
(2007) 04 CAL CK 0004
In the Calcutta High Court
Case No : M.A.T. No. 3686 of 2006

Madhumita Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Prevention of Corruption Act, 1947 — Section 5, 5(4)

West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984 — Rule 19, 20, 3

West Bengal Panchayat Act, 1973 — Section 101, 105, 105(2), 106, 94(2)

Citation : (2007) 4 CHN 932

Hon'ble Judges : Kalyan Jyoti Sengupta, J; Arun Kumar Bhattacharya, J

Bench : Division Bench

Advocate : Ashok Kumar Banerjee, Sujay Mondal, Ananda Dulal Sarkar and Amitava Bhattacharya, for the Appellant; Kalyan Baudyopadhyay, P.S. Deb Barman, Dipankar Moudal, S. Dasgupta and Tulsidas Maity, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—I have had the benefit of going through the draft judgement prepared by my learned Brother Judge. Without any hesitation I agree with His Lordship's findings and ordering portion of this judgment. However, in order to supplement to the reasoning given by His Lordship I think I should express of my own.

2. In this appeal, as rightly called out by His Lordship, the point involved is as to whether the provisions of second proviso to Section 105 of the West Bengal Panchayat Act, 1973 for calling requisition meeting by the requisitionists, upon failure of Sabhapati of a Panchayat Samiti giving "seven clear days" notice" to the Sabhapati and all members is mandatory or directory in nature.

3. His Lordship has quoted entire portion of Section 105. Thus, I need not set out again in its entirety. Only setting out of the proviso portion is good enough for my purpose:

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 to be held within 15 days after giving intimation to the prescribed authority and seven days" notice to the members of the Panchayat Samiti, failing which the aforesaid members may call a meeting to be held within 35 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 in the proceedings of the meeting. The prescribed authority shall, on receipt of the report, take such action thereon as it may deem fit.

4. Provision of Section 105 deals with the mode of meeting of Panchayat Samiti to be held. The aforesaid proviso consists of two parts. One is: if one-fifth of the members of the Panchayat Samiti want to call a meeting for any subject they can do so by giving intimation to the prescribed authority any seven days" notice to the members of the Panchayat Samiti and it ordinarily has to be called by the Sabhapati himself. It will not be unrealistic to imagine when the subject-matter of the meeting is for removal of the Sabhapati, it is unexpected that the Sabhapati will call a meeting easily against his own interest on mere requisition. Such a fair person in today's state of democracy is rare and uncommon. Keeping in view of these realities the Legislature in the said proviso has made alternative provision in case of failure for any reason of Sabhapati to call a meeting for any purpose. The requisitionist members themselves may call a meeting having noticed in action of the Sabhapati for his removal after giving intimation to the prescribed authority and giving seven clear days" notice to the Sabhapati and other members of the Panchayat Samiti.

5. With regard to the service of notice factually in this case there exists disputes as to its mode. However, this point is not highlighted before the Court. Only the point quoted above is emphasized.

6. Mr. Ashok Kumar Banerjee, Senior Advocate, in support of this appeal, contends that if the provision of this portion of the statute is read carefully keeping in view the object of the statute it will appear that the Legislature with specific purpose has used the adjective "clear" before the word "days" and this has to be read with the Rule 19 framed under the Act. He contends that in another portion of the same proviso and elsewhere in the Act the word "clear" has been omitted and must be done purposefully. So there must be objective purpose for selective use of word "clear" as to the period of notice to be given for different purposes and different situations. He contends that the golden rule of interpretation of the statute is that the Court must give plain meaning of statutory provision, if the same does not admit of any ambiguity. The Court cannot import any other meaning without studying the object of the legislation if any ambiguity appears. The Court will simply find out literal meaning. According

to him, the learned Single Judge has not done so relying on an earlier Division Bench judgement rendered in case of Aloke Pramanik. It is true that this judgement is binding upon the learned Single Judge. The learned Judge failed to notice distinguishing feature of the judgement. The Division Bench in Aloke Pramanik case reported in 1996(1) CLJ 434 has held that the said provision of seven clear days notice is a directory relying on a Supreme Court judgement in case of K. Narasimhiah Vs. H.C. Singri Gowda, . The Division Bench in Aloke Pramanik's case has also relied on the earlier decision of this Court reported in Jnanendra Nath Pramanick Vs. The District Magistrate, Nadia and Others, .

