

(1977) 01 CAL CK 0028
In the Calcutta High Court
Case No : Civil Rule No. 12616 (w) of 1976

Jnanendra Nath Pramanick

APPELLANT

Vs

The District Magistrate, Nadia and Others

RESPONDENT

Date of Decision : 28-01-1977

Acts Referred:

Bengal Municipal Act, 1932 — Section 61(3)

Citation : AIR 1978 Cal 324 : 81 CWN 986

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : M.N. Ghose and S.P. Ghose, for the Appellant; B. Ghosal, (for Nos. 1-4), Susanta Kr. Kundu, (for Nos. 5 and 6), Asok Kr. Ganguli, (for Nos. 7-11), D.K. Mukherjee and Sudipta Maitra, (for Nos. 15 to 28), for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—The petitioner, an elected Commissioner of Santipur Municipality (hereinafter referred to as the said Municipality), has challenged a notice in Annexure "A," issued by the District Magistrate, Nadia in exercise of the powers under Sub-section (4) of Section 61 of the Bengal Municipal Act, 1932 (hereinafter referred to as the said Act).

2. At the time material to the Rule, Shri Pratap Chandra Saha (Respondent No. 5) was the Chairman of the said Municipality. A notice dated October 9. 1976 was signed by 16 out of the 18 Commissioners of the said Municipality and was served on the District Magistrate, Nadia (Respondent No. 1), informing her thereby that they have no confidence in the Chairman of the said Municipality and requesting the said respondent No. 1 to convene a special meeting of the Commissioners u/s 61 of the said Act for the purpose of moving the following resolution:

^^lkrhiwjh ikSj"KHkkj egk?;{kx.k ikSj&IHkkifr Jh izrkipanz lgkj izfr vukLFkk xkkiu djhrs lsu ,cax caxka; ikSj v;usj ,dl"Vh /kkjk vuqlkjs rkgkds ikSj IHkkifrj in

gksbZ rs vilkjhrs dfjrslsu**-

The original of the notice was produced by Mr. Ghosal appearing for the Respondents Nos. 1 to 4 and a copy of the same has also been annexed with the affidavit-in-opposition of Respondents Nos. 15 to 28. The receipt of the said notice has not been denied by the District Magistrate concerned in her return to the Rule and she has stated that on receipt of the said notice at about 10.30 A. M., she heard all the Commissioners, who were signatories to the said notice and thereafter she was convinced that a case was made out for convening a special meeting and as such in exercise of her powers u/s 61 (3) of the said Act she gave the impugned notice in Annexure "A" to all the Commissioners, The said notice was dated October 17, 1976 and it appears from the original of the same that the same was signed by the District Magistrate concerned. It has also been stated by the said Respondent No. 1 that the notice in question was sent out on Oct. 18, 1976 for service on the Commissioners and Respondents Nos. 5, 10, 11 and 12 were served on the same day i.e. October 18, 1976 and the other Commissioners were served on October 19, 1976. Since the meeting was Scheduled to be held on November 3, 1976, it has been contended that 15 clear days notice of the meeting was duly given. It has also been stated by the said Respondent No. 1 that thereafter, in exercise of her powers u/s 61 (4) of the said Act, she directed the Additional District Magistrate, Nadia, to preside over the said special meeting. It has further been stated that the no confidence resolution was read over in the connected meeting and at that time the petitioner and the Respondents Nos. 6 and 7 staged a walk out, whereas the remaining 15 Commissioners including the Chairman participated in the debata and exercised their voting right. It appears that out of the 15 Commissioners 14 casted their votes in favour of the no confidence resolution, whereas the Chairman (Respondent No. 5) voted against the same. It is an admitted fact that although the resolution was passed yet the effect to the same could not be given because of the order dated November 2, 1976 passed by this Court, which permitted the holding of the meeting but restrained the authorities concerned from taking any steps regarding the resolution that may be passed.

