

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1390 of 2016**

Order Reserved On : 13/12/2016

Order Passed On : 07/04/2017

1. Chetan Kurre S/o Shri Thanuram Kurre, Aged About 39 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
2. Smt. Karuna Sahu, W/o Shankar Lal, Aged About 42 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
3. Tulasram Sahu, S/o Bharat Ram Sahu, Aged About 44 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
4. Narendra Chelak, S/o Dhiraji Ram, Aged About 34 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
5. Radheshyam Yadav, S/o Budharu Yadav, Aged About 39 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
6. Milau Sahu, S/o Preet Ram, Aged About 57 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
7. Bharat Dhruv, S/o Mansharam, Aged About 39 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
8. Smt. Bhaarti Ghoghre, W/o Rohitdas, Aged About 32 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
9. Smt. Urmila Suryawanshi, W/o Siyaram, Aged About 43 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
10. Smt. Keshri Bai W/o Pilachand, Aged About 42 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
11. Smt. Yamuna Bai, W/o Tulasram, Aged About 40 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband

(Chhattisgarh)

12. Smt. Chameli Nirmalkar, W/o Bhanuram Nirmalkar, Aged About 37 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
13. Smt. Jaanki Nishad, W/o Ramesh Nishad, Aged About 39 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
14. Smt. Rajkumari Sahu, W/o Manharan Sahu, Aged About 41 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
15. Smt. Rambai Sharma, W/o Champalal Sharma, Aged About 58 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
16. Smt. Thagiya Bai Sahu, W/o Pradeep Kumar, Aged About 37 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
17. Smt. Rohini Dhruv, W/o Kalyan Singh, Aged About 60 Years R/o Village And Post Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)

---- **Petitioner**

Versus

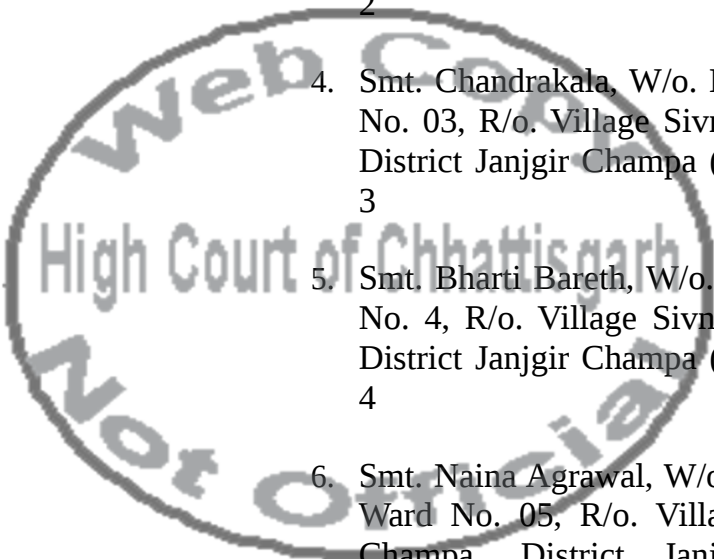
1. State Of Chhattisgarh Through : The Secretary, Department Of Panchayat, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Collector, Gariyaband, District Gariyaband (Chhattisgarh)
3. Sub Divisional Officer (Rev.)- Cum- Prescribed Authority (Panchayat), Gariyaband, District Gariyaband (Chhattisgarh)
4. Tahsidar, Rajim, District Gariyaband (Chhattisgarh)
5. Chief Executive Officer, Janpad Panchayat, Fingeshwar, District Gariyaband (Chhattisgarh)
6. Ashok Jagne, S/o. Heeraram Jagne, Aged About 52 Years R/o Ward No. 13, Kaundhkera, Police Station And Tahsil Rajim, District Gariyaband (Chhattisgarh)
7. Umesh Sahu, Tahsildar, Rajim (Presiding Officer), Rajim, District Gariyaband (Chhattisgarh)

---- **Respondent**

And

WPC No. 2014 Of 2016

1. Smt. Bharti Bareth W/o. Santram Bareth, Aged About 48 Years Panch Ward No. 16, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 16
2. Smt. Mela Bai, W/o. Narayan Dewangan, Aged About 45 Years Panch Ward No. 01, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 1
3. Smt. Fekan Bai, W/o. Ghasiram Rathore, Aged About 55 Years Panch Ward No. 02, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 2
4. Smt. Chandrakala, W/o. Lakhan Rathore, Aged About 30 Years Panch Ward No. 03, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 3
5. Smt. Bharti Bareth, W/o. Lokesh Bareth, Aged About 26 Years Panch Ward No. 4, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 4
6. Smt. Naina Agrawal, W/o. Shivkumar Agrawal, Aged About 31 Years Panch Ward No. 05, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 5
7. Ramadhin Rathore, S/o. Late Butari Rathore, Aged About 40 Years Panch Ward No. 07, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 7
8. Chandrashekhar Rajput, S/o. Late Prem Singh Rajput, Aged About 39 Years Panch Ward No. 09, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 9
9. Smt. Pushpanjali Dewangan, W/o. Hetram Dewangan, Aged About 35 Years Panch Ward No. 10, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 10
10. Baisakhu Bareth, S/o. Nammuram Bareth, Aged About 44 Years Up-Sarpanch Gram Panchayat Sivni, R/o. Village Sivni, Police Station & Post Champa,



Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/
Respondent No. 12

11. Poonam Agrawal, S/o. Onkarmal, Aged About 48 Years Panch Ward No. 14,
R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District
Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No. 14

12. Smt. Santoshi Dewangan, W/o. Dhanshri Dewangan, Aged About 33 Years
Panch Ward No. 15, R/o. Village Sivni, Police Station & Post Champa, Tahsil
Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/
Respondent No. 15

13. Smt. Resham Bai Rathore, W/o. Laxmi Prasad Rathore, Aged About 40 Years
Panch Ward No. 17, R/o. Village Sivni, Police Station & Post Champa, Tahsil
Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/
Respondent No. 17

14. Smt. Rekha Gond, W/o. Nadim Gond, Aged About 35 Years Panch Ward No.
18, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa,
District Janjgir Champa (Chhattisgarh).....Petitioner/ Respondent No.
18

15. Kranti Dewangan, S/o. Ramdayal Dewangan, Aged About 33 Years Panch
Ward No. 19, R/o. Village Sivni, Police Station & Post Champa, Tahsil
Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/
Respondent No. 19

16. Smt. Radha Bai Suryavanshi, W/o. Fatehlal, Aged About 45 Years Panch
Ward No. 20, R/o. Village Sivni, Police Station & Post Champa, Tahsil
Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/
Respondent No. 20

---- **Petitioner**

Vs

1. Smt. Pooja Rathore W/o. Mukesh Kumar, Aged About 30 Years R/o. Village
Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir
Champa (Chhattisgarh)

2. Lachhiram Bareth, S/o. Late Accheram Bareth, Aged About 56 Years Panch
Ward No. 06, R/o. Village Sivni, Police Station & Post Champa, Tahsil
Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Non-
Appellant No. 6

3. Vinod Dheewar, S/o. Dwarika Dheewar, Aged About 35 Years Panch Ward
No. 08, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa,
District Janjgir Champa (Chhattisgarh).....Petitioner/ Non-Appellant
No. 8

4. Smt. Photo Bai, W/o. Manrakhan Sarthi, Aged About 50 Years Panch Ward

No. 11, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Non-Appellant No. 11

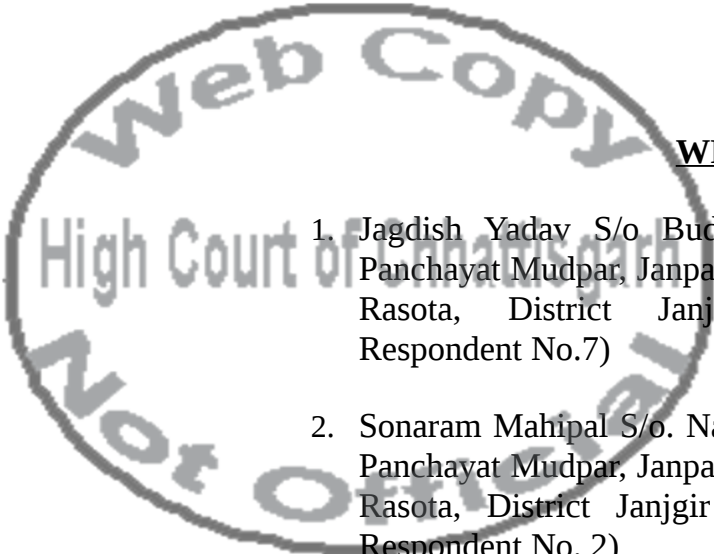
5. Kamlesh Bareth, S/o. Chhedilal Bareth, Aged About 31 Years Panch Ward No. 13, R/o. Village Sivni, Police Station & Post Champa, Tahsil Champa, District Janjgir Champa (Chhattisgarh).....Petitioner/ Non-Appellant No. 13
6. Tahsildar, Tahsil Champa, District Janjgir Champa (Chhattisgarh)
7. Chief Executive Officer, Janpad Panchayat Baloda, District Janjgir Champa (Chhattisgarh)
8. Collector/Prescribed Officer, Panchayat, District Janjgir Champa (Chhattisgarh)

---- Respondent

And

WPC No. 2127 Of 2016

1. Jagdish Yadav S/o. Budhram Yadav, Aged About 45 Years R/o Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir- Champa (Chhattisgarh).....(Petitioner/ Respondent No.7)
2. Sonaram Mahipal S/o. Nabheram Mahipal, Aged About 35 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh).....(Petitioner/ Respondent No. 2)
3. Kevra Patel, S/o. Dilip Kumar Patel, Aged About 32 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh).....(Petitioner/ Respondent No. 3)
4. Nahar Bai Jangde, W/o. Dujram Jangde, Aged About 45 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station & Post Pamgarh, District Janjgir Champa (Chhattisgarh).....(Petitioner/ Non Appellant No. 4)
5. Upendra Kumar Ratnakar, S/o. Jayant Ratnakar, Aged About 48 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh)..... (Petitioner/ Respondent No. 5)
6. Ashwani Kumar Kurrey, S/o. Reshulal Kurrey, Aged About 40 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh).....