7. The Supreme Court judgement was rendered on a completely different fact, and the ratio of the decision was absolutely different. The Division Bench with great respect in Aloke Pramanik's case has not applied properly the ratio laid down in the said decision of Supreme Court. As such earlier decision rendered by this Court reported in Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others, , Royhan and Others Vs. Chamatkar Malitya and Others, , 1994(1) CHN 423, are to be held the principle of law in this regard. Therefore, the Division Bench judgement in Aloke Pramanik's case is not applicable in this case.

8. Mr. Kalyan Bandyopadhyaya appearing for the opposite party Nos. 6 to 23 contends that in the Aloke Pramanik's case reported in 1996(1) CLJ 434 the said provision has been correctly interpreted that seven days clear notice is not mandatory but directory.

9. It has been held by this Bench decision, that even a notice of less than seven days would serve the purpose. The decision of learned Single Judge rendered in case of Tafiluddin Ahmed, reported in 1994(1) CHN 107, has been overruled by this Division Bench. According to him, the Rule of interpretation of statute is that if any particular provision prescribes a particular manner and time for the performance of any act and further in case of breach thereof the same would render the performance void and without jurisdiction and/or penal consequences then the same can be termed to be a mandatory. In the proviso of Section 105 there is no such provision. He further submits citing two decisions of this Court reported in Md. Yeasin and Others Vs. State of West Bengal and Others, and further a Supreme Court decision reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, that it is settled further if statute provides for measure for non-compliance within the time limit, it has been held that time limit is mandatory in character. He further urges that in a fairly recent decision of the Supreme Court reported in Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, it has been held that when public functionary is asked to perform a duty within a specific time the provisions would normally be held directory in nature but such principle is not applicable when injustice or inconvenience to others would be caused. In this case, question of prejudice or inconvenience for not giving seven days notice does not and cannot arise as admittedly the writ petitioner received the notice before the date of meeting. The above principle has

been reiterated in a subsequent decision of the Supreme Court reported in General Manager, Vijaya Bank and Another Vs. Pramod Kumar Gupta, and it has been held in this case that computation of period of notice would be counted from the date of service thereof. Therefore, the word "clear" before "seven days notice" used by the Legislature in the later part of the second proviso of the said section would not have any special meaning and the same would not have any effect as settled by the Supreme Court as well as High Court on the point when in a similar circumstance statute becomes mandatory or directory.

10. We have carefully considered the contention and rival contention of the parties. It appears that the learned Judge has followed the Division Bench judgement rendered in case of Alope Pramanik's case. The Division Bench in this case has also declared that the decisions rendered in cases reported in Soleman Shah and Others Vs. Director of Panchayat, Burdwan and Others, , Royhan and Others Vs. Chamatkar Malitya and Others, , 1994(1) CHN 423 and 1995(1) CLJ 198 do not lay down good law. The Division Bench has basically relied on the judgement of the Supreme Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, and a case reported in 81 CWN 986. Their Lordships to our best reading did not attempt to interpret the aforesaid provision independently and has been pleased to observe that the ratio decided in those two cases are applicable in this case. It is true that if any view contrary to the view of the earlier Division Bench needs to be taken then ordinarily the Court should send this matter to larger Bench, but when it is found that the earlier Division Bench judgement has been rendered without detailed discussion and further without objective discussion of the Supreme Court decisions on the subject the same can not have binding effect. Therefore, we have to examine the ratio decided by the Supreme Court for applicability on this subject. In the case before Supreme Court, the question was whether the provisions in Section 27(3) of the Mysore Town Municipalities Act, 1951 having regard to language used therein is a mandatory or not. Supreme Court in that case having found intention of the legislature, held that the provision of serving notice in Section 27(3) of Mysore Town Municipalities Act is not mandatory.

11. In our view the Division Bench of the earlier decision has nowhere said that the text of the provision of concerned proviso of Section 105 of West Bengal Panchayat Act and the text of the said Section 27(3) of the Mysore Town Municipalities Act is the same. Unless factually the case runs on the same footing the principle laid down by the Hon''ble Supreme Court with regard to the interpretation of law cannot be a universal application. It depends upon nature of statute and the language thereof for true and correct interpretation.

