
(1998) 11 MP CK 0048
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4443 of 1997

Narayandas Sharma

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 19(3), 43A, 43A(2)

Citation : AIR 1999 MP 197 : (2000) ILR (MP) 771 : (1999) 2 MPJR 251

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : N.C. Jain and Jeevendra Pandey, for the Appellant; S.N. Khare, Government Advocate and V.K. Tankha, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under A. 226 of the Constitution of India the petitioner has prayed for issue of appropriate writ to declare the proceedings of the meeting of Nagar Panchayat, Nasrullganj held on 24-9-97 vide Annexure-P-1 as illegal and further to issue a writ prohibiting the President of the said Nagar Panchayat to function as such.

The essential facts giving rise to the present writ petition are that the petitioner was elected as Councillor from Ward No. 8 of the Nagar Panchayat, Nasrullaganj, and thereafter, he was elected as the Vice President of the said Nagar Panchayat. It is stated that he had been working in the interest of public and from time to time was exposing the misdeeds in the corporation which had caused annoyance to the President and a limited number of members who contrived a situation to bring a no confidence motion against him. It is put forth that the President, respondent No. 3 herein, does not have the credentials to function as the President but is still continuing in the post. It is pleaded that the petitioner received a notice dated 6-9-97 purported to have been signed by Sub-Divisional

Officer, Nasrullaganj indicating that he had been nominated as the authority to convene the meeting and preside over it for the purpose of no confidence motion against the petitioner as envisaged u/s 43-A of the M.P. Municipalities Act (hereinafter referred to as "the Act"). The date of meeting was fixed for 24-9-1997. It is averred in the writ petition that the competent authority did not issue notices to all the Councillors but only to 14 elected Councillors leaving behind the nominated and the ex-officio Councillors. It is also set forth that no motion of confidence was moved in the meeting as required under the law and he was also not given an opportunity to state his point of view. It is also stated that if discussion had taken place, there would have been a change in the ultimate result of the meeting and as that had not been done the proceeding of the meeting of no confidence motion is vitiated. It is also stated that the respondent No. 3 is not entitled to hold the post of President as he has not been elected through the direct Election but was directly elected by the Councillors.

A counter-affidavit has been filed by the respondent No. 3 contenting, inter alia, that the petitioner and all other Councillors received the notices signed by the S.D.O. in accordance with the provisions of the Act, and the motion of no confidence against the petitioner was signed and presented by 10 elected Councillors which meets the requirement of law. It is also stated that the petitioner did not oppose to or objected to the contents, veracity or legality of the notice relating to the motion of no confidence. It is averred that the motion of no confidence was placed On the table of the House on 24-9-97 and the petitioner, was present in the House when the motion was tabled and considered for discussion. It is also pleaded that "every Councillor" means elected Councillors and does not include the other Councillors. It is further stated that the meeting was presided over by the Sub-Divisional Officer and the petitioner did not choose to speak his view point. The further stand in the return is that the minutes of the meeting clearly indicates that time was devoted, permitting the Councillors to speak and make up their mind, and thereafter, voting had taken place. In the voting 11 Councillors out of 14 voted in favour of motion of no confidence and three voted against the motion. As far as the continuance of respondent No. 3 as President is concerned, it has been putforth thathe is continuing by virtue of the transitory provisions which have come into effect from 21-4-1997.

A return has been filed by the respondent No. 4, Nagar Panchayat, Nasrullaganj taking the stand that a requisition for convening the meeting was signed and presented by 10 elected Councillors to the Chief Municipal Officer of the Nagar Panchayat. The said requisition has been brought on record as Annexure-R-4/1. The competent authority sent the notices to the 14 elected members. The Nagar Panchayat has also pleaded that the petitioner did not avail the opportunity to address the meeting to highlight his point of view. It is stated that meeting was conducted in a fairly and impartial manner and vote of no confidence was duly passed against the petitioner. Other allegations by the petitioner have been controverted by the said respondents.