3. The Respondents Nos. 15 to 28 to their separate return to the Rule, apart from denying the material allegations stated that the notice in question was duly served on the Commissioners and in any event no injury, injustice or prejudice has been caused by the issue of the notice dated October 17, 1976 and service thereof on some of the Commissioners on October 18, 1976 and the day after that on the rest. They have contended that the terms of Section 61 (3) are not mandatory but directory and in any event there has been substantial compliance with the said terms and more particularly when the meeting was held on November 3, 1976. Such contentions was raised as the petitioner pleaded that clear 15 days notice in terms of the requirements of the section was not given. The said Respondents have of course alleged mala fide activities and such activities which were and are detrimental to the said Municipality and its rate payers against the Chairman, Respondent No. 5 and his group. Furthermore,

they contended that the petition at the instance of the petitioner, who was admittedly served with the notice on October 18, 1976, would not be maintainable as he has not in any event been prejudiced for the shortness of time as alleged and if at all.

4. The impugned notice, as stated hereinbefore, was served on some of the Commissioners on October 18, 1976 and on the rest on October 19, 1976. Mr. Ghose appearing in support of the Rule relied on the provisions of the said Act relating to removal of the Chairman and Vice Chairman, which are to the following effect:

Section 61 (1): The (State Government) may at any time remove a Chairman appointed by it,

(2) An elected Chairman or Vice Chairman may at any time be removed from his office by a resolution of the Commissioners carried in this behalf by the votes of not less than two-thirds of the total number of Commissioners holding office for the time being, at a meeting specially convened for the purpose and according to the procedure laid down in Sub-section (3) :

Provided that if the number of Commissioners who have given their votes in favour of such resolution is less than two-thirds of the total number of Commissioners holding office for the time being but more than half the number of such Commissioners, the State Government may, by order, remove the Chairman or the Vice-Chairman, as the case may be, from his office.

(3) Written notice of the intention to move the resolution signed by not less than one-third of the total number of Commissioners holding office for the time being together with a copy of the resolution shall be delivered to the District Magistrate and the District Magistrate shall, notwithstanding anything contained in Section 78, convene a special meeting of the Commissioners for the consideration of the resolution, to be held at the municipal office on a date not later than thirty days from the date on which the notice was delivered to him, and shall give not less than fifteen clear days" notice of the meeting to the Commissioners.

(4) Notwithstanding anything contained in Section 79, the District Magistrate or any other Magistrate of the first class authorised by the District Magistrate in this behalf shall preside at such special meeting and no other person shall preside thereat.

(5) If the resolution after being put to vote is not carried by the votes of more than one half of the total number of Commissioners holding office for the time being, no notice of any subsequent resolution for the removal of the same Chairman or Vice Chairman shall be given until after the expiry of six months from the date of the meeting referred to in Sub-section (3).

(6) If, within fifteen days of the receipt of the notice of the intention to move the resolution, the District Magistrate fails to give notice convening a special meeting as aforesaid, any three of the Commissioners, who had signed such notice, may,

within seven days from the expiry of the period of fifteen days here to before referred in this sub-section, call such special meeting giving at least seven days" notice together with a copy of the resolution to the Commissioners and notwithstanding anything contained in Section 79, the Commissioners shall elect one of their number to preside at such special meeting."

and submitted that there was non-compliance with the provisions of Section 61 (3), since there was no clear 15 days notice as the notices on some of the Commissioners were admittedly served on October 19, 1976 and the meeting was held on November 3, 1976, more particularly when the law requires that the date on which the notice is issued and the date on which the meeting is to be held, will have to be excluded while construing the words "clear days" as mentioned in the section. In particular, Mr. Ghose submitted that from the date of service of the notice on some of the Commissioners on October 19, 1976 and the holding of the meeting on Nov. 3, 1976, 15 days clear notice was absent. In support of his contentions Mr. Ghose placed reliance on the interpretation of the word "clear days" from Shackleton on Meetings (5th Edition), wherein it has been observed that the stipulated number of days must elapse within which the act can be performed. In the absence of any specific provision "days" mean clear days; the term "clear days" means exclusive of the day the notice is served, and of the day on which the meeting is held; Sunday would be included in the computation but fraction of days do not count. It has also been observed that notice "at least fourteen days before the date" means that fourteen clear days must intervene between the issue of the advertisement or Circular calling the meeting and the day of the meeting, and the notice so given is effectual though it may not actually reach the holder until some days afterwards. It was further submitted by Mr. Ghose that if a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively as well of the first day as the last. This view finds support from Whartons' Law Lexicon. Mr. Ghose further relied on the case of *In re Hector Whaling Ltd.* (1936) Ch 208, wherein Bennett J. has observed that twenty clear days, in the concerned section would mean, exclusive of the day of service and exclusive of the day on which the meeting was held. In support of his contentions Mr. Ghose further relied on the provisions of the Bengal General Clauses Act and more particularly to Section 11 thereof, which is to the following effect :--

