

Md. Firoz Alam and Others Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: April 10, 2008

Acts Referred: West Bengal Panchayat Act, 1973 " Section 12

Citation: (2009) 2 CALLT 568

Hon'ble Judges: Pratap Kumar Ray, J; Manik Mohan Sarkar, J

Bench: Division Bench

Advocate: Amal Baran Chatterjee, Mr. Md. Abdul Alam and Mr. Md. Habibur Rahaman, for the Appellant; Sumitra Das Gupta and Mr. Sujit Kumar Mitra, for the State, Mr. Ekramul Bari for the Pradhan in A.S.T. No. 195 of 2008 and for the writ petitioner/respondent in A.S.T. No. 196 of 2008, Mr. Tapan Kumar Mukherjee for respondent Nos. 9 to 11 in A.S.T. No. 195 of 2008 and respondent Nos. 10, 11 and 12 in A.S.T. No. 196 of 2008, for the Appearing Parties

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates appearing for the parties.

2. Though the order under appeal before us is an interlocutory order but to identify the legality and validity of the order it requires in depth

interpretation of the statutory provision, namely, section 12 and section 16 of the West Bengal Panchayat Act, 1973 hereinafter for brevity referred

to as said Act, so far as to pass a resolution for removal of Pradhan.

3. Having regard to such state of affairs, along with the stay application wanted to hear the appeal as well as the writ application. The appeal and

the writ application accordingly both are taken up as on day's list for hearing.

4. Service of notice of appeal and all other formalities stand dispensed with.

5. Two writ applications were filed and accordingly from the identical interim order two appeals have been preferred along with the two stay

applications.

6. Both the two appeals, applications and the writ, applications are taken up for analogous hearing.

7. The issue involved in the writ application seeking judicial review under Article 226 of the Constitution of India was as to whether removal of

Pradhan by the resolution dated 27th February, 2008 passed by the majority members of Gram Panchayat, namely, seven members out of total

thirteen members which was approved by the prescribed authority declaring the removal of Pradhan as valid, was done following the procedures

laid down under the statute. The concerned Pradhan who has suffered removal order moved the writ application registered as W.P. No. 4085

(W) of 2008. The three members of Gram Panchayat who were not parties to the majority decision of removal of Pradhan and who are minority

out of total thirteen members of the said Gram Panchayat moved a writ application assailing the removal of Pradhan by a resolution dated 27th

February, 2008 of the majority members and same has been registered as W.P. No. 4087 (W) of 2008. In both the said two writ applications the

attack has been made about mode of service of notice of requisition meeting convened by the majority members with the agenda of removal of

Pradhan. The central point of attack is that notice in terms of section 16, second proviso of the said Act by keeping seven clear days gap from the

date of service to the date of meeting since was not followed, the meeting was invalid. As such, any resolution taken irrespective of the fact that it

was a majority decision for removing the Pradhan was bad in law. The learned trial Judge in both the two writ applications passed an ad interim

order dated 5th March 2008 directing that no effect should be given to the resolution dated 27th February, 2008 and there would be no necessary

of handing over the charge of office by the writ petitioner, Tabassum Banu, if charge was not handed over earlier. It is an admitted fact from the

writ application and from the documents as placed before us, namely, the stay application, affidavit-in-opposition and reply thereof that the elected

members of the concerned Gram Panchayat in total are thirteen. The writ petitioner, Tabassum Banu was elected as Pradhan by majority decision

u/s 9 of the said Act. Seven members out of such thirteen elected members of Gram Panchayat who are members under category of section 4(2A)

(i) being the elected members requested the Pradhan to convene a meeting for his removal and as the Pradhan did not convene a meeting, a

meeting fixing the date 27th February, 2008 was convened for removal of Pradhan and notice of such meeting was sent by registered post with

acknowledgement due to other six elected members who were the minority group including the Pradhan by posting the same on 19th February,

2008 from the local post office. A notice also was given to the prescribed authority. In the office notice board of the Gram Panchayat, said notice

of meeting was pasted, besides the service of another copy of said notice to the Secretary of the Gram Panchayat addressing the same in the name

of Pradhan of the Gram Panchayat which he received on 19th February, 2008. On server was sent by the prescribed authority that is the Block

Development Officer and a resolution was taken in the meeting dated 27th February, 2008 removing the Pradhan, which subsequently got

approval by the prescribed authority by his decision dated 4th March, 2008 directing Tabassum Banu to handover the charge of Pradhan to the

Upa-Pradhan.

