

**(1952) 03 CAL CK 0018**  
**In the Calcutta High Court**  
**Case No : A.F.O.O. No. 42 of 1952**

Ajit Kumar Sen and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision :** 26-03-1952

**Acts Referred:**

Calcutta Municipal Act, 1923 — Section 44, 45(2), 45(3)  
Corporation of Calcutta (Temporary Supersession) Act, 1948 — Section 4(2)

**Citation :** AIR 1954 Cal 49 : 57 CWN 613

**Hon'ble Judges :** P.N. Mookerjee, J; Das Gupta, J

**Bench :** Division Bench

**Advocate :** R. Chaudhuri, for the Appellant; S.M. Bose, General, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Das Gupta, J.—This appeal is by two unsuccessful applicants for writs of Mandamus and Prohibition. Their purpose in asking the Court to issue these writs was to ensure that the general election of the Calcutta Corporation which has been fixed to be held on 27-3-1952, should not be held on that date and further that the election should be held on some other date to be fixed by the Government of West Bengal in accordance with law.

2. The Corporation of Calcutta as constituted under the Calcutta Municipal Act of 1923 was superseded by an order passed under the Corporation of Calcutta (Temporary Supersession) Act of 1948 (which will be referred to hereafter for convenience as the Supersession Act), which Act was originally in force up to 31-3-1949, but by subsequent extensions is now in force up to 31-3-1952. Fresh orders superseding the Corporation of Calcutta were passed from time to time, as a result of which the Corporation of Calcutta remain superseded up to 31-3-1952. Two of the main consequences which follow on such an order being made u/s 3 are, as laid down in Section 4 of the Supersession Act, that

"all the Councillors and Aldermen constituting the Corporation, all the members

constituting the Committees thereof and the Mayor and Deputy Mayor of the Corporation shall, as from the date of supersession, vacate their offices as such Councillors, Aldermen, members of the Committees and Mayor and Deputy Mayor; and

all the powers, duties and functions which may under the provisions of the Act or any rule or bye-law made thereunder or of any other law for the time being in force, be exercised and performed by the Corporation or any Committee thereof or by the Mayor or Deputy Mayor or by Councillors or Aldermen shall, during the period of supersession, be exercised and performed by such person (to be called the Administrative Officer) as may be appointed by the Provincial Government in that behalf."

Sub-section 2 of Section 4, Supersession Act, lays down what is to happen on the expiration of the period of supersession. These provisions are in these words :

"(2)(a) Before the expiration of the period of supersession, there shall be a fresh general election of Councillors and a fresh election of Aldermen in conformity with the provisions of the "Act and the persons who vacated their offices under Clause (a) of Sub-section (1) shall not be deemed disqualifieds for such elections.

(b) On the expiration of the period of supersession, the Corporation shall be reconstituted on the results of the elections referred to in Clause (a) in accordance with the provisions of the Act."

3. For the purpose of holding a fresh general election as required under Sub-section (2) (a) of the Supersession Act the Government of West Bengal issued on 10-1-1952, a notification in these words:

"In exercise of the power conferred by Sub-sections 2 and 3 of Section 45 of the Calcutta Municipal Act, 1923, (Bengal Act III of 1923), the Governor is pleased to fix the following dates for the next Municipal General Elections under the said Act in the Constituencies noted below :

(1) Tuesday, the 18th March, 1952 --Constituencies 1-37. (2) Wednesday, the 19th March, 1952 --Constituencies Nos. 38-75."

On 11-2-1952, the Government of West Bengal issued a further notification in these words :

"In exercise of the powers conferred by Sub-sections 2 and 3 of Section 45 of the Calcutta Municipal Act, 1923 (Bengal Act III of 1923) the Governor is pleased to make the following amendments in notification No. M. IE-29/51 dated the 7th January, 1952, published at page 64 of Part I of the Calcutta Gazette of the 10th January, 1952, fixing the dates for the next Municipal General Election under the said Act in the different constituencies, namely,

Amendments in the said notification : (a) for the word "dates" substitute the word "date", and (b) for the words, figures, letters and brackets :

(1) Tuesday, the 18th March 1952 ...Constituencies Nos, 1-37,

(2) Wednesday, the 19th March, 1952,

...Constituencies Nos. 38-75 substitute the words, figures and letters Thursday, the 27th March, 1952 ..... All constituencies."