Section 11 :-- In any Bengal Act (or West Bengal Act), made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from", and, for the purpose of including the last in a series of days on any other period of time, to use the word "to." To substantiate his case further, Mr. Ghose placed reliance on the determinations of the Supreme Court in the case of *Jai Charan Lal Vs. State of U.P. and Others*, . The appellant in that case was elected as a member of the concerned Municipal Board and was thereafter made the President of the same. A notice of intention to move a motion of no-confidence in him was presented by certain members of the Board. The District Magistrate

concerned issued the notice to the members on November 17, 1966 fixing November 25, 1966 as the date for the meeting to consider the no-confidence u/s 87-A of the Uttar Pradesh Municipalities Act, 1916. The said meeting was adjourned to December 5, 1966. This happened during the pendency of a proceeding before the High Court challenging the notice. The High Court refused to grant any relief in the matter on the ground that even if there were some irregularities in calling the meeting, the resolution, having been passed by the necessary majority, the case was not fit for the exercise of its discretion. In appeal it was urged that the meeting itself was contrary to the provisions as mentioned above and as such the resolution was void. The term or the words "shall not be earlier than thirty-five days from the date" as used in the section was construed and it has been held that:

"Where the District Magistrate receiving the notice under Sub-section (2) on the 26th October convenes the meeting for consideration of the motion of no-confidence on the 25th Nov. it cannot be said that the meeting has been held earlier than thirty days from the date on which the notice was delivered to the District Magistrate and therefore the meeting and the resolution passed thereat are void."

The expression "earlier than thirty days" in Sub-section (3) is not to be equated to the expression "not less than thirty days." If the expression were to be "not less than so many days" both the terminal days may have to be excluded and the number of days mentioned must be clear days but the force of the words "not earlier than thirty days" is different. In other words, although 26th October has to be excluded the date on which the meeting is to be called need not be excluded provided by doing so no breach of the expression "not earlier than thirty days" is committed. The 25th November is the thirtieth day counting from the 26th October leaving out the initial day and it is not earlier than thirty days from the date on which the notice under Sub-section (2) was delivered to the District Magistrate." Mr. Ghose then relied on the case of *Harishchandra Singh Vs. The State of Bihar and Others*, , where the expression "notice of ten clear days" in Rule 10-B of the Bihar High Schools (Constitution, Powers and Functions of Managing Committee) Rules, 1964 came up for consideration and it has been held that such expression means ten days exclusive of the date on which notice is given and the date on which the meeting is held.

5. Mr. Ghose then submitted that the provisions of the said Act, particulars whereof have been mentioned hereinbefore were mandatory and not directory and relied on the case of *K. Narasimhiah Vs. H.C. Singri Gowda*, . In that case the point which came up for consideration was whether the requirement of three clear days notice for the holding of a special general meeting as embodied in Section 27 (3) of the Mysore Town Municipalities Act, 1951, was mandatory or not, since after the election of the appellant as the President on September 11, 1962, at a Special General Meeting of the Council held on October 14, 1963, a resolution of no confidence was passed and it was contended that due notice was

not given. On a consideration of the relevant provisions of the Statute the Supreme Court has held that:

"Giving of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of notice even though the person to whom it is tendered refuses to accept it. Thus as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving is not complete."

The main object of giving the notice u/s 27 (3) is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period of three clear days is considered sufficient for special general meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period of even less than three clear days" notice would be sufficient. Thus the requirements of three clear days" notice to councillors for holding a special general meeting as embodied in Section 27 (3) is only directory and not mandatory.

