

the sub- section (3) of the Section 95 of the said Act, namely:—

1. Short title.—These rules may be called the Madhya Pradesh Panchayat (Regulation of Relations between Panchayats and Panchayat and other local authorities) Rules, 1994.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) "Act" means the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994);

(b) "Section" means the section of the Act.

3. Settlement of Disputes.—(1) If any dispute arises between—

(i) the Panchayats, or

(ii) the Panchayat and the local authorities of any matter in which they are jointly interested such matter shall be resolved by reconciling the views of each other or by mutual consultation with due regard to their representative character in democratic set-up.

(2) If they fail to resolve their dispute the manner provided in sub-rule (1), the same may be referred by them jointly or by any party to the dispute to the State Government for decision and such decision may include an order as to the costs of any enquiry ordered by the State Government, and shall be final:

Provided that the Panchayat and the local authority may agree in writing that such dispute shall, instead of being referred to the State Government for decision, be referred for an arbitrator or arbitrators appointed under the Arbitration Act, 1940 or to a Civil Court under Section 90 of the Code of Civil Procedure, 1890.

4. Repeal.—The previous rules if any on the subject shall stand repealed on the date of final publication of these rules in the "Madhya Pradesh Gazette".

**THE MADHYA PRADESH PANCHAYAT (GRAM PANCHAYAT KE
SARPANCH TATHA UP- SARPANCH, JANAPAD PANCHAYAT
TATHA ZILA PANCHAYAT KE PRESIDENT TATHA
VICE-PRESIDENT KE VIRUDH AVISHWAS
PRASTAV) NIYAM, 1994**

C O N T E N T S

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[Notification No. B-1-4-95-P-2-XXII, dated 9th January, 1995, published in M.P. Rajpatra, Extraordinary, dated 10th January, 1995, p. 24(3)-(5), as amended by Notfn. dated 23-12-1995, published in M.P. Rajpatra, Ext., dated 26-12-1995, p. 1208].-In exercise of the powers conferred by the sub-section (1) of Section 95 read with sub-section (2) of Section 21, sub-section (2) of Section 28 and sub-section (2) of Section 35 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994), the State Government hereby makes the following rules, the same having been previously published as required by the sub-section (3) of the Section 95 of the said Act, namely:—

1. Short title.-These rules may be called the Madhya Pradesh Panchayat (Gram Panchayat Ke Sarpanch तथा Up-Sarpanch, Janapad Panchayat तथा Zila Panchayat Ke President तथा Vice-President Ke Virudh Avishwas prastav) Niyam, 1994.

COMMENTARY

In the meeting called for consideration of no-confidence motion against Sarpanch of Gram Panchayat, presence of panchas' names mentioned and the proceedings were signed by all the panchas including the Sarpanch and Up-Sarpanch. Collector wrongly set aside the no-confidence motion passed on the ground that presence was not mentioned. *Sukhnandan Patel v. State of M.P.*, 2003 (1) MPLJ 220=2003 (2) JLJ 74.

2. Definitions.-In these rules, unless the context otherwise requires,—

- (a) "Act" means the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994);
- (b) "Chief Executive Officer" means the Chief Executive Officer of Janapad Panchayat or Zila Panchayat;
- (c) "Secretary" means the Secretary of the Gram Panchayat;
- (d) "Section" means the section of the Act.

3. Notice.-¹[(1) Elected members of Gram Panchayat, Janapad Panchayat or Zila Panchayat desiring to move a motion of no confidence against the Sarpanch or Up-Sarpanch of a Gram Panchayat or President or Vice-President of Janapad or Zila Panchayat, as the case may be, shall give a notice thereof to the prescribed authority in the form appended to these rules:

Provided that such notice shall be signed by not less than one third of the total number of elected members of the concerned Panchayat :

Provided further that where the elected members desire to move the motion of no confidence against both the Sarpanch and Up-Sarpanch, President and Vice-President of Janapad Panchayat or Zila Panchayat, as the case may be, they shall give separate notice.]

(2) The prescribed authority, on receiving the notice under sub-rule (1) shall sign thereon a certificate stating the date on which hour and at which the notice has been given to him and shall acknowledge its receipt.

¹ Subs. by Notification dated 23-12-1995 [26-12-1995].

(3) On receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to Section 21 (3), 28 (3) and 35 (3), as the case may be. On being thus satisfied, he shall fix the date, time and place for the meeting of the Gram Panchayat, Janapad Panchayat or Zila Panchayat, as the case may be, which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof shall be caused to be despatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janapad or Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before the meeting.