Obviously, the result of this further notification is that the Government which had originally fixed the 18th and 19th of March, 1952, for holding a fresh general election as required under Sub-section (2) (a) of the Supersession Act, have now fixed 27-3-1952, for holding this election.

4. The appellants who are duly recorded voters for the election contend that the notification dated 11-2-1952, is invalid in law inasmuch as the publication in the Official Gazette was not made "not less than two months before the date on which the election has been notified to be held". They applied to the Court for writs of Mandamus directing the respondents, The State of West Bengal, Mr. A. Zaman, General Secretary to the Government of West Bengal, Local Self-Government, and Mr. A. D. Khan, Administrative Officer to the Corporation of Calcutta, to forbear from giving effect to the notification, for a writ of Prohibition asking them to forbear from giving effect to the notification and also for a Mandamus on the first two respondents to issue a fresh notification in accordance with the provisions of Sub-sections 2 and 3 of Section 45, Calcutta Municipal Act, 1923." A rule nisi was issued on the respondents, but after hearing both parties Bose J. has discharged the Rule. In appeal before us Mr. Choudhury appearing on behalf of the appellants has pressed both the contentions which he put forward before Bose J. and both of which were rejected.

5. The main contention is, that the provisions that the notification fixing the date of election must be published in the Official Gazette not less than two months before the date fixed for the election are imperative and the result of disobedience of these provisions is that the notification is invalid and can have no effect in law.

6. Another contention which does not appear to have been raised in the application but was raised in argument before Bose J., and was repeated before us, was that Sub-sections 2 and 3 of Section 45 of the Act can have no application to the proposed election inasmuch as those provisions are only for a general election which is held before the expiration u/s 39, of the term of office of the Councillors and Aldermen. Section 39 of the Act, provides as follows :

"Subject to the provisions of Section 43 an elected Councillor or Alderman shall hold office for a term of three years; and an appointed Councillor shall hold office for a term of three years or for such shorter period as the Provincial Government may, at the time of appointment, determine."

7. For a proper appreciation of the points raised it is necessary and convenient to set out also the provisions of Sections 43, 44 and 45 of the Calcutta Municipal Act. They are in these words :

"Section 43 : (1) When a vacancy occurs in the (?) of an elected Councillor or of an Alderman by reason of his seat being vacant under the provisions of Section 38 or Sec, 123F or by reason of a declaration made u/s 41, or of his election being declared void, or by his death, resignation duly accepted or removal, the Executive Officer shall call upon the constituency concerned or the Councillors, as the case may be, to elect a person for the purpose of filling the vacancy within such time as may be prescribed.

(2) If a vacancy occurs to the case of an appointed Councillor, the Provincial Government shall appoint to the vacancy a person having the necessary qualifications.

Section 44 : If any difficulty arises as to the preparation or publication of the first electoral rolls or the holding of the first elections after the commencement of the Calcutta Municipal (Amendment) Act, 1950, the Provincial Government may by order authorise any matter or thing to be done which appears to them necessary for the proper preparation or publication of the rolls or for the proper holding of the elections."

8. At the time the Supersession Act came on the Statute Book, Section 44 of the Municipal Act was slightly in a different form, and was in these words :

"If any difficulty arises as to the preparation or publication of the first electoral rolls or the holding of the first elections after the commencement of the Calcutta Municipal (Amendment) Act, 1947, the State Government may by order authorise any matter or thing to be done which appears to them necessary for the proper preparation or publication of the rolls or for the proper holding of the elections."

Section 45 is in these words :

"(1) Before the expiration of the term of office of the Councillors and Aldermen u/s 39 a general election of Councillors shall be held."

(2) Such general election shall take place on a date or dates to be fixed by the State Government ordinarily in the month of March, or on a date or dates in such other month as the State Government may fix.

(3) The State Government shall fix such date or dates by a notification in the Official Gazette published not less than two months before such date or dates."

