

(1996) 02 CAL CK 0005
In the Calcutta High Court
Case No : C.O. 7970 (W) 95

Aloke Pramanik

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

General Clauses Act, 1897 — Section 16, 27

West Bengal Panchayat Act, 1973 — Section 101, 105, 105(1), 106, 12

Citation : 100 CWN 523

Hon'ble Judges : S.N. Chakraborty, J; S.B. Sinha, J

Bench : Division Bench

Advocate : Qudrat E. Kabir, for the Appellant; S.C. Ukil, Tulsidas Maiti, Asish Sanyal, Ardhendu Ghosh and Pratip Kumar Chatterjee, for the Respondent

Judgement

S.B. Sinha, J.—This writ application has been referred to a Division Bench by N.K. Batabyal, J. in terms of his Lordship's order dated 19.12.95, for the purpose of consideration as to whether the provision of giving seven clear days' notice in the second proviso to Section 105(1) of the West Bengal Panchayat Act, 1973 (hereinafter referred to for the sake of brevity as the "said Act") is mandatory or directory. The fact of the matter is not in dispute. The writ petitioner is a Sahakari Sabhapati of Khar Gram Panchayat Samity. On or about 28.12.94, a requisition was sent to the Sabhapati of the said Gram Panchayat to convene a meeting for discussion on no confidence against Sabhapati. Pursuant to or in furtherance of the said requisition, Sabhapati did not requisition a meeting. On or about 18.1.95, thereafter the said requisitionists called a meeting for being held on 27.1.95. It appears that notice of the said meeting was sent under registered post to the petitioner, but the same was not served even on 28.1.95. In the meantime, a meeting was held on 27.1.95, in terms whereof by resolution adopted by the large number of the members, Sabhapati was removed. Before the learned Single Judge, it appears, only one question was advanced as to whether in terms of the second proviso appended u/s 105(1) of the said Act, 7 days clear notice is required to be given to all the members or not

the learned Judge in his referring Court and thought it expedient to refer the matter to the Division and pursuant thereto, this matter has been assigned, to this Bench.

2. Mr. Kabir, learned Counsel appearing on behalf of the petitioner, however, before us had raised two contentions in support of this writ application. The learned Counsel submitted that in view of the phraseology used in the second proviso appended to Section 105 of the said Act, service of seven days" notice is mandatory. In any event, the learned Counsel submits that the service of notice upon all the members is mandatory in nature. The learned Counsel secondly contended that in any event, as would appear from the fact as noticed hereinbefore, that whereas in the first notice the requisitionist has stated that the subject matter of the meeting would be no confidence, in the second notice the subject matter was changed to removal of the Sabhapati and thereby the scope of the first notice was enlarged which is not permissible in law. Mr. S.C. Ukil, learned Government pleader, placed before us a report of the observer and submitted on the basis thereof that it appears that the notices were not served upon a few persons. The learned Government pleader supported the first contention of Mr. Kabir but as regards the second contention, it was submitted that in a democracy, the phraseology "No Confidence" of Sabhapati and "removal" of Sabhapati, should be held to have the same meaning. Mr. Sanyal, learned Counsel appearing on behalf of the respondents, however, submitted that the period of notice cannot be mandatory. According to the learned Counsel, in a democracy, notice upon the leader of the party was sufficient and as notices are served for the purpose of enabling the members to attend the meeting, knowledge of the members that a meeting is going to be held, will serve the purpose. According to the learned Counsel, a combined reading of Sections 105, 106 of the said Act and Rule 319 of the West Bengal Panchayat Samity Administrative Rules, 1984 (hereinafter referred to for the sake of brevity as the said "Rules") read with Form 1B thereof will leave no manner of doubt that at the time of requisition, business of the meeting is not to be mentioned inasmuch as in terms of the said Rules, no form has been prescribed for asking Sabhapati to requisition a meeting in terms of the second proviso appended to Section 105 of the said Act. For the purpose of appreciating the question involved in this application, the relevant provisions may be noticed :-

101. A Sabhapati or a Sahakari Sabhapati of a Panchayat Samiti may at any time, be removed from office by a resolution of the Panchayat Samity carried by the majority of the existing members of the Panchayat Samiti at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority:

Provided that at any such meeting while any resolution for the removal of the Sabhapati from his office is under consideration, the Sabhapati or while any resolution for the removal of the Sahakari Sabhapati from his office is under consideration, the Sahakari Sabhapati shall not though he is present, preside,

and the provisions of Sub-Section (2) of Section 105 shall apply in relation to every such meeting as they apply in relation to a meeting from which the Sabhapati or as the case may be, the Sahakari Sabhapati is absent.

