

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

WPA 15816 of 2026

Mst. Royesha Bibi
v/s.
The State of West Bengal & Ors.

For the Petitioner: Mr. Sarwar Jahan
Mr. Anindya Ghosh
Mr. Souvik Das

For the State: Ms. Tapasi Palit Sinha
Mr. Suman Chattopadhyay

For the Respondent Nos. 11- 26: Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay
Mr. Jay Laha

Hearing concluded on: 14.07.2026

Judgment delivered on: 03.08.2026

SUVRA GHOSH, J. :-

1. The petitioner is the Pradhan of Alipore –II, Gram Panchayat and has assailed the no confidence motion submitted on 16th June, 2026 as well as the notice issued on 2nd July, 2026 on the ground that such notice has been issued in violation of Section 12(3) of the West Bengal Panchayat Act, 1973 and the date of meeting has been fixed in violation of Section 12(4) of the Act.

2. Learned counsel for the petitioner submits that in view of the negative term used in Section 12(4) of the Act to the effect that the meeting shall be held on a working day which shall **not** be later than 15 working days from the date of receipt of the motion by the Prescribed Authority, the condition is mandatory and not directory. Non compliance of the said mandate shall render the motion as well as the notice invalid.
3. Learned counsel has placed reliance on the authorities in M. Pentiah and others v/s. Muddala Veeramallappa and others reported in 1961 AIR (SC) 1107, Lachmi Narain and others v/s. Union of India and others reported in 1976 AIR (SC) 714, Nasiruddin and Others v/s. Sita Ram Agarwal reported in 2003 AIR (SC) 1543 and Union of India and Others v/s. A.K. Pandey reported in 2009 AIR (SCW) 6354 in support of his contention.
4. Per contra, learned counsel for the private respondents /members / requisitionists has submitted that the time frame laid down in the statute is directory and not mandatory since violation of the said time frame does not entail any penalty.
5. Learned counsel has placed reliance on the authorities in Debasish Paul and Another v/s. Amal Boral reported in (2024) 2 Supreme Court Cases 169, Karnal Improvement Trust, Karnal v/s. Parkash Wanti (Smt.) (Dead) and Another reported in (1995) 5 Supreme Court Cases 159, Manickam alias Thandapani and Another v/s. Vasantha reported in 2022 Supreme Court Cases OnLine SC 2096 and M/s. Atlas Cycle Industries Ltd. and Others v/s. The State of Haryana reported in (1979) 2 Supreme Court Cases 196 in support of his contention.

6. It shall be useful to reproduce Section 12(3) and 12(4) of the Act of 1973.

“12(3) The prescribed authority on receipt of the motion shall satisfy himself that it conforms to the requirements of sub-section (2) and on his satisfaction shall specially convene, by issue of notice, within five working days of the receipt of the motion, a meeting of the Gram Panchayat to be held in its office fixing date and hour of the meeting and sending such notice at least before clear seven days to each of its existing members for consideration of the motion and for taking a decision on it.

12(4) The meeting referred to in sub-section (3) shall be held on a working day which shall not be later than fifteen working days from the date of receipt of the motion by the prescribed authority and the meeting so convened shall not be adjourned or cancelled except in pursuance of an order or direction of a competent court or for any other reason beyond control of the prescribed authority.”

7. The no confidence motion was received by the Prescribed Authority on 16th June, 2026. The notice of meeting was issued on 2nd July, 2026 fixing the date of meeting on 14th July, 2026 which is clearly in violation of the time frame laid down under Section 12(3) and 12(4) of the Act.
8. In the authority in Union of India and Others (supra), the Hon’ble Supreme Court has dealt with the effect of violation of a procedural provision. In the words of the Hon’ble Supreme Court, procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. Violation of any or every

procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for.

9. The Hon’ble Supreme Court, in the authority in *Nasiruddin and Others* (supra), has observed that the Court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. Another aspect of the matter pointed out by the Hon’ble Court is the well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequences therefor are specified. In determining whether a mandatory or directory construction should be given to a statutory provision, the expression in the statute itself of the result that shall follow non-compliance of the provision should be considered. The said principle has been echoed in the authority in *Debasish Paul and Another* (supra).