9. It is necessary to decide what provisions are meant by the Legislature when it said in Section 4(2)(a) of the Supersession Act that "there shall be a fresh general election of Councillors and a fresh election of Aldermen in conformity with the provisions of the Act....." Mr. Choudhury contends that the words "provisions of the Act" in Section 4(2)(a) can have no reference to the provisions of Sub-sections (2) and (3) of Section 45 as these provisions of Section 45 are in terms applicable only to the general election of Councillors where it takes place before the expiration of the term of office of Councillors or Aldermen u/s 39. He

contends that the only provisions which the Legislature had in mind were the provisions of Section 44 and that the general election that is required to be held u/s 4(2)(a) of the Supersession Act has to be held in conformity with the provisions of Section 44 and no other provisions.

10. If this contention were correct, I would have no hesitation in holding that in issuing the notification on the 11th of February, 1952, the Government acted in accordance with law as laid down in Section 44 and that the fact that they thought and said that they were acting under Sub-sections 2 and 3 of Section 45 would not make their legal action illegal.

11. I am clearly of the opinion, however, that the contention is not correct. If one reads Section 44 carefully, it is abundantly clear that it contemplates the position that some difficulty has arisen as regards the holding of the "first election" -- the first election after 1947, when the Supersession Act came into force and the first election after the amendment of 1950 at the present time. It does not contemplate any matter like the fixing of dates for election or anything as regards the preparation of electoral roils or the making of rules as to how the election should be held. The preparation of electoral rolls is dealt with in Sections 24 and 25 of the Municipal Act; while Section 30 provides that the Provincial Government shall make rules providing for many other things, namely, the form and manner in which nominations may be made, for the appointment of a Returning Officer, for the appointment of polling stations, for the appointment of officers at the Polling Stations, for the scrutiny of votes and other cognate matters.

When the Legislature said that the election should be held in conformity with the provisions of the Act, it cannot but be held that they had in mind these provisions of Section 25, Section 30 and other provisions touching the matter of election including these, regarding the fixing of a date or dates for the election. There is provision for fixing of a date in Sub-sections 2 and 3 of Section 45. In my judgment, Section 44 does not come into operation at all so long as these provisions are available. It is only when difficulty arises in giving effect to these provisions that orders u/s 44 can be made by the Government. I am unable to agree that because the word "such" has been used in Sub-section 2 of Section 45, it must be held that the provisions in Sub-sections (2) and (3) of that section cannot have any application to an election under the Supersession Act. That might have been the effect if Sub-section 2 (a) of the Supersession Act had not been there but the effect of Section 2 is that the provisions that are already in the Act as regards the other general elections should be complied with.

12. I have no hesitation therefore in coming to the conclusion that the first contention of Mr. Choudhury that the notification is invalid inasmuch as the provisions of Sub-sections (2) and (3) of Section 45 have no application at all to the proposed election, must fail.

13. More important is his other contention that the provision in Sub-section 3

which requires that the notification fixing the date has to be published in an official Gazette not less than two months before the date fixed for the election is an imperative mandate, disobedience of which entails the consequence of invalidity. Clearly, this mandate has been disobeyed in the present case. It has been published in the official gazette; but less than two months before the date fixed. The question is,--what is the consequence thereof?

14. It is settled law that the mere fact that the word "shall" has been used, does not necessarily justify a conclusion that the mandate is imperative. Proceeding on the assumption, as they must, that the Legislature, like everybody else, does not want its main object of legislation to be defeated by breaches of comparatively unimportant minor provisions the Courts have always held that in spite of the fact that the provisions appear in the form of command with the use of "shall" or "must", it is the Court's duty to find out in each case whether the Legislature intended that disobedience of the command will nullify the other connected acts or whether it will have no such effect. The rule was laid down in these words by Mookerjee J. in the Full Bench decision in -- "Ashutosh Sikdar v. Behari Lal" 35 Cal 61 at p. 74 (A) :

"It is well settled, however, that no general rule can be laid down as to whether a provision in a statute is absolute or directory. It was ruled by Lord Campbell, L. C. in the -- "Liverpool Borough Bank v. Turner (1860) 2 De G F & J 502 (B), "that no universal rule can be laid down as to whether mandatory enactment shall be considered directory only, or obligatory, with an implied nullification for disobediences it is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the Statute to be construed". To the same effect are the observations of Lord Penzance in --"Howard v. Bodington" (1877) 2 PD 203 at p. 211 (C), and of Griffith C. J. in --"Chanster v. Blackwood" (1904) 1 Com LR 39 at p. 51 (D)."