(Petitioner/ Respondent No. 6)

7. Satrupa Ratnakar, W/o. Heeralal Ratnakar, Aged About 32 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh).....(Petitioner/ Respondent No. 8)
8. Sukrita Lahre, W/o. Babulal Lahre, Aged About 32 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh).....(Petitioner/ Respondent No. 9)
9. Manchitra Patel, S/o. Baniya Patel, Aged About 45 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station Pamgarh, Post Rasota, District Janjgir Champa (Chhattisgarh).....(Petitioner/ Respondent No. 11)

---- **Petitioner**

Vs

1. Smt. Parwati Lahre W/o. Premshankar, Aged About 30 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station & Post Pamgarh, District Janjgir Champa (Chhattisgarh).....(Respondent/ Appellant No. 1)
2. Premshankar Lahre, S/o. Kondaram Lahre, Aged About 28 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station & Post Pamgarh, District Janjgir Champa (Chhattisgarh).....(Respondent/ Appellant No. 2)
3. Pinki Devi Lahre, W/o. Dev Kumar Lahre, Aged About 28 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station & Post Pamgarh, District Janjgir Champa (Chhattisgarh).....(Respondent/ Non Appellant No. 1)
4. Manjulata, W/o. Ramesh Kumar, Aged About 24 Years R/o. Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, Police Station & Post Pamgarh, District Janjgir Champa (Chhattisgarh).....(Respondent/ Appellant No. 10)
5. Tahsildar/ Presiding Officer, Tahsil Pamgarh (Panchayat Meeting), Gram Panchayat Mudpar, Janpad Panchayat Pamgarh (Chu), District Janjgir Champa (Chhattisgarh)
6. Sub Divisional Officer/ Prescribed Officer, Pamgarh (Chu) Gram Panchayat Mudpar, Janpad Panchayat Pamgarh, District Janjgir Champa (Chhattisgarh)
7. Collector, Janjgir Champa, District Janjgir Champa Chhattisgarh.

---- **Respondent**

And

WPC No. 3036 Of 2016

- Smt. Pooja Rathore W/o Mukesh Kumar, Aged About 30 Years R/o Lili Village Sivni, Police Station & Post Champa, Tahsil Champa, Distt. Janjgir Champa, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through: The Secretary, Department Of Law, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (Chhattisgarh)
2. Advocate General, Chhattisgarh High Court Premises, Bilaspur, District Bilaspur, (Chhattisgarh)
3. Collector, Janjgir Champa, District Janjgir Champa, (Chhattisgarh)
4. Government Prosecutor, Janjgir, Distt. Janjgir Champa, (Chhattisgarh)

---- Respondent

For Petitioners : Shri PP Sahu, Shri Manoj Paranjpe and Shri KK Patel, Adv.
For Respondent/State : Shri Ramakant Mishra, Deputy Advocate General.
For Res. No.6 in WPC 1390/16 : Shri Raghvendra Pradhan, Advocate.
For Res. 1 & 2 in WPC 2127/16 : Shri KA Ansari, Sr. Advocate with Shri Devesh G. Kela, Advocate.
For Res. No.7 in WPC 2014/16 : Shri Akhilesh Kumar, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

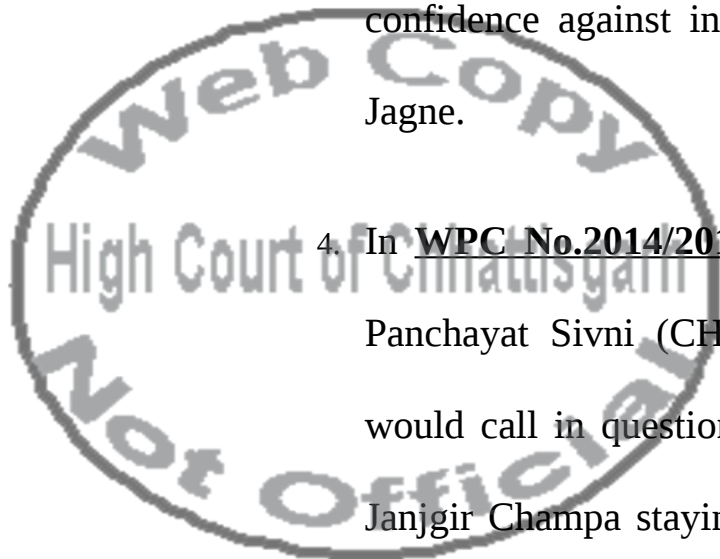
1. The present batch of 4 writ petitions were heard together and are being disposed of by this common order for the fact that common issue has been raised in all the writ petitions.
2. Pertinent question raised in the petitions is about the extent of the

Collector's power to grant interim order to stay the effect and operation of motion of no confidence carried against office bearers of the Panchayat body.