10. In the authority in Karnal Improvement Trust (supra), the Hon'ble Supreme Court has held that general inconvenience or injustice to innocent persons or advantage to those guilty of the neglect should be kept in mind in dealing with the question of disobedience of the statute. When a public duty is imposed and statute requires that it shall be performed in a certain manner or within a certain time, such prescription may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements are not essential and imperative.
11. The two considerations for regarding a provision as directory, as laid down by the Hon'ble Supreme Court in the authority in M/s. Atlas Cycle Industries Ltd (supra) are as follows:-

“(1) Absence of any provision for the contingency of a particular provision not being complied with or followed, and (2) serious general inconvenience and prejudice that would result to the general public if the act of the Government or an instrumentality is declared invalid for non-compliance with the particular provision.”
12. In the case in hand, Sections 12(3) and 12(4) of the Act do not impose any penalty for non compliance of the time frame stated therein. Extension of the time by the Prescribed Authority also does not cause any inconvenience or prejudice to the Pradhan whose removal is sought. The Prescribed Authority being a public functionary performing a public function under the Act, the time frame can be said to be directory and not mandatory, moreso, since consequence therefor is not specified in the Act.

13. The other issue raised by the petitioner is that in view of the negative term used in Section 12(4) of the Act that the meeting shall be held on a working day **not** later than fifteen working days from the date of receipt of the motion by the Prescribed Authority, the statute is imperative and mandatory. [Lachmi Narain etc (supra) and M. Pentaih and Others (supra)].
14. Generally speaking, negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative. But at the same time, procedural law is intended to facilitate and not to obstruct the course of substantive justice. [(1978) 2 Supreme Court Cases 91] Though a negative expression has been used in Section 12(4) of the Act, it is couched with a positive expression “shall”. Both the expressions should be read in unison and the negative expression cannot be isolated from the positive one. It has been discussed at length that the term “shall” should be interpreted as directory and not mandatory. In view of the same, the term “shall not” used contemporaneously with “shall” cannot have a contrary interpretation and should be read to be directory and not mandatory.
15. The negative expressions used in the authorities referred to by the petitioner need to be interpreted in their respective factual context. In the authority in M. Pentiah and Others (supra), the Hon’ble Supreme Court has dealt with the power of the committee to transfer immovable property upon compliance with certain conditions. It has been observed that if the negative expressions therein are recast in an affirmative form, the power

of the committee to alienate the property subject to fulfilment of conditions laid down under the Act cannot be questioned.

16. In the authority in Lachmi Narain (supra), the Hon'ble Court has dealt with Section 6(2) of the Laws Act which requires the State Government to give by notification in the Official Gazette not less than three months notice of its intention to add or omit from or otherwise amend the Second Schedule. The authority lays emphasis on the principle that whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law itself. The factual context in the present application can be distinguished from that of the authorities referred to hereinabove. In view of the interpretation of the term "shall", the term "shall not" cannot be interpreted differently and has to be in conformity with the positive expression.
17. In the premise, this Court is inclined to hold that upon a conjoint reading of the provision as a whole including the affirmative and negative expressions therein, both the expressions can be held to be directory and not mandatory. In the result, the no confidence motion and the notice dated 2nd July, 2026 are found to be in accordance with Section 12 of the Act and do not suffer from any illegality/irregularity. The writ petition being devoid of merits, is liable to be dismissed.
18. In the event the meeting has been held on 14th July, 2026, the Prescribed Authority shall act on the decision taken therein. If the meeting could not be held on the said date, the Prescribed Authority is directed to hold the meeting within 10 days from the date of communication of this order

upon service of notice to the parties concerned and take the proceeding to its logical conclusion at the earliest, in accordance with law.

19. The Inspector-in-charge, Kaliachak Police Station, being the 10th respondent herein, is directed to render necessary assistance to the Prescribed Authority so that the meeting is held peacefully without any disturbance from any corner whatsoever.
20. The writ petition being WPA 15816 of 2026 is dismissed.
21. There shall however be no order as to costs.
22. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to have been admitted.
23. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)