the following effect:
>
> > "But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time; or under other specified conditions, such prescriptions may well be regarded as

> intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative."

This statement was cited with approval in the two Calcutta cases, particularly the first. In that case the date of election which had to be fixed not less than two months after the notification, was so fixed but was changed by another notification which did not give more than six weeks. It was held that the provision was merely directory and that the election was validly held.

(11) We do not propose to examine the correctness of the Calcutta decisions because the facts were different. But if it be contended that the decision holds good in a case like the present, we express our disapproval of such a contention. No doubt, the rule which requires a notice of ten days is so framed that it, perhaps, postulates a meeting already fixed an a notice by a member of ten clear days with the date of the meeting in view. But the notice is not to the president alone; it is also to the members. It was the duty of the member who gave the notice (if the president fixed the meeting too early) to ask for the postponement of the meeting to a date ten clear days ahead of the notice before the resolution was moved. No waiver, estoppel or acquiescence could make the motion proper if it was not in compliance with the rules framed.

In our opinion, the rules do require that ten clear days should elapse between the notice of a resolution of no-confidence & the motion of no-confidence. The rule of ten days which is framed is in the interest of municipal administration and also of the electors whose representative the president is. The section which enables a vote of no-confidence to be moved enables the members of the committee to get rid of a president with whom they cannot work. But in this clash of principles, the Legislature has thought it wise to put in a provision about ten clear days. We cannot regard that provision, in the circumstances, as merely directory. In our judgment, that provision has to be complied with and the State Government was perfectly correct when it declined to accept the resignation based on a vote of no-confidence moved improperly."

(emphasis supplied)

10. This legal position has been in vogue since then. Therefore, that legal position was not only binding on the Single Judge of this Court; but it was also not open to be doubted on the principles of *stare decisis*, in particular by the Single Judge. The Constitution Bench of the Supreme Court in the case of **Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another**[34] in paragraph 12 has observed thus:-

> **"12.** Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-
>
> (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> (2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the

[34] (2005) 2 SCC 673

> decision laying down the law the correctness of which is doubted.
>
> (3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh* and *Hansoli Devi*."
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> *(emphasis supplied)*

Keeping in mind the principles underlying this decision, it is not open to the learned Single Judge of the High Court to doubt the correctness of the view expressed by the Division Bench as the decision of the Division Bench is binding on the Single Judge.

11. Be that as it may, we will now advert to the relevant provisions of the Act of 1961. Section 43, 54, 55 and 56 of the Act read thus:-

> **"43. Election and Term of Vice – President. -** (1) The President and the elected Councillors of the Council shall, [x x x] at its first meeting as referred to in [sub -

section(1) of Section 55] elect a Vice-President from amongst the elected Councillors in the prescribed manner.

[(2) The meeting under sub-section (1) shall be presided over by such officer as mentioned in sub-section (2) of Section 55].

(3) The term of the Vice-President shall be conterminous with the term of the Council.

54. Meeting of the Council and Committee- The Council shall meet at least once in every two months and every Committee shall meet at least once in every month for the transaction of its business.

55. First meeting after General election.-(1) The Chief Municipal officer shall with the approval of the prescribed authority, within one month of every general election, call a meeting of the elected Councillors for the purpose of electing a Vice-President.

(2) The first meeting of the Council called under sub-section (1) shall be presided over by such officer not below the rank of Deputy Collector in the case of a Municipal and not below the rank of Tehasildar in the case of Nagar Panchayat, appointed by the Collector and all provisions contained in this Chapter regarding meetings of the Council, shall, as far as may be, apply in respect of such meeting:

Provided that the presiding officer shall not have right to vote at such meeting and in case of equality of votes, the result shall be decided by lot.

56. Convening of meeting. - (1) A meeting of Council shall be either ordinary or special.

(2) The date of every meeting, except the meeting referred to in Section 43, 43A, 47, 55 or 71, shall be fixed by the President, or in the event of his being incapable of acting by the Vice-President, and in the like event in his case, by the Chief Municipal Officer.

(3) Notice of every meeting specifying the time and place thereof and the business to be transacted thereat shall be despatched to every Councillor and exhibited at the Municipal Office seven clear days before an

ordinary meeting and three clear days before a special meeting.

(4) No business other than that specified in the notice relating thereto shall be transacted at a meeting".