3. In **WPC No.1390/2016**, petitioner Chetan Kurre and other Panchas of Gram Panchayat Kaundhkera, District Gariyaband have assailed the interim order passed by the Collector, Gariyaband staying the effect and operation of the resolution carrying motion of no confidence against incumbent Sarpanch, respondent No.6 Ashok Jagne.

4. In **WPC No.2014/2016**, the petitioners, who are Panch of Gram Panchayat Sivni (CH), Block Baloda, District Janjgir Champa, would call in question the similar order passed by the Collector, Janjgir Champa staying the effect and operation of the motion of no confidence carried against incumbent Sarpanch, respondent No.1 Smt. Pooja Rathore.

5. In **WPC No.2127/2016**, the petitioners, who are Panch of Gram Panchayat, Mudpar (CHU), Janpad Panchayat Pamgarh, District Janjgir Champa, have called in question the interim order passed by the Collector, Janjgir Champa staying the effect and operation of the motion of no confidence carried against incumbent Sarpanch, respondent No.1 Smt. Parwati Lahre.



6. In WPC No.3036/2016, incumbent Sarpanch Smt. Pooja Rathore has sought for a direction to the Collector, Janjgir Champa to decide the pending reference which she has preferred under Section 21 (4) of the CG Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam'). Challenge is on the ground that in WPC No.2014/2016 filed by Panchas against Smt. Pooja Rathore, this Court has not stayed further proceedings of the reference application pending before the Collector, therefore, the Collector should proceed with the matter.

7. The factual position being not disputed in any of the matter, I shall straightway proceed to deal with the legal issue involved in the writ petitions.

8. Section 21 of the Adhiniyam provides for no confidence motion against Sarpanch and Up Sarpanch. It would be necessary to refer to the relevant provisions contained in Section 21 (1) of the Adhiniyam, which is reproduced hereunder:-

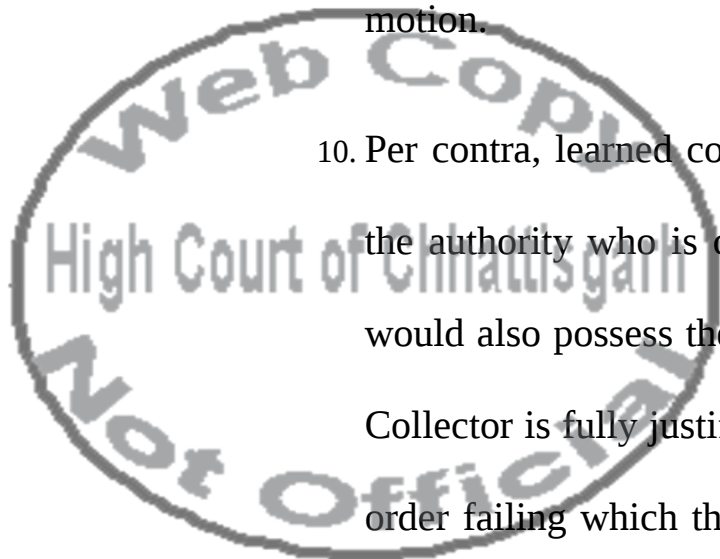
“21. No-confidence motion against Sarpanch and Up-Sarpanch. - (1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch

against whom such motion is passed, **shall cease to hold office forthwith.**”

9. Referring to the words “shall cease to hold office forthwith”, Shri PP Sahu and Shri Manoj Paranjpe, learned counsel for the petitioners would argue that the moment the motion of no confidence is passed against the Sarpanch or Up-Sarpanch he shall cease to hold office forthwith, therefore, nothing remains for the Collector to stay the effect and operation of the no confidence motion.

10. Per contra, learned counsel for the respondents would submit that the authority who is conferred power to decide the matter finally would also possess the power to grant interim relief, therefore, the Collector is fully justified in staying the effect and operation of the order failing which the reference application under Section 21 (4) would become infructuous.