12. We think that the best course of action of the Court to interpret a particular provision of the statute would be to follow the principle laid down by the Supreme Court in case of H.N. Rishbud and Inder Singh Vs. The State of Delhi, . In paragraph 5 of the said judgement it is laid down as follows:

To determine the first question (whether provision is mandatory or directory)

(emphasis supplied) it is necessary to consider carefully both the language and scope of the section and the policy underlying it. As has been pointed out by Lord Campbell in - "Liverpool Borough Bank v. Turner" 1861(30) LJ CH 379(A), "there is no universal rule to aid in determining whether mandatory enactments 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". (See Craies on Statute Law, page 242, Fifth Edition).

13. Supreme Court, in this case, while following the aforesaid principle of law of interpretation observed in paragraph 6 that provision of Sub-section (4) of Section 5 of the Prevention of Corruption Act, 1947 must be taken to be mandatory.

14. In the Moke Pramanik's case, Their Lordships, did not have occasion to consider above Supreme Court decisions laying down clearly principle of interpretation nor the scope and intention of the Legislature either.

15. According to us, in order to ascertain the correct intention the Court has to read the entire Section 105 of the said Act, 1973. My learned Brother has quoted the said section. It will appear, therefrom, that in second proviso the Legislature has stipulated that when any meeting is required to be held by the Sabhapati notice has to be served by the requisitionists and in that case seven days" notice is required. In this portion the phrase "seven days" notice" is not prefixed or suffixed by any word, but in case of failure of Sabhapati to hold a meeting the same is required to be held by the requisitionists themselves, then time-limit for service of notice given is also seven days but prefixed by the word "clear". Therefore, there must be some object underlying in the Act for making two different provisions using two different languages in the same section. This provision has to be read with the Rules viz. Rule 19. In this Rule it is mentioned that at least seven clear days notice of all meetings except an emergent or a requisitioned meeting shall be given to all the members. Therefore, if the provision of the said Rule and said section are read together it is clear that the period of notice of the meeting for two different situations is quite different and distinct and is provided for definite object. We, therefore, look into what could be the object. According to us, if there is a failure on the part of the Sabhapati to hold a meeting for his removal despite seven days" notice being given to the members of the Panchayat Samiti and the requisitionist members themselves want to hold that meeting then seven clear days notice to the Sabhapati is required to be given. In the first limb of the said proviso phrase "seven days" notice" for requisitioned meeting, is meant for the members of the Panchayat Samiti who are not affected in the event short notice is given but in the latter case seven clear days notice is required to be given upon the Sabhapati who is sought to be removed. Why such seven clear days notice is provided specifically? In our view intention of the Legislature is obvious that Sabhapati must be informed beforehand and be given a sufficient time to prepare his defence as his

removal from the office is sought for. Unless a person who is charged with possible civil and evil consequences, is given reasonable time to defend himself or to explain himself in the meeting the same cannot be in conformity with the principle of natural justice. Similarly, other members of the Panchayat Samiti are to know why the requisitionists have sought to hold their meeting, as in ordinary circumstances Sabhapati is supposed to convene a meeting on requisition.

16. In this case in order to conform to the norms and spirit of the natural justice Legislature purposefully supplied the word "clear". It may so happen that in order to explain or to resist the attempt of removal of the Sabhapati he has to collect materials and to disprove the charges on the ground of which the removal is sought to be made and to establish the same being unfounded. In one word he has to prepare his defence in the meeting for his removal. Therefore, time given for seven days" is a minimum time and Legislature thought fit this time at least be given and any short thereof one cannot put-up a defence.

17. This rule has also been framed by the Legislature in conformity with this provision of this Act. Therefore, having regard to the object of the said provision we hold that the latter portion of the word "seven clear days" notice" as mentioned in the second proviso when a meeting is to be convened by the requisitionists themselves for removal of Sabhapati is mandatory but not directory. Accordingly, the decisions though not discussed in details rendered in the case of 70 CWN 1088, 89 CWN 1044, 1994(1) CHN 423 and 1995(1) CLJ 198 have taken a correct view. The decision rendered in the case reported in 81 CWN 986 is not a good law.

Arun Kumar Bhattacharya, J.

18. The sole question involved in the present appeal preferred by the writ petitioner/appellant against the order dated 06.09.2006 passed by the learned Single Judge in W.P. No, 19802(W)/2006 is whether the provision relating to service of clear seven days" notice upon the Sabhapati and other members of the Panchayat Samiti embodied in the second proviso to Section 105 of the West Bengal Panchayat Act, 1973 is directory or mandatory.