105. (1) Every Panchayat Samiti shall hold a meeting (in his office at least once in every three months on such date and at such hour as the Panchayat Samiti may fix at the immediately proceeding meeting):

Provided that the first meeting of a newly-constituted Panchayat Samiti shall be held (on such date and at such hour and at such place within the local limited of the Block concerned) as the prescribed authority may fix:

Provided further that the Sabhapati when required in writing by one-fifth of the members of the Panchayat Samiti to call a meeting, (shall do so fixing the date and hour of meeting within fifteen days after giving intimation to the prescribed authority and seven days" notice to the members of the Panchayat Samiti), failing which (the members aforesaid may call a meeting within thirty-five days) after giving intimation to the prescribed authority and seven clear days" notice to the Sabhapati and the other members of the Panchayat Samiti. Such meeting shall be held (in the office of the Panchayat Samiti, on such date and at such hour) as the members calling the meeting may decide. (The prescribed authority may appoint an observer for such meeting who shall submit to the prescribed authority a report in writing duly signed by him within a week of the meeting on the proceeding of the meeting. The prescribed authority shall, on receipt of the report, take such action thereon as it may deem fit :)

Provided also that if the Panchayat Samiti does not (fix at any meeting the date and hour of the next meeting or if any meeting of the Panchayat at Samiti is not held on the date and hour fixed at the immediately proceeding meeting, the Sabhapati shall call a meeting of the Panchayat Samiti on such date and at such hour as he thinks fit

(2) The Sabhapati or in his absence the Sahakari Sabhapati shall preside at the meeting of the Panchayat Samiti and in the absence of both, the members present shall elect one of them to be the. President of the meeting.

(3) One-fourth of the total number of members shall form a quorum for a meeting of a Panchayat Samiti :

Provided that no quorum shall be necessary for an adjourned meeting.

(4) All questions coming before a Panchayat Samiti shall be decided by a majority of votes :

Provided that in case of equality of votes the person presiding shall have a second or casting vote;

Provided further that in case of requisitioned meeting for the removal of a Sabhapati or a Sahakari Sabhapati u/s 101, the person presiding shall have no second or casting vote.

106. A list of the business to be transacted at every meeting of a Panchayat Samiti except at an adjourned meeting, shall be sent to each member of the Panchayat Samiti in the manner prescribed, at least seven days before the time fixed for such meeting and no business shall be brought before or transacted at any meeting, other than the business of which notice has been so given except with the approval of the majority of the members present at such meet in:

Provided that if the Sabhapati thinks that a situation has arisen for which an emergent meeting of the Panchayat Samiti should be called, he may call such meeting after giving three days" notice to the members :

Provided further that no more than one matter shall be included in the "list of business" to be transacted at such meeting.

3. The State in exercise of its power conferred upon it u/s 224 of the West Bengal Panchayat Act, Rules 3 and 19 of the said Rules which are material for the purpose of this application read thus;-

3. Notice how to be served : (1) The notice for a meeting, other than an adjourned meeting or a requisitioned meeting, shall be signed and sent by the Secretary to all the members of the Panchayat. Samiti. The notice for an ordinary meeting or a meeting for the consideration of the budget or a meeting for the consideration of the audit report may be sent by post under Certificate of Posting and that for an emergent meeting shall be sent by special messenger. The notice for a requisitioned meeting shall be sent by registered post with acknowledgement due by the Sabhapati or the requisitioning members, as the case may be.

(2) The notice for all meetings except an emergent or a requisitioned meeting shall be in Form 1; while such notice for an emergent meeting or a requisitioned meeting shall be in Form 1A or in form 1B, as the case may be.

19. Notice for meeting : At least seven clear days" notice of ail meetings except an emergent or a requisitioned meeting shaft foe given to all members in Form 1. At least three clear days notice for emergent meeting shall be given to all members of the Sthayee Samiti in Form 1A. Seven clear days" notice for a requisitioned meeting shall be given in Form 1B :

Provided that not more than one item shall be discussed in an emergent meeting or in a requisitioned meeting.