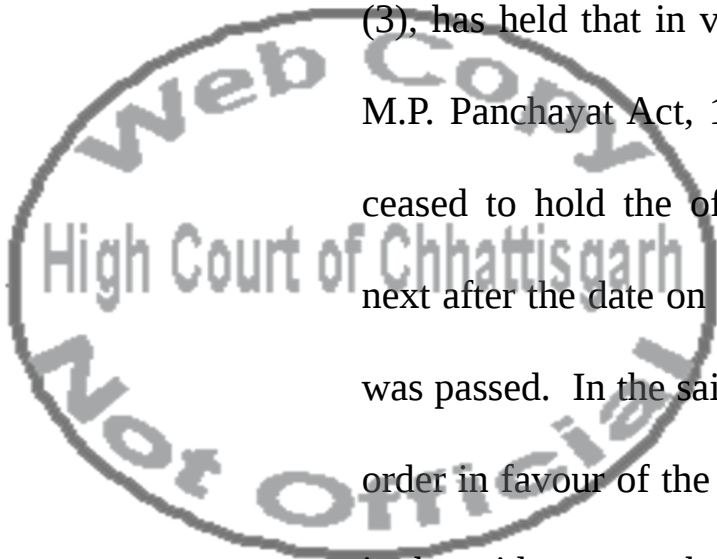
11. Way back, the Division Bench of the Madhya Pradesh High Court in the matter of **Babulal Jain and Others Vs. State of Madhya Pradesh and Others** {1966 MPLJ 901} has observed, while dealing with the motion of no confidence passed under Section 47 of the M.P. Municipalities Act (for short 'the Act'), that the Collector has no power under Section 323 of the Act to direct that motion of no confidence passed under Section 47 shall not take



effect. A motion of no confidence passed under Section 47 is neither an executory order nor an executory resolution of the Council. It takes effect from the moment it is passed and the office of the President or Vice-President, as the case may be, becomes vacant forthwith.

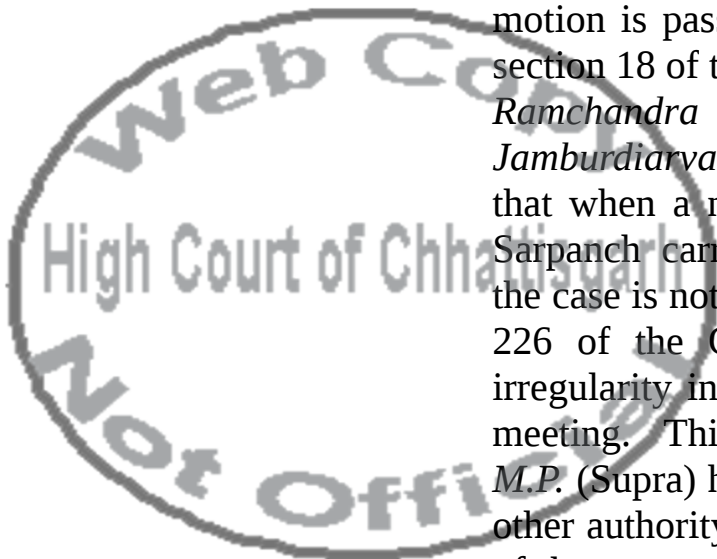
12. Yet again, the Division Bench of the M.P. High Court in the matter of **Bansilal Motilal Vs. Collector, West Nimar** {1975 MPLJ NoC (3)}, has held that in view of sub-section (1) of Section 117 of the M.P. Panchayat Act, 1962, the President of the Janpad Panchayat ceased to hold the office with effect from the date immediately next after the date on which resolution of motion of no confidence was passed. In the said case, the High Court had passed an interim order in favour of the outgoing President on a subsequent date and in the said context, the High Court further observed that the interim order stayed only the operation of no confidence resolution prospectively, therefore, all that had happened by operation of law could not be set at naught by the stay order.

13. Once again the Division Bench of the M.P. High Court in the matter of **Bal Krishan Patel Vs. Brijendra Patel and Others**{1985 MPLJ 332} had an occasion to deal with similar provision contained in Section 83 of the M.P. Panchayats Act, 1981



wherein it was held thus:-

“It is the settled view of this Court that if there is substantial compliance of this provision, a motion cannot be defeated for technical reasons and it is undemocratic to keep a person on the post when he lost majority. This Court in *Bensilal Motilal v. Collector, West Nimar* (supra) has held that on passing a no confidence motion against the Sarpanch, the post of Sarpanch is automatically vacated; this effect cannot be arrested even by the operation of the stay order passed by the High Court. Such must be effect when a no confidence motion is passed in substantial compliance to section 18 of the Act. So, this Court in *Motilal Ramchandra v. Gram Panchayat, Jamburdiarvar* {1983 MPLJSN 8} has held that when a no confidence resolution against Sarpanch carried by overwhelming majority, the case is not fit for interference under Article 226 of the Constitution even if there was irregularity in the service of the notice of the meeting. This Court in *Babulal Vs. State of M.P.* (Supra) has held that the Collector or any other authority had no power to stay the effect of the no confidence motion passed under the Municipalities Act. The motion of no confidence is not an executive order and the resolution takes effect from the moment it is passed. That was a case under section 331 of the M.P. Municipalities Act, 1961 but that provision is not similar to section 83 or 86 or the present Act. In that context this Court held that even the State had no power to stay the effect of the no confidence motion because under section 331 it had only the power to call for and examine the record of any proceeding under that Act in respect of a case and so it was held that this provision did not cover a no confidence motion the proceeding of which was not a case but now in the present enactment there is a power in the Collector or



the Additional Collector to entertain a revision against a no confidence motion and even to pass an order of stay. But before passing an order, normally a no confidence motion cannot be defeated for technical reasons, even when there is sufficient compliance to section 18.”