8. The learned trial Judge has stayed the effect of resolution of dated 27th February, 2008 which is impugned herein. In this appeal it is the

submission of the Appellants that there should not have been order of stay restraining effect of resolution removing the Pradhan as all legal

formalities were duly performed to convene a meeting and the Pradhan was removed. The respondents, namely, Pradhan and other three minority

members of the Gram Panchayat on the other hand have opposed both the appeals by contending that meeting dated 27th February, 2008 since

was not convened by service of notice on keeping a gap of seven clear days from the date of effecting service actually and the date of holding of

the meeting, decision of removal was bad in law and resolution as taken had no legal effect.

9. Having regard to the contention of the parties and the factual scenario of this case, we are of the view that the interpretation of section 12,

section 16 and the relevant rules regarding service of notice under Rule 5 and Rule 6 are required to be considered and dealt with for an answer on

the issue. Under the statute, namely, the Panchayat Act u/s 4(2A) it appears that the Gram Panchayat has been defined as consisting of members

of two categories, namely, under Clause (i) members elected under sub-section (2) and under Clause (ii) members of the Panchayat Samiti not

being Sabhapati or Sahakari Sabhapati, elected thereto from the constituency comprising any part of the Gram. Section 4 (2A) reads such:

4 (2A) The Gram Panchayat shall consist of the following member:

(i) members elected under Sub-section (2).

(ii) members of the Panchayat Samiti, not being Sabhapati or Sahakari Sabhapati, elected thereto from the constituency comprising any part of the

Gram.

10. u/s 9 of the said Act a Pradhan is elected in the first meeting having a quorum by election from the elected members, namely, the members of

the Gram Panchayat under Clause (i) of Sub-section (2A) of section 4 as it appears from the first proviso of section 9 of sub-section (1). Relevant

provision of section 9 (1) and first proviso thereof reads such:

9. Pradhan and Upa-Pradhan.- (1) Every Gram Panchayat shall, at its first meeting at which a quorum is present, elect, in the prescribed manner,

one of its members to be the Pradhan and another member to be the Upa-Pradhan of the Gram Panchayat:

Provided that the members referred to in Clause (ii) of sub-section (2A) of section 4 [shall neither participate in, nor be eligible for, such election.]

11. The tenure of the Pradhan elected has been prescribed in the statute u/s 9 of sub-section (3) for a period of five years subject to provision of

section 12 of the said Act. The said proviso reads such:

9(3) - The Pradhan and the Upa-Pradhan shall, subject to the provisions of section 12 and to their continuing as members, hold office for a period

of [five years]

12. Section 12 is the specific provision for removal of Pradhan and Upa-pradhan which is quoted hereinbelow:

12. Removal of Pradhan and Upa-Pradhan. - [Subject to the other provisions of this section, a Pradhan or an Upa-Pradhan] of a Gram Panchayat

may, at any time, be removed from office [by a resolution carried by the majority of the existing members referred to in Clause (i) of sub-section

(2A) of section 4] at a meeting specifically 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 Pradhan from his office is under consideration, the Pradhan, or while

any resolution for the removal of the Upa-Pradhan from his office is under consideration, the Upa-Pradhan, shall not, though he is present, preside,

and the provisions of sub-section (2) of section 16 shall apply in relation to a meeting from which the Pradhan or, as the case may be, the Upa-

Pradhan is absent.

Provided further that no meeting for the removal of the Pradhan or the Upa-Pradhan under this section shall be convened within a period of one

year from the date of election of the Pradhan or the Upa-Pradhan.

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.

13. Section 16 speaks about the different meetings of the Gram Panchayat which reads such:

16. Meetings of Gram Panchayat.- (1) Every Gram Panchayat shall hold a meeting at least once in a month [in the office of the Gram Panchayat.

Such meeting shall be held on such date and at such hour as the Gram Panchayat may fix at the immediately preceding meeting:]

Provided that the first meeting of a newly-constituted Gram Panchayat shall be held [on such date at such hour and] and such place within the local

limits of the Gram concerned as the prescribed authority may fix:

Provided further that the Pradhan when required in writing by [one-third] of the members of the Gram Panchayat subject to a minimum of [three

months] to call a meeting [shall do so fixing the date and hour of such meeting (to be held) within fifteen days after giving intimation to the

prescribed authority and seven days" notice to the members to the members of the Gram Panchayat] 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 Pradhan and

other members of the Gram Panchayat. Such meeting shall be held [in the office of Gram Panchayat 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 thereof as it may deem fit].

Provided also that for the purpose of convening a meeting u/s 12, at least one-third of the members referred to in Clause (i) of sub-section (2A) of

section 4, subject to a minimum of three members, shall require the Pradhan to convene the meeting.