4. Form 1B is a form in which - notice of requisitioned meeting of Panchayat Samiti/Sthayee Samiti is to be given, from a perusal whereof it appears that the business to be transacted therein is required to be specifically mentioned and such meeting can be called by Sabhapati, Karmadhakshya or members requisitioning the meeting. Sections 101, 105 and 106 of the said Act are in Pari materia with Sections 12, 16 and 106 of the said Act. The question which arises for consideration would be as to whether such a notice is required to be given. It is not disputed at the bar that in terms of the provisions of the Act and the Rules

framed thereunder, such a notice has to be given. However, the manner of issuance of such notice is specifically laid down under Rules 3 and 19 of the said Rules. Rules 3 and 19 provided for such a notice is to be served by sending the same by registered post with acknowledgment due. The said Rules, therefore, do not state that such notices must be personally served. It appears that the notices were sent under registered post 18.1.95 and the meeting was to be held on 27.1.95. Thus, in view of the fact that the manner of the notice has been categorically stated, sending the same by registered post shall serve the purpose keeping in view the notice has been categorically stated, sending the same by registered post shall serve the purpose keeping in view the provisions of Section 27 of the General Clauses Act. This aspect of the matter has been considered recently by various Benches of this Court, while construing the provisions of the Customs Act which are in pari materia with the provisions of the said Act and the Rules framed thereunder. Reference in this connection, may be made to M/s. Bowreah Cotton Mills Co. Ltd. v. Commissioner of Customs, Calcutta (Writ Petition No. 1827 of 1995 disposed of on 2nd December, 1995 and Division Bench Judgment in the case of Union of India v. Kanti Tarafder and Ors reported in 1996 (1) Calcutta High Court Notes 1. So far as the question as to whether seven days" notice is mandatory or not in our opinion, the matter is no longer res - Integra. In our opinion, even if a notice of less than seven days is given, the same would serve the purpose. In Samarendra Goswami v. The Dahuk Gram Panchayat and Others reported in 1995(2) C.H.N. 238 one of us upon taking into consideration a large number of decisions held thus :-

In K. Narasimhiah Vs. H.C. Singri Gowda, the Supreme Court while considering the provision of Section 27(3) of Mysore Town Municipalities Act held :-

It is interesting to notice in this connection that the English law as regards meeting of Borough Councils and Country Councils contain a specific provision that want of service of a summons to attend the meeting (which is required to be served) will not affect the validity of the meeting. It may be presumed that the legislature which enacted, the Mysore Town Municipalities Act, 1951, was aware of these provisions in English law, It has not gone to the length of saying that the failure to serve the notice will not make the meeting invalid. It has instead said that any irregularity in the service of notice would not make a resolution of the Council invalid provided that the proceedings were not prejudicially affected by such irregularity. The logic of making such a provision in respect of irregularity in the service of notice becomes strong if the fact that the notice given was short of the required period is considered an irregularity.

The existence of this provision in Section 36 is a further reason for thinking that the provision as regards any motion or proposition of which notice must be given in Section 27(3) is only directory and not mandatory.

We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would

be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice.

5. In *Bhagirathi Co-op. Joint Farming Society v. Howrah Zilla Parishad*, reported in 87 C.W.N. 981 this Court held :-

One should not overlook the special limitation prescribed by the statute itself for preferring some of these disputes. In our opinion, such a consequence could never have been the intention of the legislature. Mr. Ghosh has rightly drawn our attention to an observation of Maxwell on Interpretation of Statutes, 9th Edition page 378. Enunciating the proper principle of interpretation of a statute like one now under consideration, it was therein observed : "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 case when injustice or inconvenience to others who have no control over those exercising the duties would result if such requirements were essential and imperative. This observation has been approved by the Privy Council in the case of *Montreal Street Railway Co. v. Normandi*, AIR 1917 P.C. 148 and has received universal approval by different courts since then. Reliance has also been placed by Mr. Ghosh on the following observation of Lord Blackburn in the case of *Middlesex Justices v. R.* (1884) 9 Appeal Cases 757 at page 773 quoted with approval in *Craies on Statute Law*, 7th Edition page 249 : There is a numerous class of cases in which it has been held that certain provisions in acts of Parliament are directory in the sense that they were not meant to be a condition precedent to the grant, or whatever it may be, but a condition subsequent : a condition as to which the responsible persons may be blameable and punishable if they do not act upon it but their not acting upon it shall not invalidate what they have done, third persons having nothing to do with them". *Craies* has also referred to the aforesaid decision of the Privy Council with approval as laying down the proper principle of interpretation to be followed.

Yet again a learned Single Judge of this Court in *Md. Asraf Ali Mondal v. The Block Development Officers & Ors.* reported in 1992(2) C.H.N. 229 held :-

The only point involved is whether the notice period under the second proviso to Section 16 of the Act is mandatory or in other words would shorter notice period render the meeting pursuant to such notice invalid? In my view the period of 7 clear days mentioned in the second proviso to Section 16 is directory provision and not a mandatory one.