A rejoinder has been filed by the petitioner to the counter-affidavit filed on behalf of the respondent No. 3. It is clarified in the rejoinder affidavit that the petitioner was never told as to what was contained in the notice for no confidence motion and the motion was never moved. The stand of the respondent No. 4 that time was allotted for discussion and debate has been disputed. It has been specifically pleaded that denial of right to speak in a meeting of this nature vitiates the proceedings of the meeting in entirety. It is also stated that all the Councillors were required to be noticed and as the same has not been done the meeting is void in law.

I have heard Mr. N. C. Jain, learned senior counsel with Jeevendra Pandey for the petitioner, Mr. S. N. Khare, learned Government Advocate for the State and Mr. V. K. Thankha learned counsel for respondents Nos. 3 and 4.

Mr. Jain, learned senior counsel for the petitioner, in support of the writ petition, has contended that the competent authority has erred in law by not issuing notices to every Councillor as mandated under S. 43-A of the Act which makes the whole proceeding unsustainable. It is also his submission that when the special meeting is convened for vote of no confidence, the motion was required to be moved by any elected Councillor but as the same was not done and no debate had ensued because of lack of moving of the motion the proceedings of the meeting are null and void and cannot be given effect to. The learned counsel has canvassed that discussion and debate at the time of moving of vote of no confidence is an essential part of democracy and that having been given a go by the provisions of the statute are not complied with which makes the resolution susceptible. It is further contended by Mr. Jain that right to speak in the meeting of this nature has been given a burial and that clearly exposes the inherent illegality in conducting of the meeting.

Mr. Tankha, learned counsel for the respondents Nos. 3 and 4, resisting the aforesaid submissions has contended that the words "every Councillor" as used in S. 43-A of the Act do not necessarily mean every category of Councillor. It has to be given a purposive interpretation to mean only the elected Councillors. It is his further submission that the moving of the motion means tabling and appraising of the House about the procedure or making aware the Councillors present the purpose of the motion. It is propounded by him that moving of the motion is formal in nature and its non-compliance does not make the proceedings non-est in law. In any case, submits Mr. Tankha, that when the members have participated and voted after certain gap and the petitioner did not oppose or object or chose to have any debate challenging the validity of the notice on that score, the benefit should not be given to him. Mr. Khare, learned Government Advocate has supported the resolution passed by the Nagar Panchayat.

Before I advert to deal with the rival submissions raised at the Bar, it is appropriate to state at the threshold that though a prayer was made for issuance of writ of quo warrant to but the same was not pursued and contentions were

only canvassed with regard to the legality of meeting relating to vote of no confidence.

The first contention raised by Mr. Jain relates to the issuance of notice to the every Councillor. To appreciate the said submission it is worthwhile to refer to the S. 43-A of the Act which reads as under :--

"43-A. No confidence motion against Vice President (1) A motion of no confidence may be moved against the Vice President by any elected Councillor at a meeting specially convened for the purpose under Sub-section (2) and if the motion, is carried by a majority of two thirds of the elected Councillors present and voting in the meeting and if such majority is more than half of the total number of elected Councillors constituting the Council the office of the Vice President, shall be deemed to have become vacant forthwith a copy of such motion shall be sent by the Chief Municipal Officer to the Collector forthwith for filling up the vacancy :

Provided that no such resolution shall lie against the Vice President within a period of --

- (i) two years from the date on which the Vice-president enters upon his office;
- (ii) one year from the date on which the previous motion of no-confidence was rejected.

(2) For the purpose of Sub-section (1), a meeting of the Council shall be convened and presided over by the Collector or a Class I Officer in case of a Municipal Council and a Class II Officer in case of Nagar Panchayat as nominated by him, in the following manner, namely :--

- (i) the meeting shall be convened forthwith on a requisition signed by not less than one-sixth of the total number of elected Councillors constituting the Council for the time being ;
- (ii) the notice of such a meeting specifying the date, time and place shall be despatched to the President and every Councillor ten clear days before the meeting.
- (iii)- the no-confidence motion moved under this section shall be decided through secret ballot."