Provided also that if the Gram Panchayat does not fix at any meeting the date and the hour of the next meeting or if any meeting of the Gram

Panchayat is not held on the date and the hour fixed at the immediately preceding meeting, the Pradhan shall call a meeting of the Gram Panchayat

on such date and at such hour as he thinks fit.

Analysis of sections 12 and 16 of the said Act:

14. On a comparative analysis of section 12 and section 16 relating to convening of a meeting for removal of Pradhan, it appears that the

legislature consciously have used different language to identify the different meetings along with prescription of minimum number of members of

Gram Panchayat who may initiate process under respective sections for removal of Pradhan. Section 12 speaks that subject to other provisions of

the said section 12, ""at any time"" Pradhan or Upa-Pradhan could be removed by resolution carried by majority of the existing members referred to

in Clause (i) of sub-section (2A) of section 4 hereinafter for brevity referred to as elected members of Gram Panchayat at a meeting specially

convened for the purpose. The word ""at any time"" has been limited to section 12 itself under second proviso which speaks that within a period of

one year from the election of the Pradhan or Upa-Pradhan no meeting for removal could be convened. Except that embargo ""at any time"" is not

saddled with any further limitation either u/s 12 or by any other section of the said Panchayat Act. u/s 12, the meeting has been termed as a

specially convened"" meeting for the purpose of removal of Pradhan and Upa-Pradhan by, a resolution carried by majority of the elected

members. u/s 16 it appears that the different meetings have been mentioned along with its particulars and specifications, namely, the general

meeting, first meeting, requisition meeting and a meeting convened by the Pradhan. Under the second proviso it appears that one-third members of

the Gram Panchayat which means the total members of the Gram Panchayat, namely, elected and nominated in terms of section 4(2A) of the said

Act may request the Pradhan to convene a meeting for any purpose and pradhan has been statutorily obliged to convene a meeting within fifteen

days from the date of receipt of such requisition on giving intimation to the prescribed authority and seven days notice to all the members of the

Gram panchayat elected and nominated both. Under the third proviso of the said section 16 which has been effected from 20th December, 1994 it

appears that for removal of Pradhan u/s 16 a request to convene a meeting could be by Pradhan requires a written notice to the Pradhan by at

least one third of the members who are under category of elected members subject to minimum three members. Under the second proviso of

section 16 it appears that failing to convene a meeting by the Pradhan within fifteen days from the date of receipt of the notice requesting to

convene such by one-third members of Gram Panchayat or one-third members from the elected category as the case may be for different agenda,

the said members, namely, those one-third members would be entitled to convene a meeting for the purpose of passing a resolution which may be

relating to affairs of Gram Panchayat including the confidence or no confidence upon the Pradhan whatever may be by serving the notice to all the

members of the Gram Panchayat elected or nominated in the event requisition of the meeting was not u/s 12 for removal of Pradhan by giving

seven clear days notice of such meeting to other members including the notice to the Pradhan and intimation to the prescribed authority with a

limitation to convene meeting within thirty-five days from the date of expiry of fifteen days" period as was given to the Pradhan to convene such a

meeting.

15. On a reading of section 16 it accordingly appears that ""at any time"" Pradhan could not be removed even by majority decision if one-third

elected members under third proviso of section 16 initiate a process by making a request to the Pradhan to convene a meeting for the purpose u/s

12 of the said Act as because those one-third members are required to wait to convene a meeting by themselves to pass a majority decision for

removal of the Pradhan on service of notice to other two-third elected members as well as other members of Gram Panchayat after waiting fifteen

days from the date of receipt of the notice by the Pradhan as the statute provides that failing to convene a meeting by Pradhan within fifteen days as

mentioned, the requisition's will get a legal right to convene a meeting with the agenda for removal of Pradhan on serving a notice with seven clear

days" time gap to the rest members of the Gram Panchayat. Hence, it appears on a bare reading of section 16 that if any request to convene a

meeting is made by one-third elected members for removal of Pradhan u/s 16, they have to wait to convene a meeting by themselves upon notice

to all the members of the Gram Panchayat for passing a majority decision for removal at least twenty three days from the date of giving intimation

to the Pradhan to convene such a meeting. Furthermore, those requisition"s are bound to complete their action by convening such meeting within

thirty-five days from the last statutory date as to be considered as a refusal date to convene a meeting by the Pradhan himself which means that

Pradhan cannot be removed u/s 16 of the said Act ""at any time"" in view of the statutory embargo and procedural frame-work of the statute u/s 16,

which mandates that the requisition"s would not be entitled to take a resolution before twenty three days from the date of intimation to Pradhan to

convene a meeting for such purpose on minimum side of the time period whereas in maximum side they would be entitled to convene such meeting

within fifty eight days from the date of first intimation to convene a meeting by the Pradhan himself is served, which means, that the word ""at any

time"" u/s 12 which speaks about the removal of Pradhan, if anybody intends to proceed following the section 16, is contoured by the time limit for

taking a resolution after twenty days from the date of request to the Pradhan to convene a meeting by himself and within the period of fifty days as

would start from the sixteen days of the date of intimation to the Pradhan requesting him to convene a meeting for his removal.