The learned Judge observed

Having held that the provision relating to the period of notice is directory and not

mandatory, the question whether the petitioner was served on 20th February, 1991 or 14th February, 1991 becomes irrelevant. If the object of the exercise in giving notice was to enable the petitioner to attend the meeting it cannot be said that this object was not achieved as service was admittedly effected on the petitioner and it is not the petitioners' case that the notice was not sufficient so that the petitioner was unable to attend.

Finally even if there was an irregular notice, such irregularity cannot by itself invalidate the meeting unless the petitioner has suffered prejudice thereby the shortness of notice cannot be said to have prejudiced the petitioner or materially affected the outcome of the proceedings. There were only 20 members of the Gram Panchayat. No other member has come forward to complain of the shortness of the notice. 13 of the members who attended the meeting unanimously held against the petitioner. These 13 members in any event constitute the majority required for passing the resolution.

6. The aforementioned decisions have been followed by this Court in *Madhusudan Kayal v. Jhalda Municipality and Others*, reported in 1995 All India High Court cases and various other decisions. Yet recently, in *Rafikul Mondal v. State of West Bengal and Others*, reported in 1995 All India High Court cases 6284, one of us upon taking into consideration various decisions held that Section 16 of the West Bengal Panchayat Act is directory. This Court observed :

Section 12 of the Act provides for removal of Pradhan and Upa-Pradhan and Section 16 lays down the Procedure therefor. In the impugned notice the members of the Gram Panchayat have clearly stated that they intended to remove the petitioner from the post of Pradhan. It is now well settled by various decisions of the Supreme Court of India that non-mentioning of the provision of law in the order does not invalidate the order if there exists a power in relation thereto. Reference may be made in this connection to the case reported in *Union of India Vs. Khazan Singh*, It is not the case of the petitioner that PRADHAN Cannot be removed at all. Section 12 of the said Act confers power upon the members of the Gram Panchayat to pass a resolution removing the Pradhan. In this view of the matter, in my opinion, non-mentioning of the provision of law does not vitiate the notice itself.

7. However, we may note that In *Re : Sirajul Islam v. STATE of West Bengal* reported in 85 C.W.N. 188, it was held that in view of Section 17 of the said Act, which is in pari materia with Section 106 thereof is mandatory in nature and with utmost respect to the learned Judge we do not subscribe to the aforementioned view. Yet recently in a decision reported in 1994-91) C.H.N. 107 for the same reason the judgment of a learned Single Judge of this Court in *Taffiluddin Ahmed and Others* does not lay down a good law. Before the learned Judge, the decision of the Hon'ble Supreme Court of India reported in *K. Narasimhiah Vs. H.C. Singri Gowda*, as also the earlier decision of this Court in 81 CWN 986 were not brought to His Lordship's notice. The said decision was, therefore, rendered per incuriam and must be held to be not a good law.

8. So far as the second question raised by Mr. Kabir is concerned, the same appears to have some substance. In 70 CWN 1088, A.N. Ray, J. as the Hon''ble Chief Justice of India then was inter alia, observed that removal is a serious charge and thus it is to be specifically mentioned. The learned Judge held that a notice which does not mention removal is a misleading notice and thus a resolution of removal when the notice did not mention removal is bad in law. The said decision was considered by a Division Bench of this Court in Royhan and Others Vs. Chamatkar Malitya and Others, M.N. Roy, J., speaking for the Division Bench, upon noticing the decision reported In 70 CWN 1088. held : - "If the appellants-petitioners are desirous of removing the Said Upa Pradhan acting as Pradhan, They should have resolution of removal passed in accordance with law as laid down in Soleman Shah's case (supra) which is good law in subject." In Re : Mihir Mondal and Others reported in 1994(1) CHN 423, a learned Single Judge of this Court followed the aforementioned decision. Yet again a Division Bench of this Court in Kilabuddin Seikh vs. Daud Hossain and Ors., reported in 1995(1) CLJ 198, held that, a resolution of no confidence cannot equate with resolution of removal. The learned Judges further held :

We have no doubt that the removal of the writ petitioner as Pradhan pursuant to the impugned resolution adopted in the said meeting dated 16th February, 1994 is bad in law. We find that there was no resolution for removal of the Pradhan. If any resolution of no confidence against the Pradhan is passed in a meeting then the consequential step should be to convene another meeting in the manner prescribed in the said Act for removal of the Pradhan. When any resolution for removal of the Pradhan has been passed in the meeting, then only the Pradhan can be declared to have been removed from the office of the Pradhan and then there will be a resultant vacancy in the office of the Pradhan and in a meeting duly convened, Pradhan has to be elected in accordance with law. In the instant case, we hold that simply by adoption of the resolution of no confidence against the Pradhan there was no vacancy in the office of the Pradhan and the Pradhan can not be removed from his office until a resolution for removal of the Pradhan from his office had been duly adopted in a meeting duly concerned in the manner prescribed by law.