15. We find also that to ascertain what the intention in a particular case is the Courts have always tried to distinguish between the essential and the non-essential, between the important and the unimportant parts of the command. In -- AIR 1947 75 (Privy Council) (E), where the Judicial Committee of the Privy Council had to consider the effect, of disobedience of mandates u/s 1132 (1), Criminal P. C., their Lordships said, "It appears to their Lordships that the effect of a contravention of the section depends on the prohibition which has been contravened". In -- Dharendra Krishna Mukherji and Another Vs. Nihar Ganguly and Others, (F) Pal J. said as follows :

".....No universal rule can be laid down for the construction of statutes as to whether any enactment shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed: -- "(1860). 2 De GF & J 502 at p. 507 (B)", per Lord Campbell L. C. In each case the subject-matter is to be looked to and the importance of the provision in question in relation to the general object intended

to be secured by the Act, is to be taken into consideration in order to see whether the matter is compulsive or merely directory..."

16. While it is true, as already stated, that no universal rule can be laid down, two principles which the Courts have found possible to enunciate in considering the numerous cases which have come before the Courts in England and in this country on this question, have to be mentioned. The first is that the harm and inconvenience that will result from holding a command to be imperative should be Weighed against the harm and inconvenience that will result from holding the command to be directory, and that the conclusion which results in greater harm should be avoided as that could not have been the intention of the legislature. It must be the intention of the legislature to avoid greater harm at the cost of the lesser harm.

In -- "Montreal Street Railway Co. v. Nor-mandin" AIR 1917 PC 142 (G), the Privy Council observed :

"It does far less harm to allow cases tried by a jury formed as this one was, with the opportunities there would be to object to any unqualified man called into the box, to stand good, than to hold the proceedings null and void."

In the case of --- "Caldow v. Pixell" (1877) 2 CPD 562 (H), where the court had to consider whether the time fixed by the Act within which the Bishop shall direct the surveyor to inspect the buildings of a benefice and to report to the Bishop what sum if required to make good the dilapidation to which the late incumbent or his estate is liable, is obligatory or imperative, both the learned Judges (Denman and Lopez JJ.) considered it necessary that

"a balance should be struck between the inconvenience of holding the direction of the bishop and the proceedings subsequent thereto to be null and void and the inconvenience of giving effect to the direction when it has been made after the prescribed time."

17. The other principle has reference to the Statutes where the legislature imposed for the attainment of its object a public duty to be performed by either the Government or certain other persons. Thus, in -- "AIR 1917 PC 142 (G)", already mentioned, their Lordships made the following observations at page 144 :

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

The principle has been described in these words by Maxwell at page 374 in his Interpretation of Statutes :

"When a public duty is imposed and the statute requires that it shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative."

18. As the learned counsel do not dispute the correctness of the principles mentioned above, I do not think it necessary to refer to the large number of cases that were cited by them.

19. In applying these principles it is necessary to examine the scope of the Calcutta Municipal Act. It is necessary to consider for the purpose only provisions in the second and the third chapters of the Act. Section 5 of the Act provides that the Corporation shall consist of 76 Councillors of whom 75 shall be elected and 1 shall be the Chairman of the Trustees for the Improvement of Calcutta, and five Aldermen to be elected by the Councillors in the manner provided by Section 9. Section 9 provides for the method of election of Aldermen. Section 10 provides for the annual election of Mayor and Deputy Mayor. The important provisions of the third chapter are, first, Section 20 which lays down the qualifications of the electors; Section 22 which mentions certain disqualifications for being Councillors and Aldermen; Sections 24 and 25 contain provisions about the electoral roll; Section 27 contains provisions for the nomination of candidates; Section 30 deals with provisions under which the State Government shall make rules providing for the mode of holding elections.