14. In a subsequent Single Bench decision in the matter of **Kaushalya Vs. Additional Collector** {1998 (I) M.P. WEEKLY NOTES [236]}, the principle has been reiterated in the following words:-

“The short question involved for consideration is as to whether in the revision under rule 8 of the Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995, a party could be granted such an order staying the effect of the passing of the motion of no-confidence against Sarpanch.

Section 21 speaks that if the resolution is passed by a majority of not less than three fourth of the Panchas present and voting and such majority is more than two-third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up Sarpanch against whom such motion is passed, shall cease to hold office forthwith. Cessation of holding of the office is statutory. The Rules framed under the Act come under the category of subordinate legislation and the subordinate legislation cannot override the provisions of the Act. A person against whom, a motion of no-confidence is passed, he ceases to function and ceases to hold office forthwith. An authority functioning in exercise of his power given under the Rules which come under the category of subordinate legislation cannot stay such a declaration. It is well established principle that the stream cannot go higher than the source.

Learned State counsel invited the attention

of this Court to a decision of this Court in *Bal KrishanPatel v. Brijendra Patel and others*, 1985 JLJ 522.

Though this decision was cited by the learned counsel for the petitioner for making submission that stay could be granted but subsequently, the learned State counsel himself submitted that the decision was in a different situation of law as in that case, the revision was provided under the Act itself and power of staying such resolution was provided in the Act and not by means of Rules. In view of this, it is not necessary to dilate on the decision so cited.

In view of the above, the impugned order is not sustainable. It deserves to be set aside.”

15. Let me now dwell on the meaning of the word 'cease'. As per Black's Law Dictionary, the word 'cease', *a verb*, would mean (1) to stop, forfeit, suspend or bring to an end, (2) to become extinct; to pass away.

16. Interpreting the word 'cease', the Division Bench of the Andhra Pradesh High Court in the matter of **Mahant Narayana Dessjivaru Vs. State of Andhra, Hyderabad and Others** {AIR 1959 AP 471} has held that the word 'cease' means discontinue or put an end to. It means that the scheme and the Sanad were no longer operative and the rights, if any, accruing therefrom are extinguished. There is no scope for importing any notion of suspension into that expression. Its only import is that they are discontinued once and for all.

17. Interpreting the word 'ceased' occurring in Section 13 (2)(v) of the East Punjab Urban Rent Restriction Act, a Single Bench of the Punjab and Haryana High Court in the matter of **Sat Parkash, etc. Vs. Shiv Lal** {AIR 1991 Punjab and Haryana 199} has held in para-12 thus:-

| | | |
|-------|------|------|
| “xxxx | xxxx | xxxx |
| xxxx | xxxx | xxxx |
| xxxx | xxxx | xxxx |

The expression “ceased” is not defined in the Act. In the Law Lexicon by Justice T.P. Mukherjee, the word “cease” means “to discontinue or put an end to”. In Stroud's Judicial Dictionary by John S. James, the term “cease” is stated to apply to the case where the entire thing has ceased to be. Its only import is that the tenancy has been put to an end once for all. The Legislature in its wisdom has allowed the landlord to seek eviction of the tenant on the ground that the latter had ceased to occupy the premises continuously for a period of four months without reasonable cause. The landlord has to prove that the tenant by his conduct has brought the tenancy to an end and with that intention had discontinued the occupation of the demised premises.”

18. Highlighting the importance and significance of ouster from office through the mechanism of no confidence motion, the Supreme Court in the matter of **Pratap Chandra Mehta Vs. State Bar Council of Madhya Pradesh and Others** {(2011) 9 SCC 573} has held that no confidence motion cannot be equated in law to

removal relatable to a disciplinary action or as a censure. It is *stricto sensu* not removal from office, but a removal resulting from loss of confidence. It is relatable to no confidence and is not removal relatable to the conduct or improper behaviour of the elected person. It further held that the distinction between removal by way of no confidence motion and removal as a result of disciplinary action or censure is quite well accepted in law. They are incapable of being interchanged in their application and must essentially operate in separate fields. Referring to the judgment in the matter of **Afjal Imam Vs. State of Bihar** {(2011) 5 SCC 729}, the Supreme Court observed that the recall of a Mayor and the re-election of a different Mayor in his place has been held to implicitly shorten the term of the appointees of the previous Mayor, if such is in the interest of smooth functioning of the body. The Supreme Court then referred to the judgment in the matter of **Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot** {(1974) 2 SCC 706} to observe that there is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members.