9. In the light of the aforementioned decisions, let us now consider the submission of Mr. Sanyal.

10. Section 101 of the said Act speaks of removal of Sabhapati and Sahakari Sabhapati. Such a decision has to be taken by removing the concerned authority from office by a resolution of the Panchayat Samiti carried by the majority of the existing members of the Panchayat Samiti at a meeting specially convened for the purpose. Notice of such meeting is also required to be given to the prescribed authority. Proviso appended to Section 101 of the said Act provides that if in such a meeting the question of removal of Sabhapati falls for consideration, the Sahakari Sabhapati shall preside and in his absence provision of Sub Section (2) of Section 105 of the said Act. shall apply. Section 105 provides that every

Panchayat Samiti shall hold a meeting at least once in every three months. It is not disputed that normally Sabhapati is required to call a meeting. The second proviso to Section 105 of the said Act, however makes an exception thereto; in terms whereof other members may ask the Sabhapati to call a meeting fixing the date and hour of meeting within 15 days after giving 15 days" notice to the members of the Panchayat Samiti, failing which the members may call a meeting within 35 days after giving intimation to the prescribed authority and seven clear days notice to the Sabhapati and other members of the Panchayat Samiti. The right of the requisitioner is, therefore, to call a meeting it arises only in case of a failure on the part of the Sabhapati to call a meeting in terms of their requisition. Rule 3 of the said Rules, as noticed hereinbefore, provides only the manner in which the notice is to be served. Rule 19 of the said Rules again prescribed the form for service of notice in respect of a meeting. It is true that no form has been prescribed for requisitioning a meeting by the members to the Sabhapati inasmuch as by reason thereof a meeting is not called, but merely a requisition is made to call a meeting. It is, therefore, not a case where the doctrine of *causssus omission* shall be applicable as has been urged by Mr. Sanyal. Despite the fact that such a requisition, to the Sabhapati to call a meeting by the requisitioner is not required to be sent in prescribed form; but in our considered opinion reasons for calling such a meeting must be stated in clear term inasmuch as the first part of the second proviso appended to Section 105 of the said Act casts a duty upon the Sabhapati to call such a meeting. While discharging the function the Sabhapati is required to send notice in Form 1B and there cannot be any doubt in terms thereof the business for which the meeting is to be called is required to be specifically stated. The reason for stating the business of the meeting in the notice is also required in terms of Section 106 of the said Act The said provisions is clearly mandatory in nature inasmuch as it has in no uncertain terms, been stated that no business shall be brought before or transacted at any meeting other than the business of which notice has been so given. It is true as has been submitted Mr. Sanyal that even in such a case, an exception has been curved out in terms whereof with the approval of the members present in such a meeting any other business may be transacted. The said exception supports the view we have taken inasmuch as it is not a case where the provisions had been taken recourse to aforementioned exception.

11. Having regard to the phraseology referred in various decision as noticed hereinbefore read with the rules, we are of the opinion that notice of a meeting by the Sabhapati and/or Requisitionists in terms of Form 1B is in continuation of the notice of requisition sent by the requisitioner to the Sabhapati to call a meeting and in that view of the matter, we have no doubt in our mind that it was obligatory on the part of the requisitioner to state specifically as to for what purpose such a meeting is to be called. The requirement of stating the business in the notice calling a meeting cannot be said to be an empty formality; its object being to enable the members to know the purpose for which they are required to attend the same and thus come prepared therefor. The exception stated in

Section 106 of the said Act is merely an enabling provision. Such exception can be taken recourse to only when the requirements therefor are fulfilled. It is not a case where the members present in the meeting dated 27.1.95 took recourse to the said provision. The said exception, therefore, in our opinion cannot be taken recourse to for the purpose of construing the provisions of Section 106 of the said Act as directory. We are, therefore, unable to accede to the contention of Mr. Sanyal that the decision of this court in 70 C.W.N. 1088, 89 C.W.N. 1044, 1994(1) C.H.N. 423 and 1995(1) C.L.J. 198, do not lay down a good law. With respect, we agree with the said decisions.

Keeping in view the question referred to us for our consideration, we remit the matter back to the learned Trial Judge for disposing of the matter in accordance with law but we make it clear that the question as to whether the petitioner has been prejudiced by reason of such irregularity may be considered by the learned Trial Judge.

S.N. Chakraborty, J.

I agree.