(emphasis supplied)

12. We may also refer to Rule 3 (3) of the Madhya Pradesh Municipalities (Election of Vice-President) Rules, 1998 which is applicable to the matter in issue. The same reads thus :-

> **"3. Time and place of election.-**
> (1) .....
> (2) .....
> (3) Notice of the meeting shall be dispatched to every Councillor and exhibited in the Council Office at least seven clear days before the meeting."
>
> *(emphasis supplied)*

13. The main reason which has weighed with the learned Single Judge is that the provision such as Section 56 of the Act is a procedural provision and, therefore, should be construed as directory in nature. For that, we must understand the purpose underlying the calling of the first meeting after the general election. It is to ensure that within one month from the general election, a meeting must be convened by the authorized person for electing the Vice President from amongst the elected Councillors. No doubt, the post of Vice President is not ascribable to Part IX-A of the Constitution. That, however, does

not mean that it is not essential to elect a Vice President of the Municipal Council. On the other hand, electing a Vice President from amongst elected Councillors is a mandatory requirement, by virtue of Section 43 read with 55 of the Act. The office of Vice President has been fastened with the specified functions and duties, such as referred to in Sections 52 and 57 of the Act. Elaborate statutory Rules for election of Vice President have been framed titled as "**The Madhya Pradesh Municipalities (Election of Vice-President) Rules, 1998**". It may not be necessary to dilate on those Rules for considering the question posed by the learned Single Judge. In the context of the question posed, suffice it to observe that convening first meeting after the general election within specified time has been made mandatory; and in that meeting one of the agenda must be for electing a Vice President from amongst the elected Councillors.

14. Before we deal with the decisions of this Court which are directly on the point, it may be useful to recapitulate the principle of interpretation expounded by the Constitution Bench of the Supreme Court in the case of **Bhikraj Jaipuria**

Vs. Union of India[35]**.** The Court has observed that where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliances, the question whether the provision would be mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the Statute. Further, if the Statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity. The Supreme Court has quoted with approval **Maxwell on Interpretation of Statutes 10th Edn. p. 376** which reads thus :-

> "It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded."

The Supreme Court has also reproduced the observation of **Lord Campbell in Liverpool Borough Bank v. Turner**, (1860)

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[35] **AIR 1962 SC 113**

30 LJ Ch 379 which reads thus :-

> "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

15. The next question is how the meeting in question has to be convened. Convening of meeting either ordinary or special is governed by Section 56 of the Act. Sub Section (2) stipulates that date of every meeting shall be fixed by the specified Authority. That is a general enabling provision, but it makes exception of the first meeting after general election which is to be fixed by the Chief Municipal Officer with the approval of the prescribed Authority within specified time. The provision in sub-Section (3) of Section 56 is a general provision applicable to every meeting and the modality of giving notice of such meeting. It not only defines about the contents of the notice, but also the manner of issuance of the notice. In that, the notice is required to be despatched to every Councillor and exhibited at the Municipal Office. Further, that notice must be despatched "seven clear days" before an ordinary meeting and three clear days before a special meeting.

16. Despatch of notice to every Councillor must conform to the requirement of seven clear days notice, for the first meeting after the general election, to transact the business specified in Section 55 (1) read with Rule 3(3) of the Rules of 1998 for electing a Vice President from amongst the elected Councillors. This procedure has been justly construed as mandatory by the Division Bench of our High Court and which legal position is in vogue since 1955, followed in 1967 and again in 1968. It has been so construed because of the nature of the business to be transacted in the first meeting after the general election and also because it is concerning the election of a public representative.

17. These decisions, in the context of provisions of no confidence motion, have been considered by the Full Bench of our High Court in the case of **Smt. Bhulin Dewangan** (supra). In Paragraph 8 the Full Bench has dealt with the purport of second part of sub Rule (3) of Rule 3 of the M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994, which stipulates the time and place of the meeting within the

prescribed period not later than 15 days and for despatch of notice of such meeting to every member of the panchayat seven (7) days before the meeting. In Paragraphs No.8 to 10 and 19, the Court observed thus:-