19. Before we open the discussion and indeed as paving the way for it, the circumstances leading to the writ petition need be stated: On 15.06.2006 eighteen out of forty-one members of Ranaghat- II Panchayat Samiti issued a notice for convening a requisition meeting on 23.06.2006 for removal of Sabhapati of the Panchayat Samiti- the petitioner herein. The said notice and all subsequent steps taken pursuant to the notice, on being challenged by the petitioner and Sahakari Sabhapati before this Court, were quashed. The said eighteen requisitionists issued a further notice dated 04.08.2006 to the petitioner to convene a meeting for the same purpose. Without getting any reply to the representation made by the petitioner to the prescribed authority i.e. SDO, Ranaghat, the petitioner filed a suit being T. S. 75/2006 in the Court of learned Civil Judge (Junior Division), Second Court, Ranaghat for declaration and

injunction. On 25.08.2006 the petitioner received a notice dated 21.08.2006 without copy of resolution by registered post issued by the said eighteen requisitionists for convening a meeting on 30.08.2006 for the same purpose which being violative of the provisions of Sections 101 and 105 of the Act and Rule 19 of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984 is illegal and arbitrary as clear seven days" notice was not given to the petitioner and some of the members did not receive any notice at all. Hence, the writ petition for setting aside the said notice and for other reliefs.

20. By the impugned order dated 06.09.2006 the learned Single Judge, relying upon the Division Bench decision of this Court in Alope Pramanik v. State of West Bengal reported in 1996(1) CLJ 434 and some other decisions dismissed the writ petition holding that the restriction of calling a meeting for the second time within a period of six months as provided in the third proviso to Section 101 is not attracted here and that service of clear seven days" notice in terms of Section 105 of the Act is not mandatory.

Being aggrieved by the said order, the appellant/petitioner has landed in this Court.

21. While assailing the impugned order solely on the ground of non-service of clear seven days" notice, Mr. Banerjee, learned Senior Counsel for the appellant/petitioner contended that the case of Alope Pramanik (supra) is distinguishable since in that case "clear seven days" notice" was not duly clarified. The case of K. Narasimhiah Vs. H.C. Singri Gowda, , so relied upon by the learned Division Bench, Mr. Banerjee contended, stands on a different footing, as in that case by virtue of the deeming provision contained in Section 36 of the Mysore Town Municipalities Act 1951 no resolution of Municipal Council or any committee appointed under the Act shall be invalid on account of any irregularity for the service of notice upon any Councillor or member provided that the proceedings of the Municipal Council or committee were not prejudicially affected by such irregularity, but in the West Bengal Panchayat Act there is no such provision. So, Mr. Banerjee argued, when the statute in mandatory terms required giving of clear seven days" notice whereas five days notice was given, it being in complete violation of the statutory provision cannot be held to be valid and consequently any step or action taken pursuant to the said notice cannot be held to be legal.

22. Mr. Maity, learned Counsel for the State respondent on referring to the impugned notice dated 21.08.2006 and postal receipt canvassed that the notice was sent on that very date and it can be presumed that it was duly served in time.

23. Mr. Bandyopadhyay, learned Counsel for the respondent Nos. 6 to 23, while supporting the impugned judgment and order, relying upon the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, submitted that service of five days" notice instead of seven days may at best be said to be irregular but not illegal and reading the provision of Section 105 of the Act and

Rule 19 of the said Rules, period of notice cannot be held to be mandatory, as the object of the notice is merely to inform the members and Sabhapati about the proposed meeting on a specified date so as to enable them to attend the meeting, and as such there being nothing wrong, the impugned order may not be interfered with.

24. For proper appreciation of the matter in controversy, the provisions of Sections 101, 105, 106 of the Act and Rules 3, 19 and 20 of the Rules may be reproduced hereunder:

101. Removal of Sabhapati or Sahakari Sabhapati.- Subject to the other provisions of this section, a Sabhapati or a Sahakari Sabhapati of a Panchayat Samiti may, at any time, be removed from office by a resolution carried by the majority of the existing members referred to in clause (ii) of Sub-section (2) of Section 94 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:

Provided further that no meeting for the removal of the Sabhapati or the Sahakari Sabhapati under this section shall be convened within a period of one year from the date of election of the Sabhapati or the Sahakari Sabhapati;

Provided also that if, at a meeting convened under this section, either no meeting is held or no resolution removing an office bearer is adopted, no other meeting shall be convened for the removal of the same office bearer within six months from the date appointed for such meeting.