COMMENTARY

SYNOPSIS

1. Issue of no-confidence motion notice.
2. Non-compliance of the provision of notice, whether caused serious prejudice to any party.
3. Revision.
4. Invalid meeting.
5. Change of venue of meeting for discussing no-confidence motion.
6. Delayed meeting-Effect.
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9. Despatch of notice.
10. Adjournment of meeting called for considering motion of no-confidence against Sarpanch.
11. Prescribed Authority fixing date of meeting beyond 15 days- Motion of no-confidence passed cannot be held invalid.

1. Issue of no-confidence motion notice.- The issue of notice of meeting of a no confidence motion must be issued by the Collector, who is the prescribed authority and not by the Chief Executive Officer of the Janpad Panchayat. But such a notice can be served by him. *Mohanlal Marco v. Additional Commissioner*, 2004 (4) MPLJ 461=2004 (4) MPHT 59.

2. Non-compliance of the provision of notice, whether caused serious prejudice to any party.- The provision regarding notice is mandatory. If it is not complied, it is still open to the Collector to find out whether it has caused serious prejudice to any of the parties or whether it has resulted in failure of justice. *Bhulin Dewangan v. State of M.P.*, 2001 (2) MPLJ 372=2000 (2) JLJ 353 (F.B.).

3. Revision.- Revision against notice convening meeting to consider no-confidence motion and appointing president Officer. Notice being neither an order, nor a proceeding but only a performance of statutory duty, revision does not lie. Commissioner has no jurisdiction to stay the proceedings. *Ramprasad Mavai v. Hari Singh Tomar*, 2002 (2) JLJ 53=2001 (4) MPHT 364.

4. Invalid meeting.- [1] Where a meeting is called for discussing a no-confidence motion, it can be invalidated if notice to call such a meeting

is not dispatched before seven clear days of the date fixed for meeting. *Jugraj Singh Markam v. Dhannalal*, 2003 (4) MPLJ 378=2004 (1) JLJ 340.

[2] See also: *Ramesh Chandra Vanshkar v. State of M.P.*, 2008 (4) MPLJ 373 = 2008(5) MPHT 340 = 2008(2) MPWN 40.

5. Change of Venue of meeting for discussing no-confidence motion.-Where venue of a meeting to discuss no-confidence is to be changed, the same should be done by the prescribed authority and such change should be informed to the Sarpanch. If it is not done so, the meeting would be invalid. *Channulal v. Additional Commissioner*, 2004 (1) MPLJ 250.

6. Delayed meeting-Effect.-Meeting to discuss no-confidence motion against Sarpanch not convened within 15 days from the date of notice. Petitioner participated in the meeting without raising any objection and motion was carried out with required majority. Held no prejudice caused to the petitioner because of delay in calling the meeting. *Nanchibai v. State of M.P.*, 2005 (1) MPLJ 200.

7. Requirement of convening meeting.-[1] Under Rule 3(3) convening of meeting within 15 days is must; it is mandatory and if the meeting which is convened within 15 days could not proceed because of the reasons beyond control of the prescribed authority, it can be adjourned and the bar of rule 3(3) will not come in the way. The expression 'shall be convened within 15 days' has to be interpreted as mandatory and it cannot be construed as directory. 1996 MPLJ 409 to the extent it holds that meeting cannot be adjourned **OVERRULED**. *Muku Bai v. State of M.P.*, 1998 (2) MPLJ 661 (DB).

[1-A] See also: *Seva Yadav v. State of M.P.*, 2008 (2) MPLJ 172 = 2008(2) JLJ 9 = 2008(3) MPHT 407 = AIR 2008 (NOC) 1389 (MP)[DB].

[2] It is necessary for passing of a no-confidence motion that notice of meeting should be despatched before 7 clear days. Where no such notice was despatched, motion passed in such meeting shall not be valid. *Shrinarayan Tiwari v. State of M.P.*, 1998 (1) JLJ 124.

[3] Where the petitioner participated in the meeting without raising any objection as to sufficiency of notice, he is not entitled to raise objection after the motion is passed. *Mahesh Prasad v. State of M.P.*, 1997 (2) JLJ 397.

[4] The requirement of law of seven clear days is not for delivery of notice but it is for despatch of notice. *Mahesh Prasad v. State of M.P.*, 1997 (2) JLJ 397.