16. Now, let us consider the provision of section 12 for removal of Pradhan. u/s 12 it appears that ""at any time"" Pradhan could be removed and it

is not saddled with any liability of following the procedural steps and the limitation of time limit by giving a specific time frame, namely, after twenty-

three days from the date of request to the Pradhan and upto the outer limit of fifty eight days from the date of request to the Pradhan in terms of

section 16 as already discussed. Section 12 speaks that by resolution carried by the majority of the existing elected members at a meeting specially

convened for the purpose may remove the Pradhan. Hence, on a bare reading of section 12 it appears that to remove the ball in motion for

removal of Pradhan the majority elected members may convene a meeting ""at any time"" to pass a resolution for removal of the Pradhan only with a

rider that a notice of such meeting should be given to the prescribed authority and further subject to the second proviso which is in the instant case

has no applicability.

17. From the very frame-work and the language used by the legislature it appears that there is a basic difference in between the two provisions,

namely, section 12 and section 16 of the said Act for taking a resolution for removal of Pradhan. It appears as per our reading that the legislature

consciously have kept the two, provisions open for removal of the Pradhan following the different procedural laws for the purpose of taking a

resolution for removal of Pradhan by majority decision. As u/s 16 the ball is required to be moved in motion by only one-third elected members

when the desire/wish of the two-third elected members were not known, requesting to convene a meeting by the Pradhan and failing to convene

such a meeting within prescribed time limit, those one-third members who are prima facie a minority group till that time would be entitled to

convene a meeting by serving a notice of such meeting to the rest two-third majority members with a specific time limit of service of notice as

prescribed so that in the meeting as to be convened for removal of Pradhan, the wish of majority is reflected and thereby a resolution is passed for

removal. Hence, section 16 speaks about a situation prescribing a procedural law for removal of Pradhan when only one-third elected members of

the Gram Panchayat express a desire for removal of Pradhan which till the resolution is passed by the majority members remains as a minority

desire. Whereas u/s 12 it appears that the ball is required to be set in motion by the majority elected members and as it is a wish/desire of majority

elected members that the Pradhan should be removed, the legislature purposely had used the word ""at any time"" without any rider of procedural

steps either intimation to the Pradhan first to convene such a meeting or waiting for fifteen days from the date of request to the Pradhan to convene

a meeting or right to convene a meeting in the event of failure of the Pradhan to convene such prescribing outer time limit of thirty five days from the

date of expiry of 15 days aforesaid. The Pradhan is elected by majority votes of elected members of the Gram Panchayat, hence, in our view once

the majority members are of the opinion that Pradhan was not of their liking, they got the-right to remove the Pradhan without any delay and, as

such, legislature had used the word ""at any time"" u/s 12 without any procedural follow up as would cause delay to remove the Pradhan. Further it

appears from section 12 that the word ""meeting"" has been defined as a ""specially convened meeting"" for the purpose of removal which is on

continuation of the words ""by a resolution carried by the majority of the existing members"". On a bare reading of section 12 it appears that the

majority of the existing elected members are empowered to convene a special meeting, accordingly such meeting is not a meeting u/s 16 which

speaks of other category of meeting namely a general meeting, emergency meeting and requisition meeting. The meeting u/s 12 as is convened by

the majority elected members for the purpose of removal of Pradhan from the very beginning is nothing but a reflection of mind of the majority

elected members that they had lost confidence upon the Pradhan which is the main nucleus for holding the office of Pradhan as the Pradhan is

elected by the majority members u/s 9 of the said Act. The legislature as per our reading accordingly did not like that a Pradhan who has already

lost his confidence of majority elected members would remain as Pradhan and for that purpose to reach a prompt decision for removal of Pradhan,

a specific provision of section 12 has been enacted giving a go-by of all procedural formalities of convening a meeting in terms of section 16 by

using the word ""at any time"". If we consider section 12 is depending upon section 16, and its procedural follow up, then the ultimate result would

be that there would be no meaning of the word ""at any time"" as has been used in section 12. Section 12 accordingly being a situation where

already the majority members had applied their minds to remove the Pradhan. Accordingly legislature purposely did not stipulate any provision of

service of notice upon the minority group but prescribed only a provision of service of notice upon the prescribed authority. It is a settled legal

proposition of law that the legislature never uses any language and/or any word unnecessarily and without any meaning. Every word of the statutory

provision carries a particular meaning.