Relying on the Sub-section (2)(ii) it is strenuously urged by Mr. Jain that it is incumbent on the part of the competent officer to despatch the notice of the meeting specifying the time, date and place to the President and every Councillor 10 clear days before the meeting. It is not in dispute that only 14 elected members were sent the notices. Developing his argument Mr. Jain has submitted that the words "every Councillor" as used in the said provision would include all the councillors, elected nominated and the ex-officio Councillors. In this context he has referred to the Section 19 of the Act which deals with the composition of Municipal Council of Nagar Panchayat. It is appropriate to reproduce the said

provision.

"19. Composition of Municipal Council or Nagar Panchayat.-- (1) A Municipal Council or a Nagar Panchayat, shall consist of --

(a) President, that is Chairperson, elected by direct election from the Municipal area;

(b) Councillors elected by direct election from the wards;

(c) Not more than four persons in the case of Municipal Councils and not more than two persons in the case of Nagar Panchayats having special knowledge or experience in Municipal Administration nominated by the State Government.

Provided that only a person residing with Municipal area and being otherwise not ineligible for election as a Councillor may be nominated.

(d) Members of the House of the people and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area;

(e) Members of the Council of State as registered as electors within the municipal area.

(2) The person nominated under Clause (c) 6f Sub-section (1) shall hold office during the pleasure of the State Government.

(3) Persons referred to in Clauses (c), (d) and (e) of Sub-section (1) shall be deemed to be Councillors, but shall not have the right to vote in the meetings of the Council.

(4) If any municipal area fails to elect a President or any ward fails to elect a Councillor, fresh election proceedings shall be commenced for such municipal area or ward, as the case may be, within six months to fill the seat, and until the seat is filled it shall be treated as casual vacancy:

Provided that proceedings of election of Vice-president, or any of the Committees under the Act shall not be stayed, pending the election of such seat,"

It is emphatically urged by Mr. Jain that subsection (3) of Section 19 deals with the categories of Councillors in Clauses c, d and e of Sub-section (1) who are deemed to be the Councillors, and therefore, the word "every Councillor" would include these categories. He has canvassed that though these Councillors have no right to vote in the meeting of Councillors but there is a mandate of the law that they have to be noticed when the meeting is to be convened relating to the no confidence motion against the Vice-President. He has vehemently putforth that all the clauses occurring in Sub-section (2) of Section 43-A have to be regarded as mandatory. To appreciate the aforesaid submission of learned counsel for the petitioner it is to be kept in mind that subsection (2) stipulates, three aspects, namely, a special meeting has to be convened by the Collector on receipt of a notice signed by not less than 1/6th of the total number of elected

Councillors and hence requisition has to come from 1/6th of the total number of the elected Councillors, notice of the meeting, specifying the time, date and place, has to be despatched to the President and the every Councillor 10 clear days before the meeting of no confidence and the no confidence motion moved under this section has to be decided by secret ballot. It is his submission that the word "every Councillor" has to be understood in its usual and natural sense as the intention of the Legislature is clear and unambiguous; To substantiate the submission he has placed reliance on the decisions rendered in the cases of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , Ajay Pradhan Vs. State of Madhya Pradesh and Others, and Nelson Motis Vs. Union of India and another, . In the case of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, their Lordships of the Apex Court have held as follows (Para 8):--

"The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canon of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the, intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed."

In the case of Ajay Pradhan Vs. State of Madhya Pradesh and Others, the Apex Court expressed thus :--

"A rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense and give them full effect. The plea of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider."

In the case of Nelson Motis (AIR 1992 SC 1981) (supra) their Lordships of the Apex Court has registered the view as under (Para 8):--

"..... .It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in numberable cases in India and in England, the expression used in

the statute alone declares the intent of the legislature. In the words used by this Court in *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, , when the language is plain and unambiguous and admits of only one meaning, no question of construction a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating ;--

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

In the case of *Union of India v. Deokinandan* (1991) 3 JT (SC) 608 : (AIR 1992 SC 96) it has been held as follows :--

"It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Court shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

The aforesaid decision has been followed in the case of *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, .