8. Expression "caused to be despatched by him"-Meaning of.-The requirement of sub-rule (3) of rule 3 is that whenever a notice is received by the prescribed authority desiring to move a motion of no-confidence against Sarpanch or Up-Sarpanch of a Gram Panchayat or President or Vice-President of Janpad or Zila Panchayat, as the case may be, he shall satisfy himself about the admissibility of the notice with reference to section 21(3) of the Act in case of Gram Panchayat or

28(3) of the Act in case of Janpad Panchayat and under Section 35(3) of the Act in case of Zila Panchayat, as the case may be, that the notice is in consonance with the aforesaid provision or not. After having been satisfied that the notice is in consonance with the aforesaid provision, he shall fix the date, time and place of the meeting of the Gram Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be, which shall not be more than fifteen days from the date of receipt of the said notice. The notice of meeting shall specify the date, time and place of the meeting and the same shall be caused to be despatched by him through the Secretary of the Gram Panchayat or through the Chief Executive Officer of the Janpad Panchayat or Zila Panchayat, as the case may be, to every member of the Panchayat concerned seven days before the meeting. The expression "notice shall be caused to be despatched by him" should not necessarily mean that the notice should be signed by him. If the prescribed authority passes the order on being satisfied that the notice is in order then, he shall fix the date, time and place for convening the meeting. Compliance of the above order is nothing but a clerical job. What is relevant is that an order has to be passed by the prescribed authority for issue of notice of meeting. *Somvati Soni v. Gram Panchayat, Padwar*, 2000 (1) MPLJ 173.

[2] **Meaning of the expression 'such'**. - The meaning of the expression 'such' appearing in sub-rule (3) shall be that the prescribed authority, apart from specifying the date, time and place of the meeting in the notice, he should also specify that the meeting is convened for the particular purpose of motion of no-confidence against (the person concerned). *Somvati Soni v. Gram Panchayat, Padwar*, 2000 (1) MPLJ 173.

9. Despatch of notice. - The word 'dispatch' used deliberately and it cannot be read as 'receipt'. Dispatch of notice for service on the members in one of the modes prescribed in the rules will be due compliance of the provision. It cannot be read as 'receipt'. *Bhulin Dewangan v. State of M.P.*, 2001 (2) MPLJ 372=2000 (2) JLJ 353 (F.B.).

[2] In the matter of meeting for considering motion of no-confidence, the requirement of law is that the notice shall be despatched seven days before the meeting for considering the motion. Proceedings are not affected merely because notice was served by Executive Officer and not by peon. No such technicality can be allowed to be raised when the majority has cast vote against the petitioner. *Meenabai v. State of M.P.*, 1999 (2) MPLJ 97.

[3] See also comments under S.21. *Bhulin Dewangan v. State of M.P.*, 2000 (4) MPHT 69=2000 (2) JLJ 253 (FB).

[4] Rule 3(3) contemplates despatch of the notice of meeting specifying the date, time and place thereof by the prescribed authority through the Secretary of the Gram Panchayat, to every member 7 days before the meeting. Therefore, requirement of law is for despatch of notice and not service on the members. *Shardabai v. State of M.P.*, 1997 (2) MPLJ 291.

10. Adjournment of meeting called for considering motion of no- confidence against Sarpanch.-[1] Once the meeting of no- confidence is fixed by the Prescribed Authority and an officer has been appointed as a Presiding Officer under Rule 3 it is he who is seized of the matter because he has to preside over the meeting. It is he who is responsible for the conduct of the meeting. Once a Presiding Officer has been conferred a power to preside at the meeting he has all the powers as Presiding officer including inherent power to adjourn the meeting. This power can therefore be exercised even earlier for justifiable reasons. 1996 MPLJ 409=1996 JLJ 231 Rel. *Lakhansingh v. State of M.P.*, 1998 (1) MPLJ 682.

[1-A] See also: *Seva Yadav v. State of M.P.*, 2008 (2) MPLJ 172 = 2008(2) JLJ 9 = 2008(3) MPHT 407 = AIR 2008 (NOC) 1389 (MP)[DB].

[2] If the Presiding Officer adjourned the meeting in exercise of inherent power vested in him and that date falls beyond 15 days from the date of receipt of the notice, it is not in violation of clause (3) of rule 3. 1997 (2) MPLJ 175, 1996 MPLJ 409=1996 JLJ 231 Disting. *Lakhansingh v. State of M.P.*, 1998 (1) MPLJ 682.