Section 35 provides that every election agent shall keep regular books of account; Section 39 fixes the term of Councillors and Aldermen. Section 42 makes provisions under which the State Government may remove Councillors or Aldermen. There is then Section 43 which provides for the filling up of casual vacancies and Section 44 which gives power to the State Government in passing special orders to meet difficulties in respect of the first elections, and Sections 45, 46 and 47 provide for the disposal as regards the disputes as to the validity of elections. The paramount object clearly is that there should always be a proper number of Councillors and Aldermen to carry on the work of the Corporation. It is for this object that the different rules as regards the qualifications of voters, disqualifications of persons, and nominations of candidates are made. For this object again, the Legislature made it the duty of the State Government to make certain rules as to how the Corporation should be carried on. It is impossible to hold that by those words no such duty is being provided.

Duty has also been cast on the election agent by Section 35. Remembering how different duties have been cast on different parties for the achievement of the view, it is all the more clear, when we come to the provisions of Section 45 which provide that the State Government shall fix a date for holding the election, that this date shall be published in an official Gazette and that the publication of the

date must be not less than two months before the date fixed for the election, that by all these provisions the Legislature was imposing a public duty to be performed by the State Government the duty of fixing a date for the election, and was further requiring that the duty should be performed in a particular manner, within a certain time.

20. When once this conclusion is reached, it becomes the Court's duty to consider what harm or inconvenience will result from holding the provisions as regards the time to be imperative and what harm and inconvenience will ensue if the contrary view is taken. It has been said by the appellants in paragraph 13 of their petition that by reason of the publication of the notification of the 11th of November, the petitioner has found it impossible to stand as a candidate at the next Municipal election, and that the exercise of the right of voting or the franchise by the petitioner will be in jeopardy by reason of the improper publication of the notice. It is impossible to understand how the publication of the notification has made it impossible for the petitioner to stand as a candidate at the next election and Mr. Choudhury did not attempt to persuade us that any such inconvenience will result. Indeed, Mr. Choudhury did not mention to us any special harm or inconvenience that will result to either the petitioner or to the electors or to other candidates if the provision mentioned be held to be directory.

On the other hand, it is clear that if the provision is held to be imperative entailing the consequence of invalidity of the proceedings, very serious inconvenience will result to the numerous candidates who do not control the activities of the State Government who may have gone to trouble and expenses in their attempt to contest the elections. Another necessary consequence will be that the Supersession Act will have to be extended for a much longer period than would have otherwise been necessary. That also is an inconvenience and injury to the public which the Courts can and should take notice of, for, it is the intention of the Legislature that ordinarily the Corporation should carry on its duties. Applying, therefore, the principles that have been mentioned, I have no hesitation in coming to the conclusion that the Legislature must be held to have intended, at least, as regards the provision of publishing the notification not less than two months before the date fixed for the election, that disobedience of this provision will not have the effect of invalidating the other acts done.

21. My conclusion, therefore, is that Bose J. has rightly held the provision, as regards the time within which the publication must be made, to be directory. There is therefore no reason for holding that the notification of the 11th February, 1952, is invalid. We are conscious that even when a provision is held to be directory, it is necessary that there should be substantial compliance therewith. In the present case, the object of providing that the notification should be published not less than two months before the date fixed for the election was to give notice to the intending candidates as well as to the voters in good time. What actually happened as a result of the subsequent notification was that about six weeks' time was given. This, in my judgment, was substantial

compliance with the directory provision.

22. In this view of the matter, I do not consider it necessary to express any opinion about the correctness of the alternative argument advanced on behalf of the respondent that the amendment effected by the notification of the 11th February 1952 amounts in law to a fixation of the 27th February 1952 for the election by the original notification of the 10th January, 1952.

23. I therefore hold that the Court rightly refused to issue any writ or any direction as asked for. The appeal is therefore dismissed with costs.

P.N. Mookerjee, J.

24. I concur in the order proposed by my learned brother. As, however, the questions raised are of some public importance and have evoked considerable public interest, I desire to add a few words.