All these decisions lay down that once the language of statute is clear and unambiguous it should be given the natural meaning and no attempt should be made to create any artificiality. The words used in the statute are "every Councillor" and on an objective reading of Sub-section (3) of Section 19 it is apparent that the nominated Councillors as well as the ex-officio Councillor have been deemed to be Councillors. Hence "every Councillor" used in Clause (ii) of subsection (2) of Section 43-A of the Act would engulf all categories of the Councillors. It would not mean that only elected Councillors would be noticed. It is to be kept in mind that the said provision indicates that the notice has to be despatched to the every Councillor 10 clear days before the meeting. The mandate is to despatch. Once "every Councillor" has been used by the Legislature it has to be given due weightage. It is the duty of the competent officer to despatch keeping the time frame in view, Now question that really falls for consideration is what is the impact and effect of non-compliance of the aforesaid provisions. Mr. Jain has contended that the provision should be treated to be mandatory and once it is held to be mandatory, the non-compliance thereof would vitiate the whole proceeding. Mr. Tankha objecting to the aforesaid submission has impressed upon this Court to interpret the term "every Councillor" to mean every elected Councillor, It is his submission that unless it is

so interpreted the provision would be unworkable. It is his further submission that despatch of notice to the other categories of Councillor except the elected Councillors does not serve any purpose because these Councillors are not entitled to cast their vote in any meeting and their presence or absence would not affect the ultimate result. Controverting the aforesaid contention Mr. Jain has submitted that the Legislature has used the word "every" with the purpose as these Councillors can participate in the debate or discussion and may be able to persuade the other elected Councillors from voting against the no confidence motion. Whenever the word "every" is used it indicates that there is reference to all the members of a group or all the parts of something and not only some of them. The word "every" as used in the provision would encompass all the Councillors and exclusion of any category cannot be conceived of. The legislature has a purpose behind the use of the said word. It is to be noted here that in the beginning of the section there is reference to a motion to be moved by any elected Councillor. Later on, there is reference to the requisition which has to be signed by the 1/6th of the total number of elected Councillors. But as far as despatch of notice is concerned the same has to be given to every Councillor. Mr. Tankha has taken pains to submit that every Councillor in the context of the provision should be interpreted as elected Councillor as that would be in consonance with the provisions and would be in harmony with the concept of purposive interpretation. It is to be kept in mind that Legislature always uses words with some intention or purpose. When the words "every Councillor" have been used by the draftsman there is no reason to circumscribe the meaning of the said words. In fact, the meaning of the said words are clear and unambiguous and they do sub-serve the purpose as enshrined under the scheme of things. The purpose is that the nominated members and ex-officio members may choose to participate in the meeting and take a leading part in the discussion which takes place in the meeting of no confidence. They are there to play a role which has been ascribed to them. In Parliamentary form of democracy this has its significance and cannot be whittled down. Hence, I am inclined to accept the submission of Mr. Jain that the aforesaid provision is mandatory.

The second plank of submission of Mr. Jain relates to non-moving of the motion of no confidence by an elected Councillor. Section 43-A postulates that vote of no confidence may be moved against the Vice-President by an elected Councillor at a meeting which is specially convened. Submission of Mr. Jain is that if a motion-of no confidence is not moved the meeting cannot be proceeded and voting cannot take place. It is also his submission that there has to be a debate and discussion with regard to the motion. Admittedly in the case at hand no elected Councillor had moved the motion of no confidence. It transpires from the resolution that the competent authority presided over the meeting and the voting took place. The moot question that falls for consideration is whether moving of a motion by an elected Councillor is mandatory or not and whether there can be deemed moving of a motion by conduct. Mr. Jain learned senior counsel for the petitioner, has proposed that an elected member is required to move the motion

of no confidence against the Vice-President whereas Mr. Tankha ha contended that once the proposal is tabled and is brought to the notice of the House in any manner whatsoever that would amount to moving of motion. In the case at hand, admittedly no elected Councillor moved the motion of no confidence. The meeting was convened at the time stipulated where the competent authority apprised the members present about the convening of meeting of the no confidence against the Vice-President and certain doubts were cleared. It is appropriate to reproduce the language used in the resolution (at page 19).