105. Meeting of a Panchayat Samiti.-Every Panchayat Samiti shall hold a meeting in its office at least once in every three months on such date and at such hour as the Panchayat Samiti may fix at the immediately preceding 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 limits 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 to be held 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 to be held 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 made 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 proceedings of the meeting. The prescribed authority shall, on receipt of the report, take such action thereon as it may deem fit:

Provided also that for the purpose of convening a meeting u/s 101, at least one-fifth of the members referred to in clause (ii) of Sub-section (2) of Section 94 shall require the Sabhapati to convene the meeting:

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 Samiti is not held on the date and hour fixed at the immediately preceding 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 or on the refusal of any or both to preside at a meeting, 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 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. List of business to be transacted at a meeting.- 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 meeting:

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 not more than one matter shall be included in the "list of

business" to be transacted at such meeting.

Rules:

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 reports 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 acknowledgements 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 all meetings except an emergent or a requisitioned meeting shall be 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.

20. Notice how to be served.-(1) (a) Notice for meeting other than a requisitioned meeting shall be signed and sent by the Secretary to all the members of the Sthayee Samiti. The notice for an ordinary meeting shall be sent by post under certificate of posting and that for an emergent meeting shall be sent by special messenger.

(b) The notice for a requisitioned meeting shall be sent by registered post with acknowledgements due by the Karmadhyaksha of the Sthayee Samiti or the members requisitioning the meeting, as the case may be.

(2) A copy of the notice for all meetings, except a requisitioned meeting called by the members themselves shall be displayed on the notice board of the Panchayat Samiti on the same date on which such notice is issued.

25. The question as to whether a statute is mandatory or directory depends upon the intent of the legislature.... The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". Quoting with approval Crawford on the "Construction of statutes" as above, the Apex Court said in the case of *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, : "For ascertaining the real intention of the legislature, the Court may

consider, inter alia, the nature and the design of the statute, and the consequences which would follow from constructing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

26. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct", as was observed in the case of *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, . Maxwell says: "The reports are full of cases dealing with statutory provisions which are devoid of indication of intention regarding the effect of non-compliance with them. In some of them the conditions, forms or other attendant circumstances, prescribed by the statute, have been regarded as essential to the act or thing regulated by it and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of which did not affect its validity or involve any other consequences than a liability to a penalty, if any were imposed, for breach of the enactment." "It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequences in its disregard or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of neglect without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded. The general rule is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially" (Maxwell, 9th edition, pp. 373-374). In the latest edition of Maxwell (12th edition), the second paragraph of aforesaid quotation does not find place, and even the first paragraph has been substantially modified. The observation that the question is in the main governed by considerations of

convenience and justice is deleted from the latest edition, suggesting that it is no longer the accepted principle of construction that when the result of declaring an enactment mandatory would involve general inconvenience or injustice to innocent persons or advantage to those guilty of neglect without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. In place of the concept of the general inconvenience of the public, who have no control over the compliance with its statutory requirements, the present edition substitutes only that "where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in the particular manner did not imply a prohibition of doing it in any other, no doubt can be entertained as to the intention."

27. In the present case, while Section 101 speaks of removal of Sabhapati or Sahakari Sabhapati, Section 105 provides for meeting of Panchayat Samiti. According to second proviso to Section 105, if the Sabhapati fails to call a meeting as required by one-fifth of members of the Samiti within fifteen days after giving intimation to the prescribed authority and seven days" notice to the members, the said members may call a meeting within thirty-five days after intimation to the prescribed authority and giving seven clear days" notice to the Sabhapati and other members. Section 106 requires only one matter to be included in the list of business to be transacted at every meeting, except adjourned meeting and such list shall be sent to each member at least seven days before the time fixed for such meeting. Under Rule 3 of the Rules, notice for a ordinary meeting or a meeting for consideration of budget or audit reports may be sent by post under certificate of posting, but in case of emergent meeting it shall be sent by special messenger and for a requisitioned meeting by registered post with acknowledgement due. Rule 19 prescribes at least three clear days" notice for emergent meeting and seven clear days notice for a requisitioned meeting.