Where, therefore, some of the councillors of a municipality received less than three clear days notice of a special general meeting to discuss a resolution to express no confidence in the President and in the strength of 20, 15 out of 19 councillors who attended the meeting voted for the resolution, the proceedings of the meeting were not prejudicially affected by the "irregularity in the service of the notice" and the resolution passed there was not invalidated."

6. Mr. Ghose then submitted that non-service of due notices on all the Commissioners have created great prejudice as some of them did not appear and could not take part in the deliberations at the meeting. He submitted that to avoid such prejudice, the legislature intended that the notices under the provisions of the said Act should have been served with a clear margin of 15 days. For the purpose of having the legislative intent in sending notices in cases like this, reliance was placed by Mr. Ghose in the case of AIR 1930 157 (Nagpur) , where Section 21(1)(b) of the C. P. Municipalities Act, 1903 and Clause 4 of the Bye-laws thereunder came up for consideration and it has been observed that taking into consideration the intention of either sending, giving or serving notice of a special meeting, which is to invite every member because he must be given facility to exercise his right to attend it and to influence his deliberations, the Committee, if it adopts the procedure of sending round one common notice to all members can be reasonably expected to send it round to every one of the members concerned as often as possible in order that the call

may come to his notice. In that case it has also been held that formality which is directed by legislature is imperative but if it is prescribed by ordinary individuals and corporations it is merely directory.

7. The respondents Nos. 5 and 6, who appeared through Mr. Kundu, filed no return to the Rule, but they submitted that since the procedure as mentioned in Section 61 (3) is an extraordinary one, so those provisions should be held to be mandatory and the meeting as referred to or mentioned in Section 61 (6) would not come or fall under the provisions of Section 92, which is to the following effect. Section 92: (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of-

(a) the existence of any vacancy in or any defect in the constitution of the municipality or any standing, joint or special committee or any disqualification in less than half of the Commissioners or members of the committee present when the act or proceeding was done or taken;

(b) any Commissioner having voted or taken part in any proceeding in contravention of the proviso to Section 62; or

(c) any defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Commissioners, or of any standing, joint or special committee, the minutes of the proceedings which have been duly signed by the person presiding over the meeting shall be deemed to have been duly convened and when the minutes are confirmed at a subsequent meeting shall be deemed to be free from all defects and irregularity and the accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of the meeting,"

It was further submitted that the said Section 92 does not contemplate a meeting in terms of or under Sections 61 and 62 of the said Act. The said respondents further referred to Sections 77, 81 and 83 of the said Act amongst others and contended that in view of the terms of these and the other relevant provisions, the procedure required or necessary to be followed for removing a Chairman of the Municipality must be deemed to be mandatory. In short the said respondents supported the arguments advanced on behalf of the petitioner,

8. Mr. Ghosal appearing for the respondents Nos. 1 to 4, first took the preliminary point that the petition at the instance of the petitioner, who admittedly received the notice and not at the instance of the Chairman, Respondent No. 5, who in fact was affected, if at all, was not maintainable. He submitted that In fact the arguments as advanced would be available if the Chairman himself had moved the petition because it was his right to hold the post was prejudicially affected. It was also submitted that the Commissioners viz., Respondent Nos. 5, 10, 11 and 12, who were served on October 18, 1976 cannot maintain any claim since they had clear 15 days notice as the meeting was held on November 3, 1976. It was further submitted by Mr. Ghosal that if