^^esjs }kjk mifLFkr leLr ik"kZnx.k dks mik/;{k ds fo:) izkIr vfo"okl izLrko ij uxj ikfydk fof/k la"kks/ku vf/kfu;e ls lacaf/kr tkudkj nh xbZ rFkk mudh "kadvksa dk lek/kku fd;kA

mifLFkr leLr ik"kZnksa dks fuokZpu dk;kZy; lhgsj ls izkIr er isVh [kksydj fn[kkbZ xbZ rFkk ik"kZnksa ds le{k gh mls xqIr ernku gsrq lhycUn fd;k x;k rnksijkUr mifLFkr ik"kZnx.kksa dh ,d&,d dj eq>ls eri= izkIr dj fu/kkZfjr cwFk es tkdj eri= ij fu"kku vafdr djus dh lwpu nh rFkk IHkh ik"kZn x.kksa dks eri= dk ernku ds iwoZ voyksdu dj;k;kA**

It is also reflected in the resolution that the voting commenced at 12.45 p.m. Thus there was a gap of 45 minutes. The core question that requires determination is whether the drawing of attention of the members of the House by the competent authority would amount to sufficient compliance or not. The statute confers a privilege on an elected member to move the motion of no confidence. If the motion is not moved, submits Mr. Jain, the question of carrying it dut does not arise. In essence his submission is that one of the elected Councillors has to move the proposal and in absence of proposal being moved the proceedings of the meeting have no legal validity. Mr. Jain has drawn the attention of this Court to the judgment passed in the case of Nagasai v. State of M. P. and others in W.P. No. 4305/95 wherein this Court while interpreting the provision contained in Section 29 of the M. P. Panchayat Raj Adhiniyam, 1993 has held that Sarpanch and Upsarpanch, as the case may be, shall have aright to speak or to take part in the proceeding. This Court has observed that the object of this right is to satisfy and to impress upon the members during the course of discussion about the confidence which was denied to the person facing a vote of no confidence. Mr. Jain has fairly accepted that the language used u/s 21(2) is quite different but the purpose is inhered because there is stipulation for moving a motion. In a democratic set up, moving of a motion of no confidence has its own significance. The word "motion" has not been defined in the Act. Once a particular word or term has not been given any specific definition in the statute it has to be understood in the common parlance. In Law Lexicon by Ramnath Aiyar it has been indicated that motion in Local Assemblies means as under:--

"A motion is a proposal made to evoke action on the part of the council or other assembly, and when acted upon, it becomes the formal expression of the will or resolution of the city council."

In parliamentary law, the motion has been given the following meaning :--

"A motion is a "proposition made to the house by a member, which, if adopted, becomes the resolution, vote or order of the house."

In "words and phrases" one of the meaning given to the word "motion" is that "a proposal or suggestion looking to action in deliberative assembly." Considering the aforesaid meaning of the term and its distinction in a democratic set up it is necessary to give its due meaning. The requirement of law is that the proposal has to be moved by a member. An elected member has been conferred with the privilege to move the proposal. The question is whether such moving of the proposal or mooting of the same should be regarded as mandatory. The purpose of the section is that the proposal is floated so that all the members present know the nature of proposal. The basic purpose is to invite a deliberation. The moving of the proposal has to be given its due weightage and cannot be brushed aside solely on the ground that members were aware of it. It can only be moved by an elected Councillor and not otherwise. Thus, a motion is moved for apprising the nature and purpose of the meeting and it opens a debate to ascertain the sense of meeting and to clearly putforth the rival ideas so that each member present can exercise his right of voting in an objective manner. That being the purpose, the importance of moving of motion cannot be: allowed to be diminished. Open discussion is the basic requirement of a democracy and when the Vice-President is sought to be unseated through the vote of no confidence there has to be a discussion. The legislature in Sub-section (2) of Section 43A stipulates for convening the meeting and under Sub-section (1) about the manner of conduct of the meeting. Every step has a purpose. As is apparent, a nominated Councillor or ex-officio Councillor cannot move for no confidence. The competent authority has nothing to do with the moving of the motion. The legislative purpose cannot be whittled down by substituting that appraisal by the Presiding Officer amounts to substantial compliance. Indubitably that would not sub serve the purpose and intendment of the legislature. Hence, I am inclined to hold that motion of no confidence can only be moved by an elected Councillor and not otherwise.