> "8. The second part of sub-rule (3) of Rule 3 mandates that the prescribed authority after fixing date, time and place of the meeting within the prescribed period not later than 15 days as laid down in the first part of the Rule, shall cause despatch of notice of such meeting to every member of the Panchayat 7 days before the meeting. The said latter part of sub-rule (3) of Rule 3 of 1994 Rules is mandatory as intimation of date, time and place of meeting to every member is essential to ensure his presence, if he so desires, in the meeting to be held on such vital issue of passing of no-confidence motion.
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> 9. …….. The law intends that the notice of meeting should be sent to the members concerned seven days in advance of the meeting to enable them to participate in the motion of no-confidence. …….. The latter part of Sub-rule (3) of Rule 3 uses the words 'shall be caused' indicating clearly that the rule is mandatory and requires due compliance. ……
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> ……..
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> 19. We, however, with respect, are unable to subscribe to the view expressed by the Division Bench in **Gayasuddin v. Gram Panchayat, 1971 MPLJ 1012 = 1971 JLJ 286** that the requirement of the rule is service of notice of no-confidence motion seven clear days in advance of the holding of the meeting. The decision in the case of **Gayasuddin** (supra) has failed to notice the earlier Division Bench decision in **Raghuvans Prasad v. Mahendra Singh and Ors**., **1967 MPLJ 941**. In **Raghuvans Prasad v. Mahendra Singh** (supra), construing comparable provisions contained in Section 56 (3) of the M.P. Municipalities Act, where similar language was used as in the second

> part of Rule 3 (3) of the 1994 Rules, it was observed :
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> ……..
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> It would thus be noticed that the Division Bench in the case of **Raghuvans Prasad** (supra) has only read into the rule mandatory requirement of despatch of notice of the meeting to every councillor clear seven days before the meeting. But rule has not been construed to mean 'receipt of such notice' by the councillor clear seven days in advance of the actual holding of the meeting.”
>
> *(emphasis supplied)*

In the light of the abovequoted observations of the Full Bench, the decision of the Division Bench in **Awadh Behari Pandey** (supra) must be held as impliedly affirmed by the Full Bench. For, the Full Bench has approved the decision in **Raghuvans Prasad** (supra), which has been followed in **Awadh Behari Pandey**’s case (supra).

18. In the backdrop of series of decisions on the point, it is not open to doubt the correctness of the view expressed in the case of **Awadh Behari Pandey** (supra); nor the reasons recorded by the learned Single Judge in that behalf merit any consideration. By now it is well established position that the Single Judge is bound by the opinion of the Division Bench and more so, on legal position which has been in vogue for such a long time if not time immemorial. Merely because some other view may also be possible, cannot be the basis to question the

settled legal position. Such approach is not only counter productive but has been held to be against the public policy. In the case of **Abhay Singh Chautala Vs. Central Bureau of Investigation**[36], while dealing with this aspect and restating the maxim of *stare decisis et non quieta movere,* in Paragraphs No.35 and 36 the Court observed thus:-

> "35. There is one more reason, though not a major one, for not disturbing the law settled in Antulay's case. That decision has stood the test of time for last over 25 years and it is trite that going as per the maxim *stare decisis et non quieta movere*, it would be better to stand by that decision and not to disturb what is settled. This rule of interpretation was approved of by Lord Coke who suggested - "those things which have been so often adjudged ought to rest in peace". This Court in **Shanker Raju Vs. Union of India** [**2011 (2) SCC 132**], confirmed this view while relying on the decision in **Tiverton Estates Ltd. Vs. Wearwell Ltd**. [**1974 (1) WLR 176**] and more particularly, the observations of Scarman, L.J., while not agreeing with the view of Lord Denning, M.R. about desirability of not accepting previous decisions. The observations are to the following effect:-
>
> > "17… '... I decline to accept his lead only because I think it damaging to the law to the long term - though it would undoubtedly do justice in the present case. To some it will appear that justice is being denied by a timid, conservative adherence to judicial precedent. They would be wrong. Consistency is necessary to certainty - one of the great objectives of law."
>
> The Court also referred to the following other cases: **Waman Rao Vs. Union of India [1981 (2)**

[36] (2011) 7 SCC 141

> **SCC 362], Manganese Ore (India) Ltd. Vs. CST [1976 (4) SCC 124], Ganga Sugar Corpn. Vs. State of U.P. [1980 (1) SCC 223], Union of India Vs. Raguhbir Singh [1989 (2) SCC 754], Krishena Kumar Vs. Union of India [1990 (4) SCC 207], Union of India Vs. Paras Laminates (P) Ltd. [1990(4) SCC 453] and lastly, Hari Singh Vs. State of Haryana [1993 (3) SCC 114**].
>
> 36. We respectfully agree with the law laid down in **Shanker Raju Vs. Union of India** and acting on that decision, desist from disturbing the settled law in **Antulay** case. We have in the earlier part of the judgment, pointed out as to how the decision in **Antulay** case (cited supra) has been followed right up to the decision in **Prakash Singh Badal v. State of Punjab – (2007) 1 SCC 1** and even thereafter."
>
> *(emphasis supplied)*