the contentions of the petitioner are correct, which is not, the Commissioners who would be aggrieved are Respondent Nos. 15 to 28 as they were served on October 19, 1976. But since those Respondents, who are appearing through Shri D. K. Mukherjee have not supported the petitioner and in fact are opposing him, so the submissions as made on the question of prejudice for non-service of notice would be of no avail or assistance whatsoever. It was also submitted by Mr. Ghosal that it is the requisitionists, if at all, who would be prejudiced for shortness of time of the service of notice but none of them have challenged the validity or sufficiency of the notice and that fact itself would be enough to refuse the relief as claimed. It was further submitted by Mr. Ghosal that on merits also, no interference should be made on the grounds of insufficiency of notice as no prejudice was caused by the shortness of time, if any, because out of 25 Commissioners of the said Municipality at least 18 were present. He stated that Respondents Nos. 5, 10, 11 and 12 herein were duly served with the notice on October 18, 1976 and amongst them only Respondent No. 5 participated and others did not. He also stated that the notices in question were served on Respondent Nos. 6 and 7 on the 18th and in fact they attended the meeting and walked out. It was submitted that the service of notices on October 19, 1976 on Respondents Nos. 15 to 28, which is the very basis of the submissions of the petitioner would be of no avail as those Respondents have neither raised any objection or challenge nor they are supporting the petitioner. These apart, Mr. Ghosal submitted that in view of the provisions in Chapter III of the said Act which deals with the Municipal Authorities and their Constitution and more particularly in view of the provisions in Sections 61, 78, 79, 80, 91 and 92 and particularly because of Clause (c) of Sub-section (1) of the said Section 92, the provisions of Section 61 of the said Act should be deemed to be directory and not mandatory as any defect or irregularity not affecting the merits of the case can be cured, rectified or validated. Mr. Ghosal referred to the proviso to Section 61 (2), and Sub-section (5) and (6) of the said Section 61 and submitted that in the admitted facts of the case, there was substantial compliance with the provisions of the statute in the matter of calling the meeting by the notice in question. It was also submitted with reference to the facts as mentioned hereinbefore that in any event or in any view of the matter the merit of the case has not at all been affected.

9. Mr. Ghosal relying on the determinations of the Supreme Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, submitted that the existence of the provisions as referred to hereinbefore by him and more particularly of Section 92 (1) (c) of the said Act, would be enough to hold and find that the provisions of Section 61 of the said Act and its sub-sees, are only directory and not mandatory. He further referred to the fact of service of notice on the Commissioners, particulars whereof have been mentioned hereinbefore and submitted that the fact that some of the Commissioners received less the 15 clear days" notice of the meeting would not by itself make the proceedings of the meeting or the resolution passed therein invalid, Such proceeding or the meeting

according to Mr. Ghosal would be invalid only if the proceedings were prejudicially affected by such irregularity. Thus it was submitted by Mr. Ghosal that since 18 out of the 25 Commissioners were present and 14 voted in favour of the resolution of no-confidence against the Respondent No. 5, there was absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the irregularity of service of notice, if any. It was in fact submitted by Mr. Ghosal that the paramount intention of the service of notice is to inform and intimate the Commissioners about the fact of consideration of the motion so that they can arrange other business so as to enable them to attend the meeting and that was amply fulfilled in the instant case. Mr. Ghosal then relied on the determination of the Supreme Court in the case of Shyabuddinsab Mohidinsab Akki Vs. The Gadag-betgeri Municipal Borough and Others, :

The appellant in that case was one of the 32 Councillors of the Municipality. The last general election of the Municipality was held on May 7, 1961 and the term of office of the Councillors elected was three years computed from the date of the first general meeting held after the general election. Such election was held on July 10, 1951 wherein Respondent Nos. 4 and 5 were elected President and Vice-President respectively for three years initially and which was thereafter extended to 4 years ending on July 9, 1955. As the term of respondents 4 and 5 as aforesaid was to expire at the end of three years from 10-1-1951 and as the term of the municipality was extended by one year under the amending Act as aforesaid, the vacancies thus occurring had to be filled up by a fresh election of President and Vice-President. The Collector therefore called a special general meeting of the municipality to be held on 30-7-1954 to elect a President and Vice-President for the remaining period of the quadrennium. The Collector had nominated the Prant Officer (the District Deputy Collector) to preside over that special general meeting. On 30-7-1954 the Prant Officer under instructions from the Collector adjourned the meeting to 3-8-1954 without transacting any business, the only item on the agenda being the election of the President and Vice-President. The 3rd respondent raised a point of order against the adjournment but the presiding officer aforesaid overruled that objection. Hence the special general meeting was held on 3-8-1954. At that meeting the appellant raised a point of order that under the provisions of the Act a President could not be elected for a term less than a year and that therefore the proposed election would be in the teeth of those provisions. The presiding officer who was the same person who had adjourned the meeting on 30-1-1954 overruled that objection too. Thereupon 13 out of the 32 councillors who were present walked out on the ground that they did not propose to participate in a meeting in which the proposal was to elect a President for less than a year contrary to the provisions of the Act, The appellant was one of those 13 councillors who walked out. It may be added that the full strength of the municipality is 32 councillors all of whom were present both on 30-7-1954 and 3-3-1954. The remaining 19 councillors proceeded to transact business and elected the 2nd respondent as the President, the proposal being that he "should be President of the municipality for