I have already held that the despatch of notice to every Councillor to be mandatory and moving a no confidence motion by an elected Councillor is the basic requirement for the progress of the meeting on a specified date. In the case at hand there has been non-compliance of both the provisions. Mr. Jain has vehemently urged that the provisions have not been complied with, and hence the resolution passed cannot be said to have been validly passed. He has submitted that if a thing is required to be done in law in a particular manner it should be done in the said manner alone or should not be done at all. As the facts exposit, the competent authority had putforth the proposal to the House and cleared the doubts of the members present. The petitioner was present in the meeting as the resolution passed vide Annexure P-4 clearly indicates. He had chosen not to object to the non-compliance of Sub-section (2)(ii) of Section .43-

A of the Act nor had he objected to the non-moving of the motion. He did not voice his grievance that he had not been given an opportunity to speak or there had been no discussion. As is apparent, the meeting was convened at 12 noon and voting took place at 12.45 p.m. There was sufficient time to object to the procedure adopted in convening the meeting and conducting of the meeting. The petitioner behaved as a silent spectator and conceded to the procedure. The petitioner being present and having participated in the voting process and having lost in the vote of no confidence, cannot claim the relief as has been done by him. At this juncture, I may refer to the decision rendered in the case of K. Narasimhiah Vs. H.C. Singri Gowda, wherein some of the Councillors of the concerned Municipality alleged to have received the notices less than three clear days. There were 20 Councillors in all and 19 Councillors, attended the meeting 15 members voted in favour of no confidence. The person against whom the no confidence motion was moved was present in the meeting. The Apex Court in the considering factual matrix observed as under (Para 20) :--

"We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days notice of the meeting did not itself make the proceedings of the meeting of the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity" in the service of notice."

In the case of Ajit Singh v. Nagar Panchayat, 1995 MPLJ 774 this Court has held as under :--

"..... in the present case the petitioner never objected in the meeting that the notice is short or that he was not given enough opportunity to canvass. Had he taken some objection the position might have been different. He having participated in the meeting without raising objections, it is difficult to say anything in his favour."

Recently in L.P.A. No. 225/96 (Smt. Muku Bai v. State of M. P.) this Court while interpreting Section 21 of M. P. Panchayats Raj Adhiniyam and Section 44 of the Act, 1994 which deal with the procedure of meeting and the provision enumerated under M. P. Panchayat (Procedure of Meeting and Conduct of Business) Rules, 1994 and: Gram Panchayat Ke Sarpanch Tatha Upsarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastava) Niyam, 1994 has held that Sub-rule (3) of Rule 3 of the Rules is mandatory because "shall" has been used for directing Prescribing Authority that he shall call the meeting within 15 days from the date of receipt of notice. While holding the said provision as mandatory the Division Bench refused to grant relief by observing as under :--

"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."

Applying the aforesaid ratio, I am of the considered view that as the motion of no confidence has been passed against the petitioner and out of 14 Councillors 11 Councillors voted against him. He is not entitled to the relief under equitable jurisdiction of this Court under Article 226 of the Constitution.

In the result, the writ petition, being devoid of merit, stands dismissed. However, there shall be no order as to costs.