19. The principle of *stare decisis* is also well ingrained and legitimate reason for not doubting the settled legal position. The Supreme Court in the case of **Maktul Vs. Mst. Manbhari and others**[37] in Paragraph No.9 observed thus:-

> "9. There is one more point which still remains to be considered. Having regard to the principle of stare decisis, would it be right to hold that the view expressed by the High Court of Punjab as early as 1895 was erroneous ? The principle of stare decisis is thus stated in Halsbury's Laws of England:
>
> "Apart from any question as to the Courts being of co- ordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other, ways, will generally be followed by courts of higher authority than the court establishing the rule, even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the supreme appellate Court will not

[37] AIR 1958 SC 918

> shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."
>
> The same doctrine is thus explained in Corpus Juris Secundum:
>
> "Under the stare decisis rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable.…….
>
> ……."
>
> *(emphasis supplied)*

20. Following these decisions, the learned Single Judge should have eschewed from referring the matter to the Larger Bench. We may now usefully refer to Rule 8 in Chapter IV of the High Court of Madhya Pradesh Rules, 2008, in particular, Clause 3 thereof, which reads thus:-

> "**Reference to Larger Bench**
>
> 8. (1)……..
>
> (2)……..
>
> (3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, an earlier decision of coordinate or larger bench of this court needs reconsideration, he may formulate question (s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger bench."

21. The expression "reconsider" and "reconsideration as mentioned in **The Major Law Lexicon by P Ramanatha Aiyar**, **4th Edition**, read thus:-

> "**Reconsider.** "Reconsider", as used in an Act, providing that, upon the return by the mayor of a vetoed ordinance with his objection, the aldermen shall at their regular meeting order the objection entered on the journal, after which they shall proceed to *re-consider* the same, means the taking up of the matter and discussing it. The word "re-consider" is not given the artificial meaning which it may have acquired in strict parliamentary proceedings, but only the ordinary meaning, which is to think or consider the matter over again, for the purpose of passing upon the matter on such second consideration.
>
> A resolution adopted by the city council that a certain ordinance theretofore enacted "be reconsidered" does not amount to a repeal of such ordinance.
>
> **Reconsideration.** Reconsideration, in parliamentary law, is defined to be taking up for renewed consideration that which has been passed or acted on previously."

22. Indeed, the learned Single Judge sitting alone while hearing a case is free to refer the decision of Coordinate or Larger Bench of this Court for reconsideration. The expression "reconsideration", will have special connotation when the Judge sitting alone while hearing a case doubts the opinion of a Division Bench. The Single Judge cannot opine that another view or opinion is possible; or that he disagrees with the

decision of the Division Bench. *Sensu stricto,* in the light of the principles underlying the decision of the Constitution Bench of the Supreme Court in Central Board of Dawoodi Bohra Community and Anr. (supra), he can merely invite the attention of the Chief Justice and request for the matter being placed for hearing before a larger quorum than the Bench whose decision has come up for consideration. At best, he may delineate the points which may require reconsideration, such as, that the Division Bench decision is per incuriam or has failed to refer to the settled legal position or any decision of the Supreme Court on the subject or for that matter the relevant statutory provisions of the Act or Rules have gone unnoticed.

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.

24. Reverting to the second part of the question as formulated by the learned Single Judge, as mentioned earlier, it is essentially about the discretion of the Court. Even this aspect

is no more *res integra*. The Full Bench of our High Court in the case of **Smt. Bhulin Dewangan** (supra) has considered the same. The Court in Paragraphs No.14 and 15 has observed thus:-

> "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. 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 (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 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."
>
> *(emphasis supplied)*

25. In view of this legal position already enunciated, the learned Single Judge should have decided the controversy brought before him by applying the settled legal position.

26. Accordingly, the questions referred to us are answered on the above terms.

27. We direct the Registry to place the matter before the learned Single Judge forthwith for further consideration in accordance with law.

28. While parting we place our appreciation on record for the able assistance given by the counsel appearing for the respective parties and in particular in completing the arguments in the given time frame.

(A.M. Khanwilkar) (Shantanu Kemkar) (J.K.Maheshwari)
Chief Justice Judge Judge

Anchal/PSM/AM