the remaining period of the quadrennium and that was the proposal which was carried. Immediately after the election of the President another meeting was held for the election of the Vice-President under the presidency of the newly elected President (the 2nd respondent). The appellant raised the same point of order as he had done in the case of the election of the President and that was also overruled. Thereupon six of the councillors present including the appellant walked out and the remaining councillors elected the 3rd respondent as the Vice-President. He moved the High Court of Bombay under Art. 226 of the Constitution for a writ of "quo warranto" or any other appropriate writ or order or direction against the 2nd and 3rd respondents "restraining them from usurping the office of the President and Vice-President respectively of the opponent No. 1 Municipality and restraining them from performing any duties and from exercising any powers as President and Vice-President respectively.

The High Court held that the election of the 2nd and 3rd respondents was not illegal and dismissed the application. It held that on a proper construction of the relevant provisions of the Act it was not correct to say that the term of office of the councillors or of the newly elected President and Vice-President shall end with 9-7-1955; that the intention was to elect the President and the Vice-President for the remaining term of the municipality which was not only a period of four years certain but an additional period up to the date when new President and Vice-President would be elected and take over after a fresh general election; that the adjournment of the meeting of the 30th July was not beyond the powers of the presiding officer; and that consequently the meeting of the 3rd August was not vitiated by any illegality. It was also pointed out by the High Court that all the councillors constituting the municipality had notice of the adjourned meeting and did as a matter of fact attend that meeting and that even if there was any irregularity in the adjournment on 30-7-1954 that did not affect the legality of the adjourned meeting and the business transacted therein."

and on a construction of Section 36 (3) of the Bombay Municipal Boroughs Act (18 of 1925), it has been held that the provisions are directory and not mandatory and the omissions in the matter of service of the notices were mere irregularities which would not vitiate the proceedings unless it was shown that those irregularities had prejudicially affected the proceedings. To substantiate his arguments that the provisions of the said Act as involved in this case are merely directory and not mandatory, Mr. Ghosal relied on the case of State of U.P. Vs. Manbodhan Lal Srivastava, wherein the following test has been laid down by the Supreme Court (at p. 917):

"The use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with

those provisions will not render the proceeding invalid."

These apart, Mr. Ghosal relied on the determination of the Allahabad High Court in the case of Dr. B.N. Sarin Vs. State of U.P. and Others, where the provisions of Section 87-A of the U. P. Municipalities Act (2 of 1016) were construed and it has been held that:

"When notice of a meeting to pass 3 no-confidence resolution against President of a Municipal Board is not sent to him and even after having obtained knowledge of the date, time, place and purpose of the meeting shortly after it was convened, and thus having sufficient notice, the president does not deliberately attend it and also does not inform the District Magistrate, the authority under the U. P. Municipalities Act, about such non-service, he cannot question the resolution for want of notice and hence no writ can issue.

The issue of a writ under Article 226 of the Constitution is guided by the principles of equity. The president cannot say that he was under no duty to take notice of the meeting because "duty" in equity Court is not legal duty alone but also includes equitable duty. He owed an equitable duty to inform the District Magistrate about the non-service but as he kept quiet and knowingly suffered public time and money to be invested in the meeting, on principles of equitable estoppel by acquiescence and want of good faith, he cannot be permitted to question the resolution for want of notice and hence no writ can issue."

Such determination was made as it was contended that the no-confidence resolution which was passed against the President on September 9, 1966 was illegal and ineffective as the meeting of the Municipal Board in which the same was passed was not duly convened inasmuch as no notice of the meeting was ever sent to him and such fact was admitted by the Respondents. The Respondents of course contended that no notice was sent to the President as he had full knowledge of the date, time, place and purpose of the meeting. Apart from substantiating his arguments about the directory nature of the section in question by citing the abovementioned cases, Mr. Ghosal sought to establish in construing the section and the purpose of the notice in question that the intention underlying the same will have to be considered.