28. The words "clear seven days" notice" to Sabhapati and other members as used in case of requisitioned meeting in the second proviso to Section 105 and Rule 19 of the Rules which deals with notice for meeting are very much significant. The ordinary rule of construction is that an Act should be so construed as to avoid surplusage or redundancy. Meaning must be given to every word used in a statute, because legislature is deemed not to waste its words or say anything in vain, and it is not a sound principle to brush aside words in a statute as being inapposite surplusage, if they can have proper application in circumstances conceivably within the contemplation of the statute. Reference may be made to the cases of Quebec Railway etc. Company Ltd. v. Vandry reported in AIR 1920 PC 181 at 186 and Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, .

29. That part, when a statute requires a particular act to be done in a particular manner, that act must be done in that manner and by no others which is well-settled. Statutes relating to procedure are usually regarded as absolute, even

where the observance of the formalities in question is not a condition exacted from the parties seeking the benefit of the statute. In *Blackburn v. Flavelle* reported in 1881(6) AC 628 at 634, it was said that if there be any one rule of law clearer than another, it is this that where the legislature has expressly prescribed one or more particular modes of dealing with property, such expression always excludes any other mode, except as specifically authorized. Though property is not dealt with in the present case, the consequence remains the same. In the case of *Rambharoselal v. State of Madhya Pradesh* reported in AIR 1955 Nag 35, it was held that the rule that "any member of a Municipal Committee who desires to move a motion of no-confidence in the President of the committee shall give notice of such a motion in writing to the President at least ten days before moving it" is a mandatory provision and must be followed scrupulously, and that no waiver, estoppel or acquiescence could make the motion proper if it was not in compliance with the rules framed.

30. The contention of the learned Advocate for the State that as the notice was posted on that very date, it can be presumed to have been served in time does not appear to have any substance, since had it been so, there was no need for sending the notice by registered post with acknowledgement due in terms of Rule 3 so as to prove the date of service.

31. Regarding the case of *Bhavnagar University (supra)* so relied upon by the learned Advocate for the respondents, it stands for the proposition that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory, but it is equally well-settled that when consequences for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative. But at the same time, it has been stated in paragraph 43; "As a corollary of the rule outline above, the fact that no consequences of non-compliance are stated in the statute has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."

32. The object of giving clear seven days" notice is to inform Sabhapati and other members about the proposed meeting so as to enable them to attend such meeting with sufficient preparation, and that is why a notice in Form IB for a requisitioned meeting is to be sent under Rule 3 by registered post with acknowledgement due. Regarding prejudice, removal is a serious charge which cannot be lightly looked at. So far as the case of *K. Narasimhiah Vs. H.C. Singri Gowda*, , is concerned which was relied upon in *Aloke Pramanik's* case (*supra*), apart from the fact that the relevant provision of the *Mysore Town Municipalities Act, 1951* are not in *pari materia* with the *West Bengal Panchayat Act, Section 36* of the said Act specifically provides that no resolution of a Municipal Council or any committee appointed under the Act shall be deemed invalid on account of any irregularity in the service of notice upon any Council or member provided that the proceedings of the Municipal Council or committee were not prejudicially affected by such irregularity. There is no such provision in the *West Bengal*

Panchayat Act. Accordingly, the case of Alope Pramanik is distinguishable.

33. Therefore, considering the phraseology of different provisions of the Act and Rules, we are of the opinion that the provisions regarding giving seven clear days' notice to Sabhapati and other members of the Samiti for a requisitioned meeting by one-fifth of the members of the Samiti as embodied in the said Proviso to Section 105 of the Act is mandatory and not directory, and as such the impugned notice dated 21.08.2006, said to have been served upon the appellant/petitioner on 25.08.2006 being not in conformity with the said requirement is bad in law and as such deserves to be set aside.

34. The appeal is accordingly allowed and the impugned judgment and order are set aside, and consequently any step or action taken in pursuance of the said notice be quashed. Urgent xerox certified copy of this judgment, if applied for, be supplied to the learned Counsel for the parties with utmost expedition.

Later:

35. In view of the decision, further steps be taken for fresh meeting in accordance with law. This shall be done within a period of four weeks from the date of receipt of the operative portion of the xerox copy of this order. Till such fresh meeting is held, existing system, in terms of our order will continue.