19. There can be no denial of the legal character of the Panchayat body. It exists as a pillar of democracy at the grass-root level where democratic norms have to be followed in the matter of election of office bearer which essentially includes ouster or removal of office bearer by means of no confidence motion. Therefore, the purposive interpretation of the word 'shall cease to hold office' occurring in Section 21 (1) of the Adhiniyam is to pave way to the established democratic norms and a person who has lost confidence of the house is not to be allowed to remain in the office on the strength of interim order of the Collector, who is required to hear the reference application under Section 21 (4) of the Adhiniyam.

20. Learned counsel for the respondents have referred to Single Bench decision of this Court in the matter of **Smt. Basanti Chandra & Others Vs. Nand Ram & Others** {2006 (1) CGLJ 486} where a contrary view has been taken. In the said case, it has been observed that even if the provisions contained in sub-section (1) of Section 21 provides that the incumbent of the office shall cease to hold the office forthwith, that is to say, with immediate effect, that prescription is not a limitation on the power of the District Collector to pass appropriate interim order when a reference envisaged under sub-section (4) of Section 21 of the Adhiniyam

was made by Sarpanch or Up-Sarpanch, as the case may be, for his decision. It is further observed that such power would be conceded to the Collector in order to sub-serve the ends of justice and to avoid failure of justice.

21. It appears, when the matter was argued before the Single Bench in **Smt. Basanti Chandra** (Supra), the previous Division Bench Judgments rendered by the M.P. High Court in the matters of **Babulal Jain** (Supra), **Bansilal Motilal** (Supra) and **Bal Krishan Patel** (Supra) were not brought to the notice of the Court. The High Court of Chhattisgarh having been constituted with effect from 1.11.2000 by virtue of the provisions contained in Section 21 of the Madhya Pradesh Reorganization Act, 2000. In the real sense, it is an off-shoot of the M.P. High Court exercising the same jurisdiction and administering the same laws which the M.P. High Court had exercised immediately before 1.11.2000 in the territories now included in the State of Chhattisgarh. The Chhattisgarh High Court may thus be treated as one succeeding to the High Court of M.P. exercising all the powers and administering the same laws which the M.P. High Court had exercised in the territories comprised in the State of Chhattisgarh. Therefore, the Division Bench judgments rendered by the M.P. High Court prior to 1.11.2000 would be binding on this Court as at that point of time

the areas falling within the jurisdiction of the State of Chhattisgarh or the High Court of Chhattisgarh were under the jurisdiction of the M.P. High Court and the law was so declared by pronouncement for the entire State which also comprised the areas under the jurisdiction of the Chhattisgarh High Court.

22. For the above proposition, it would be profitable to refer to the law laid down by the M.P. High Court in the matter of **Baboo Vs. Tumla** {1966 MPLJ Notes of Cases (26)} holding that a decision of the Nagpur High Court, if it applies to the facts and circumstances of the case, is binding on every subordinate Judge. It is a binding precedent. Even if a contrary view is taken by all other High Courts, he is bound by the view taken by this (Nagpur) High Court. A decision of any other High Court can serve only as a persuasive precedent. In any event, a decision of this High Court cannot be said to be directly or indirectly overruled by a decision of any other High Court.

23. Similarly the Full Bench of the Andhra Pradesh High Court in the matter of **M. Subbarayudu Vs. State** {AIR 1955 AP 87}, while dealing with the similar issue upon bifurcation of the State of Madras into Madras and Andhra Pradesh and creation of separate Andhra Pradesh High Court held thus in paras-27 & 31:-

27. I shall now consider the procedure to be followed by this High Court in dealing with decisions of the Madras High Court prior to 5-7-1954. The general principle is that this High Court shall follow the decisions of the Madras High Court prior to the said date in same manner in which the Madras High Court would follow its own decisions. The conditions when a Court can differ from a Court of co-ordinate jurisdiction have been succinctly stated by Lord Greene, M.R., in 1944-2 All ER 293 (C) in a passage already referred to.

31. I prefer to rest my decision primarily on my answer to the second question. To start with, the territory over which the Andhra High Court exercises jurisdiction is part of the territory over which the composite Madras High Court exercised jurisdiction. There is no doubt that, if the Madras High Court had continued to exercise jurisdiction, the precedents of the Madras High Court would have been enforced over the whole of this territory. Should the mere constitution of a new High Court make any difference to the Judge-made law that ought to prevail here? Now, for instance, it is well known that quite a large body of the rules of the Hindu Law as administered in India is Judge-made. Why should we rouse apprehension in the minds of the citizens of the Andhra State that those rules so long held to obtain in this part of India are subject to reconsideration and possibly to reversal, all because a new High Court has been ushered into existence? Lawyers and the litigant public alike will be perplexed and confused. The security of titles to property based on the law as previously understood will be needlessly imperilled. The very idea that what has been recognised to be well-established law will be re-examined by this Court will, I entertain no doubt, be a prolific source of undesirable and speculative litigation. Indeed, it seems to me, the whole object of the rule of stare decisis will be defeated. I think it is our clear duty to do everything to avoid that result.