25. The matter relates to the ensuing municipal elections to be held in this city to-morrow. On the 10th January last the State Government published in the Official Gazette a notification dated the 7th January, 1952, u/s 45 of the Calcutta Municipal Act fixing the 18th and 19th of this month as the dates for the holding of the city's municipal elections. By a subsequent notification, dated the 11th of February, 1952, purporting to be an amendment of the above earlier notification and published in the Official Gazette on the same date, namely, the 11th February, 1952, and issued also under the said Section 45 of the above Act, the dates fixed by the earlier notification were altered to 27th of March, 1952. The validity of these notifications and the legality of the elections, sought to be held thereunder, have been challenged in the present proceedings.

26. The matter came to this Court in the shape of an application for appropriate writs under the relevant Statutory provisions, forbidding the respondents, the State of West Bengal and the Corporation of Calcutta, from giving effect to the above notifications and/or holding the city's municipal elections thereunder. The application was refused by our learned brother Bose J. on the 19th of this month and against that refusal the present appeal was filed by the petitioners who are admittedly duly recorded voters in the city's municipal electoral roll and who are represented in this appeal by their learned counsel Mr. R. Choudhury. The respondents are the State of West Bengal and the Corporation of Calcutta and their case has been presented before us by the learned Advocate-General.

27. The relevant facts are not in dispute but the contest centres round the validity and scope and effect of the above notifications and the true interpretation of Section 45, Calcutta Municipal Act. The appellants contend, in the first place, that Section 45 of the said Act cannot apply to the ensuing elections and the said elections cannot be held under the impugned notifications, issued under the said section. It is pointed out on their behalf that Sub-section (1) of Section 45 clearly shows that the general election, contemplated in Section 45, is one which is to be held before the expiration of the term of office of the

Councillors and Aldermen u/s 39 of the Act, that is, at a time when the Councillors and Aldermen are still in office. As, admittedly, at the present moment there are no Councillors or Aldermen in office, the elections, so argues the appellants' learned Counsel, cannot be held u/s 45(1) of the Act and necessarily, therefore, no date therefore can be fixed and no notification in respect thereof can be issued or published under Sub-sections (2) and (3) of that section. In other words, the contention is that Sub-sections (2) and (3) of Section 45 cannot apply to a case where Sub-section (1) cannot be attracted. For this contention, reliance is placed on the word "such", used at the beginning of Sub-section (2) and also in Sub-section (3), and it is sought to be argued therefrom that Sub-sections (2) and (3) have reference only to a general election to be held under the circumstances, contemplated in Sub-section (1).

This proposition is seriously controverted by the respondents. They do not dispute that the ensuing general elections are not taking place under circumstances mentioned in Sub-section (1) of Section 45, but are being held u/s 4 (2) (a) of the Corporation of Calcutta (Temporary Surpassession) Act of 1948, as extended or amended by subsequent legislation, which provides for the holding of a fresh general election of Councillors in conformity with the provisions of the Calcutta Municipal Act before the expiry of the period of supersession, but they contend that to such general election also Sub-sections (2) and (3) of Section 45 would apply in view of the provision in the relevant Statute, cited above, that the same is to be held in conformity with the provisions of the Calcutta Municipal Act.

28. In my opinion, the respondents' contention, noted above, ought to prevail. Section 45 (1) of the Act refers in terms to "a general election of Councillors" and in that context the word "such" at the beginning of Section 45(2) precedes the words "general election" in that sub-section to indicate that the general election, contemplated in this sub-section, is a "general election of Councillors". The date of this general election is fixed under Sub-section (2) and the word "such" in Sub-section (3) has obvious reference to this date. Read in this light, Sub-sections (2) and (3) will be attracted to general elections of Councillors to which the Act would apply and, therefore, the general election of Councillors u/s 4 (2) (a) of the Calcutta Corporation (Temporary Surpassession) Act of 1948 which is to be in conformity with the provisions of the Calcutta Municipal Act would attract Sub-sections (2) and (3) of Section 45. Consequently, the date for such general election may be fixed u/s 45 (2) and the notification therefore may be issued and published under Sub-section (3) of Section 45. The appellants' contention on this part of the case must, therefore, fail.