10. The Respondent Nos. 15 to 28, in addition to the arguments advanced by Mr. Ghosal submitted further that no material injustice in the instant case and in the facts and circumstances of the same has been caused to the Commissioners and more particularly to the petitioner and in that view of the matter, the petition should not be entertained.

11. There is no dispute that to find out, whether the provisions of a statute are directory or mandatory the purpose and intention behind or underlying the same should be taken into consideration. It has been observed in the case of Montreal Street Rly. Co. v. Normandin 1917 AC 170: (AIR 1917 PC 142) that 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 duty, and at the same time would not promote the main object of the Legislature, the provisions would be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. Apart from this, the intention of the statute in having the notice served, the purpose of the same and the prejudice if any or if at all, caused for improper or irregular service of the notices will have to be considered. Mr. Ghose is right in his submissions, relying on the determinations in the case of AIR 1930 157 (Nagpur) , that the intention and purpose of the service of notice in a case like this was to invite all the Commissioners and to afford them facilities to exercise their rights to attend and to take part in the deliberations or the determinations.

12. In this case, individual notices were sent and some of the Commissioners were served on October 18, 1976 and some on the 19th, So far the Commissioners, who were served on 18th there cannot be any cause for complaint because clear 15 days notice was there since the meeting was scheduled to be held on November 3, 1976. Thus the arguments as advanced by Mr. Ghose, if at all, would be available in the cases of those Commissioners, who were served on the 19th, There is no dispute and that too following the determinations in the cases as mentioned or cited at the Bar, particulars whereof have been mentioned hereinbefore, that "..... shall give not less than fifteen clear days" notice....." in Section 61 (3) of the said Act would mean exclusive of the day of service and exclusive of the day on which the meeting was held. So the question to be considered is whether the delayed service of notice on some of the Commissioners of the Municipality to be more particular, service on them on 19th, has materially affected the meeting or the determination or not or if at all, whether the same has caused any prejudice?

13. The Commissioners, who were served on 19th viz,, Respondent Nos. 15 to 28, have in fact neither raised any objection nor challenged the said shortness of time in service of the notice and in fact they have in this proceeding challenged or opposed the contentions of the petitioner. In fact those respondents were the requisitionists and all excepting Ismail Mondal, were served on 19th. In a case like this and in view of the above, if any one can claim or allege any prejudice, they would be the said requisitionists or any one of them and in fact, they, as recorded hereinbefore, have raised no protest. Furthermore, for the shortness of time in the service of notice, they have also not suffered any prejudice because as requisitionists they were aware of the purposes of the requisition and the meeting and as such the intention and object of the notice as mentioned hereinbefore, has not at all been frustrated.

14. Thus following the determinations in the case of K. Narasimhiah Vs. H.C. Singri Gowda, , I find that the meeting in the instant case was not prejudicially affected by the irregularity in the service of notice because 18 out of 25 Commissioners were present and that apart, the persons who were actually interested in the proceedings, raised no objection at all on the ground of

shortness of time in effecting service of notice on them and the more so when the petitioner himself was duly served with the notice. Following the determinations in the Supreme Court case as mentioned hereinbefore and the principles as enunciated in the case of Montreal Street Rly. Co. v. Wormandin 1917 AC 170: (AIR 1917 PC 142) (supra), I further hold in the facts and circumstances of the case, that the requirements of time as mentioned in Section 61 (3) are merely directory and not mandatory and In any event in the instant case there has at least been substantial compliance with the same. The shortness of notice on the requisitionists have not at all pre-judicially, materially or adversely affected the determination or made the same illegal or irregular.

15. In view of the nature, character and intention of the section as discussed above, I find that there is ample substance in the submissions of Mr. Ghosal that the present petition at the instance of the petitioner, who was admittedly and duly served with the notice and not at the instance of the Chairman, Respondent No. 5, who was sought to be removed, would not be maintainable.

16. In view of the above, the application fails and the same is dismissed. There will however be no order for costs.

17. Stay of operation of the order as prayed for, is refused.