[3] A meeting summoned for expressing no confidence cannot be adjourned for want of quorum as the quorum has not been prescribed. The presiding officer has to only preside over the meeting but has no power to adjourn it. 1975 JLJ 500 Disting. *Hargovind Johari v. Zila Panchayat, Morena*, 1996 JLJ 231=1996 MPLJ 409.

11. Prescribed authority fixing date of meeting beyond 15 days-Motion of no confidence passed cannot be held invalid. Although the date of meeting fixed by the Prescribed Authority was beyond 15 days from the date of receipt of notice still, the motion of no-confidence passed cannot be held invalid for the reason that the will of members in relation to the no- confidence motion cannot be defeated on account of inaction or delayed action of the Prescribed Authority. But it was observed that in case the meeting is not held within 15 days, the members have the right to approach the High Court for its compliance and this judgment should not be held to have authorised the Prescribed Authority to fix date of meeting for consideration of no-confidence motion beyond 15 days. *Dhumadandhin v. State of M.P.*, 1997 (2) MPLJ 175.

4. Appointment of Presiding Officer.-The Prescribed Authority shall appoint an Officer of the Government under sub-section (2) of Section 21, sub-section (2) of Section 28, or sub-section (2) of Section 35 to preside over the meeting of the Gram Panchayat, Janapad Panchayat or Zila Panchayat, as the case may be. For the purpose of considering the no confidence motion against Sarpanch or Up-Sarpanch, a Revenue Officer not below the rank of Naib Tehsildar, against President or Vice-President of Janapad Panchayat ¹[Officer not below the rank of Deputy Collector]

1 Subs. by Notification dated 23-12-1995 [26-12-1995].

and against President or Vice-President of Zila Panchayat the Collector or Additional Collector shall be appointed to preside over such meeting and the prescribed authority shall inform the Secretary of the Gram Panchayat or Chief Executive Officer of Janapad Panchayat or Zila Panchayat as the case may be, and the Collector of the district about such appointment at least 3 days before the date fixed for the meeting.

COM M E N T A R Y

In the matter of no confidence motion against Sarpanch of Gram Panchayat, if information is not sent to the Collector of appointment of presiding officer under Rule 4, it cannot nullify the resolution of non-confidence which is passed by overwhelming majority. *Sukhnandan Patel v. State of M.P.*, 2003 (1) MPLJ 220=2003 (2) JLJ 74.

5. Conduct of meeting.-(1) The Presiding Officer shall record the attendance of the members of the Panchayat present at the meeting.

¹[x x x]

²[(3) The Presiding Officer shall ask any of the signatories to the notice to move the motion.]

(4) After the motion is moved the mover shall first speak on the motion and thereafter other members may, if they so desire, speak on the motion.

(5) On the conclusion of the debate on the motion, the Presiding Officer shall call the members present in the meeting one by one and shall give them ballot paper duly signed by him to indicate its authenticity, to cast his vote for or against the motion. The member who wants to vote in favour of the motion shall affix the symbol (✓) and the member who wants to vote against the motion shall affix the symbol 'X'. After the member has recorded his vote, he shall fold the ballot paper to maintain secrecy and put it in the ballot box kept on the table of the Presiding Officer.

(6) After the voting is over, the Presiding Officer shall take out the ballot papers from the ballot box and sort out the votes for and against the motion. If the number of votes in favour of the motion fulfills the requirement of sub-section (1) of Section 21, sub-section (1) of Section 28, or sub-section (1) of Section 35, as the case may be, the Presiding Officer shall declare that the motion of no confidence is passed. ³[xxx].

COM M E N T A R Y

1. Validity of resolution-Sarpanch has a right to speak.-A no-confidence motion against a Sarpanch was considered in a meeting called for the purpose and a resolution was passed by the majority of members required to do so but the concerned Sarpanch was not allowed to speak in that meeting. Held that although the motion was passed by the requisite majority still, the resolution was invalid because the Sarpanch was not allowed to speak in that meeting. See comments under S.21. *Nagsai v. State of M.P.*, AIR 1998 MP 81.

1 Sub-rule (2) omitted by Notification dated 23-12-1995 [26-12-1995].

2 Subs. by Notification dated 23-12-1995 [26-12-1995].

3 Omitted by Notification dated 23-12-1995 [26-12-1995].

2. Mark on ballot paper construed.-[1] Looking to the marks put on three ballot papers, the Court came to the conclusion that these marks were put to vote in favour of the no- confidence motion. *Shardabai v. State of M.P.*, 1997 (2) MPLJ 291.