29. The other branch of Mr. Choudhury's submission is based on an alleged non-compliance with the provisions of Section 45 (3) of the Act in the matter of fixation of the date for the general elections. In brief, Mr. Choudhury's argument on this point may be put as follows:

30. The original notification dated 7-1-1952, which was duly published in the

official Gazette on 10-1-1952, and which fixed the dates of the general elections on 18th, and 19th of Madch 1952, that is, well beyond the requisite minimum interval of two months, was perfectly in order but when those dates were changed to 27-3-1952, by the later notification, dated 11-2-1952, which was published in the Official Gazette on the same date, the interval between this date of publication, namely, 11-2-1952, and the date fixed for the elections, that is 27-3-1952, was clearly less than two months, so that the later notification, not satisfying the requirement as to the minimum interval of time, prescribed in Section 45 (3), was contrary to the said sub-section and was, therefore, invalid. Mr. Choudhury, accordingly, contended that no general election could be held under this invalid notification and his clients' applications ought to succeed at least on this ground.

To this contention of Mr. Choudhury the learned Advocate-General gave a two-fold answer. His first rejoinder was that the provision as to the minimum interval of time in Section 45 (3) was merely directory and as there had plainly been a substantial compliance with that provision even by the second notification dated 11-2-1952, no grievance could be made against that notification also. In the second place, the learned Advocate-General submitted that the second notification was merely an amendment of the first or the original -- only amending or altering the date of elections -- so that the relevant notification, fixing the date, would still be the first or the original notification which was published in the Official Gazette well over two months before 27-3-1952, the date now fixed for the elections, and the elections would now be held under the said first or original notification -- which was quite in order as amended by the second or subsequent notification.

The learned Counsel for the appellants did not seriously challenge the State Government's power to amend the original notification u/s 22, Bengal General Clauses Act, but he strongly urged that the amendment also must, under the express terms of that section, comply with the conditions to which the original notification was subject, one of them being the requisite or requirement as to the minimum interval of two months. He submitted, accordingly, that the second notification, be it regarded as an original notification, or merely an amendment of the first, was invalid as it contravened the said requirement which was mandatory and not merely directory. The first question, therefore, that arises on these conflicting submissions is whether the provision as to the minimum interval of time in Sub-section (3) of Section 45 is merely directory. If the answer be in the affirmative, this appeal would fail, as plainly enough, there has been, even in the second notification, substantial compliance with this provision. In the other event, the further question as to the nature of the amendment, sanctioned by Section 22, Bengal General Clauses Act, will arise for consideration.

31. The question whether a particular provision is imperative or directory is, in many instances, extremely difficult. The language employed is not always a sure index and it is scarcely possible to lay down a hard and fast rule of general

application. Broadly speaking, however, there are three fundamental tests which are often applied with remarkable success in the determination of this question. They are based on considerations of the scope and object --sometimes called the scheme and purpose -- of the enactment in question, on considerations of justice and balance of convenience and on a consideration of the nature of the particular provision, namely, whether it affects the performance of a public duty or relates to a right, privilege or power -- in the former case the enactment is generally directory, in the latter mandatory. These tests clearly aid the respondents.

There is nothing in the scope or object of the Calcutta Municipal Act or in the scheme or purpose thereof to indicate that the provision as to the minimum interval of time in Section 45 (3) must be held to be mandatory and this conclusion would not be materially affected by the difference in language in Sections 43, 44 and 45 of the Act to which our attention was specially drawn by Mr. Choudhury. That difference is hardly sufficient to warrant a conclusion that Section 45 is mandatory. The test of justice and convenience would also be clearly on the side of the respondents and, as I shall presently show, Section 45 in its Sub-sections (2) and (3) also imposes a public duty on the State Government -- thus attracting the third test ---for the performance of which certain conditions have been prescribed in the Statute. It may be contended that the said sub-sections confer power on the state Government but that power, as will be seen later, is clearly for the performance of the public duty to which reference has been made above. In my view, therefore, the third test of a directory enactment would also be amply satisfied in the present case and would support the respondents.