There is nothing in the genesis of our Courts which

gives us a free hand to deal with the earlier law as laid down by the Madras High Court. There may be cases where the constitution of a new Court involves the welding of two or more jurisdictions each previously under a different Court. In such a case, regions governed by different judge-made rules of law are brought together for the first time and a new Court administering justice over the new jurisdiction cannot properly hold itself bound by the precedents established in one or other of the earlier jurisdictions without making an invidious distinction and without upsetting one set of precedents or other. That, to my mind, is the case with the Travancore and Cochin High Court. It would not be in accordance with the reasonable expectations of the citizens of that new State that the new Court should follow either the Travancore or the Cochin Judge-made law. The decision therefore, in AIR 1953 Trav-C 283 (E) seems to me unexceptionable.

Again, where small territorial units are integrated to form a new State, and a new and independent High Court is established with jurisdiction over the whole State without reference to the jurisdiction of the previous local Courts as is the case with Madhya Bharat, according to the Chief Justice of that Court, the new Court may have no precedents of a parent Court to follow, or would have to apply the precedents of a former Court with a narrower territorial jurisdiction. In such cases, the Court cannot help starting with a clean state. In breaking new ground therefore, it would not be disappointing any natural expectations on the part of the people as to established rules of law. The view taken in AIR 1952 Madh-B 171 (FB) (F) may with respect be considered right.

On the other hand, where territories under the jurisdiction of one High Court are divided into two, each to be under the jurisdiction of a separate High Court, it seems to me that the principle underlying the rule of precedents requires the continuity of

case-law to be maintained, because there is no reason at all why the certainty of the law should be affected. The Andhra High Court is, in one sense, new of course but its jurisdiction is a jurisdiction which was once subject to one High Court and until 5-7-1954 governed by the case law as laid down by that High Court. A Court should be reluctant to favour innovations unless they are indispensable. Precedents are followed in the words of Blackstone.

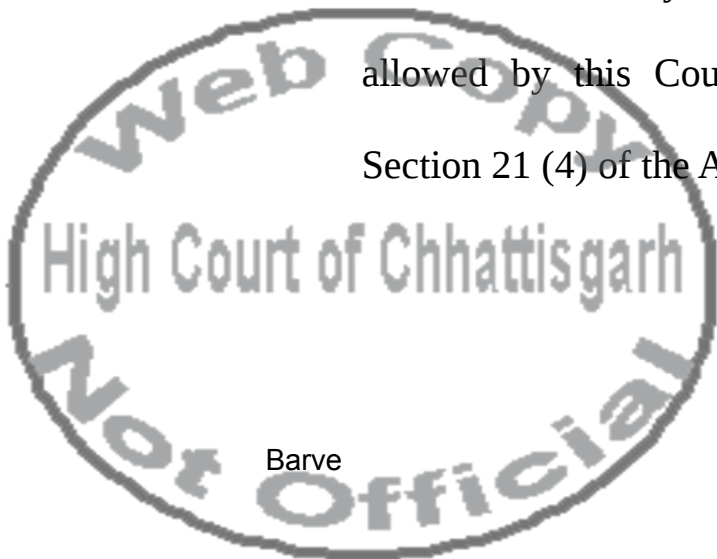
"as well to keep the scales of justice steady and not liable to waver with a new Judge's opinion as also because.....What before was uncertain and perhaps indifferent is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter according to his private sentiments".

24. It is also to be noticed that the Law of Precedent is that the Single Bench cannot take a view in departure or in conflict from the view expressed by the Bench of larger strength, as held in **Jabalpur Bus Operators Association and others Vs. State of M.P. and Others** {2003 (1) M.P.L.J 513}.

25. In view of the binding nature of law declared by the Division Bench of the M.P. High Court prior to 1.11.2000, this Court would follow the earlier Division Bench decisions to hold that the moment motion of no confidence is carried against Sarpanch or Up-Sarpanch, as the case may be, he ceased to hold the office forthwith and nothing remains for the Collector to stay the effect and operation of carrying of no confidence motion.

26. In the result, WPC Nos.1390/2016, 2014/2016 and 2127/2016 are thus allowed and the interim orders passed by the respective Collectors in those cases are set aside. WPC No.3036/2016 preferred by Smt. Pooja Rathore, incumbent Sarpanch for direction to the concerned Collector to dispose of the pending reference is disposed of with a direction that the Collector shall decide the pending reference at the earliest, preferably within a period of 2 months from today. In 3 other writ petitions which have been allowed by this Court, if the reference is still pending under Section 21 (4) of the Adhinyam, the same direction shall apply.

Sd/-
Judge
(Prashant Kumar Mishra)



HEADLINES

Once motion of no confidence is passed against Sarpanch or Up-Sarpanch under Section 21 (1) of the Panchayat Raj Adhiniyam, 1993, Sarpanch or Up-Sarpanch ceases to hold the office forthwith, therefore, nothing remains for the Collector to stay the operation of the resolution.