[2] **Mark on ballot paper's back side treated as no expression of intention.**-A voter was required to cast his vote in favour of no confidence motion by putting the symbol of right mark and against it by putting a symbol of cross mark (x). One disputed ballot paper is liable to reject for the reason that reverse mark of right symbol was put on the blank back side. Held, it will not convey any intention in specific of the voter and the same cannot be treated as a expression of intention within the meaning of election laws. Such ballot paper rightly rejected. *Sunita Patel v. Collector*, 2008 (3) MPLJ 248 = 2008(1) MPHT 302 = 2008(2) JLJ 26 = AIR 2008 (NOC) 802 MP.

2-A. Nirvachan Niyam, 1995 are applicable.-M.P. Nirvachan Niyam, 1995 are quite exhaustive and they would also cover the meetings of no confidence with regard to various things for which no provision has been made in the Avishwas Prastav Niyam, 1994. Illustratively, Chap. X of Nirvachan Niyam provides for counting of votes for which no specific provision made in Avishwas Prastav Niyam and although counting is required to be made even in the meeting for no confidence. *Sunita Patel v. Collector*, 2008 (3) MPLJ 248 = 2008(1) MPHT 302 = 2008(2) JLJ 26 = AIR 2008 (NOC) 802 MP.

3. Sub-rule (5)-Opportunity to speak.- The facts showing that deliberations were made showed that opportunity was given to speak at the meeting called for consideration of no confidence against the Sarpanch. Provisions of sub-rule (3) were complied. *Sukhnandan Patel v. State of M.P.*, 2003 (1) MPLJ 220=2003 (2) JLJ 74.

4. Sub-rule (5)-Voting by women members with assistance of their husbands.-While casting votes in the proceedings of no-confidence motion meeting, the women members were permitted to take assistance of their husbands by the Presiding Officer and no objection to such course was taken by anyone, the motion carried out by 3/4th majority of votes cannot be set at nought in the absence of any allegation to the effect that the votes were casted by the women candidates under the influence of their husbands. *Kamla Durga Solanki v. State of M.P.*, 2004 (2) MPLJ 140=2004 (2) MPHT 76 (DB).

5. Conclusion.- No meeting could be held due to difference of opinion between the presiding officer and the members present. No conclusion can be drawn that the motion was rejected. *Baboolal Baiga v. State of M.P.*, 2002 (3) MPLJ 529=2002 (5) MPHT 32.

[2] No confidence motion was not validly passed for want of requisite strength i.e. 3/4th. *Sunita Patel v. Collector*, 2008 (3) MPLJ 248 = 2008(1) MPHT 302 = 2008(2) JLJ 26 = AIR 2008 (NOC) 802 MP.

6. Minutes of the Proceedings.-Minutes of the proceedings of the meeting called under rule 4 shall be drawn up by the Presiding Officer and

recorded in the minute book kept in the Panchayat for recording the proceedings of its meetings and sign it.

7. Safe keeping of Records.-(1) The Presiding Officer shall keep in safe custody the ballot papers referred to in sub-rule (5) of rule 5, in his office duly sealed along with a copy of the minutes of the proceedings for period of one year.

(2) The minutes of proceeding recorded under sub-rule (1) shall include,—

- (i) name of the office bearers present;
- (ii) the decision of the meeting on the motion of no-confidence; and
- (iii) when such decision is not unanimous the number of votes for and against such motion and the number of those who have remained neutral.

8. Decision to be communicated to the Prescribed Authority and the Collector.-When the Panchayat takes a decision on any motion of no-confidence, the Presiding Officer shall communicate forthwith a copy of the proceeding drawn under rule 6 to the prescribed authority and the Collector.

9. Repeal.-All previous rules on the subject shall stand repealed from the date of final publication of these rules in the "Madhya Pradesh Gazette".

FORM

[See sub-rule (1) of Rule 3]

NOTICE OF NO-CONFIDENCE

To,

The Prescribed Authority,

I/We intend to move a motion of no-confidence against *Sarpanch/Up-Sarpanch of Gram Panchayat *President/Vice- President of Janapad Panchayat *President/Vice-President of Zila Panchayat

The grounds of no-confidence motion are as under:—

1.
2.
3.

Place

Date

Signature

*Strike out which is not applicable.