32. There are high authorities on the subject of the imperative or directory character of Statutory provisions and an exhaustive and illuminating discussion on this matter is to be found in Maxwell's Interpretation of Statutes (9th Edition) at pp. 374 and 379 to 380 where the leading cases have been collected. On this point a number of decisions were also placed before us by the parties' Counsel, of which mention may be made to the cases of -- "Barker v. Palmer" (1882) 8 QBD 9 (1); -- "Subramania Iyer v. King Emperor" 28 Ind App 257 (PC) (J); -- AIR 1914 129 (Privy Council) (K); -- Rathis Chandra Munshi and Another Vs. Amulya Charan Ghatak, ; -- AIR 1945 16 (Federal Court) , and -- Janardan Reddy and Others Vs. The State of Hyderabad and Others, (N), cited on behalf of the appellants, & "The Kink v. Mayor Sheriffs, Citizens and Commonality of the city of Norwich" (1830) 1 B & Ad 3110 (O), -- "Smith v. Jones" (1830) 1 B & Ad 328 (P); -- "(1877) 2 CPD 562 (H)"; -- "AIR 1917 PC 142 (G)". -- (1940) 8 ITR 635 (Privy Council) ; and -- AIR 1945 67 (Federal Court) , cited on behalf of the respondents.

Reference was also made in the course of arguments to the recent decision of this Court in -- Ramhari Mandal Vs. Nilmoni Das, (S), to which I myself was a party. It is, however, unnecessary for my present purpose to enter into any detailed discussion of the above authorities and it is enough to refer to the

principle of construction which the Judicial Committee laid down in -- " AIR 1917 PC 142 (G)", cited above, in the following words:

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable not affecting the validity of the acts done."

This principle which is now well established is not opposed to the case of -- "(1882) 8 QBD 9 (1)", strongly relied on by Mr. Chowdhury, notwithstanding certain general observations, apparently to the contrary, made therein. In that case, no question of public duty was involved and the statutory provision, there considered, dealt, in substance, with conditions affecting private rights and procedure in Court where reasonably different considerations apply. That case, therefore, is clearly distinguishable and does not affect the proposition enunciated by the Judicial Committee in the passage cited. This is not seriously disputed by Mr. Chowdhury who, however, contends that under Sub-section (2) of Section 45. Calcutta Municipal Act, only a power has been conferred upon the State Government subject to certain conditions or limitations, mentioned in Sub-section (3), and no public duty has been cast upon anybody and, as such, the principle, laid down in the Privy Council decision, cited above, cannot be applied to make the provision relating to the minimum interval of time in Sub-section (3) of Section 45 merely directory.

I am unable to accede to this argument. There is clearly a public duty imposed on the State Government under Sub-section (2) of Section 45 to fix the date for the general election, as, otherwise, that is, in the absence of such fixation, no such election can be held and it will be impossible to carry on the work of municipal administration of the city in accordance with the provisions of the Calcutta Municipal Act, -- in other words, the purpose of the Act would be frustrated. The power that is conferred is for the performance of this public duty and Sub-section (3) contains prescriptions affecting such performance. It is also abundantly clear that to hold the State Government's neglect or failure in the matter of such performance fatal to the elections would work serious general inconvenience and injustice to the Municipal electorate and the intending candidates who have no control over the State Government, and at the same time would not promote the main object of the Legislature namely, the carrying on of the civic administration of the city by elected Councillors and Aldermen. The principle of the Privy Council decision, cited above, would, therefore, clearly apply and the statutory provision, now under consideration, must be held to be directory.

Once this conclusion is reached, there is no further difficulty in the respondents' way, as, clearly enough, there has been in the present case substantial

compliance with Sub-section (3) of Section 45 even in the second or subsequent notification of 11-2-1952, which provides a clear interval of more than six weeks between the date of its publication and the date of election, fixed thereunder. That substantial compliance is sufficient in the case of a directory enactment and affords necessary protection against challenge on the ground of non-compliance with that particular enactment is laid down by the Judicial Committee in -- (1940) 8 ITR 635 (Privy Council) , of the report. The impugned second notification, therefore, be it regarded as an original notification or merely an amendment, would be quite valid and effective and the appellants' challenge thereto on the score of non-compliance with alleged imperative requirements must fail. Accordingly, the second branch of Mr. Chowdhury's submission, alike the first, must also be overruled.

33. In the above view of the matter, it is not necessary to discuss the further question to which reference has been made above and this appeal must fail for the reasons given in the foregoing paragraphs. I agree, therefore, that this appeal should be dismissed with costs.