18. On interpreting a particular section of the statute accordingly the Court should be careful to give a harmonious meaning of each and every word

of the particular section.

19. Having regard to our discussions above, we are of the view that the legislature has kept two separate provisions for removal of Pradhan under

different contingency/situation/factors, namely, when a minority group being one-third of the elected members and being a minimum of three

member desires to remove the Pradhan, to test the minds of the majority persons namely, the elected members, section 16 second proviso and

third proviso should be followed to identify the mind of majority elected members. But where already the majority members have decided that

Pradhan should be removed, legislature has wanted removal of Pradhan instantly/forthwith by section 12, using the word ""at any time"" and also by

not saddling the liability of service of notice to all other members, who are minority group and a necessity of waiting for a particular period, as such

specified convening of a "special meeting" by such majority members with notice to the prescribed authority only. Hence, we are of the view that

when there would be such a situation where section 12 could be applied for convening a meeting, which is termed as a special meeting, could be

initiated by majority elected members. The said meeting cannot be considered as a requisition meeting in terms of the definition of the requisition

meeting under the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 in terms of Rule 2(e) of the said rules.

20. Now, we have to consider the said Administration Rules regarding meeting of a Gram Panchayat. It appears that under Rule 5 four types of,

notices have been prescribed with proper format, namely, Form 1, Form 1A, Form 1B and Form 1C. Form 1 has been specified for a general

meeting, Form 1A has been specified for an emergent meeting, Form 1B is for a meeting as to be convened by a Pradhan on the requisition of

one-third elected members and Form 1C is the form of convening a meeting by the requisitions. The requisition meeting under definition 2 (e) is

confined under the second proviso of sub-section (1) of section 16 only. That second proviso of sub-section (1) of section 16 is not relating to

removal of Pradhan. As u/s 16 notice for removal of Pradhan by the minority members could be served under third proviso of sub-section (1) of

section 16, hence Rule 5 has prescribed different formats of notice relating to general meeting, emergency meeting, meeting as to be convened by

the Pradhan and requisition meeting and the Rule 5 accordingly has no applicability so far, as the "special meeting" is concerned in terms of section

12 where the majority members decide to convene a meeting for removal of Pradhan. As a resultant effect, Rule 6 also has, no applicability so far

as a special meeting u/s 12 is concerned. Rules 5 and 6 is set out hereinbelow:

5. Notice of the meeting to members. (1) At least seven days" notice of the list of business to be dealt with at every meeting, except an emergent

meeting of the Gram Panchayat is to be sent to each member of the Gram Panchayat in Form 1. An emergent meeting may be called after giving

three days" notice to the members in Form 1A. [A requisitioned meeting] may be called by the Pradhan in Form 1B or by the requisitionist

members in Form 1C, as the case may be.

(2) A copy of the budget of the Gram Panchayat, if required to be considered at a meeting of the. Gram Panchayat, shall be enclosed with the list

of business for such meeting.

(3) When the Pradhan is required to convene [a requisitioned meeting] he may issue notices under his signature or with his written instruction under

the signature of the secretary. Such notices shall be issued at last-seven days before the date of the meeting, which shall be held within fifteen days

from the date of receipt of such requisition by the Pradhan.

(4) There shall be no meeting with agenda for removal of more than one office bearer in a Gram Panchayat any notice issued for removal of more

than one office bearer shall be void ab initio.

(5) In a Gram Panchayat, not more than one general body meeting shall be held on a single calendar day. A notice convening more than one

general body meeting on a single calendar day, shall be void ab initio; if more than one notice are issued for convening separate meeting on the

same day only the notice which is issued first shall be valid.

6. Procedure of delivery of notice to members. - (1) The notice of the list of business to be transacted at a meeting, an emergent meeting or a

requisitioned meeting of a Gram Panchayat in Form 1, 1A or 1B as the case may be shall be sent through the Secretary of the Gram Panchayat to

each member of the Gram Panchayat by a messenger. The messenger shall deliver the notice to the member to whom it is addressed. In the

absence of the member, the notice may be delivered to an adult member of his family residing with him. The messenger shall obtain the signature of

the member or the adult member, as the case may be, of his family residing with him, in the copy of the notice as a receipt thereof. If the member is

absent and there is no other adult member of his family to whom the notice may be delivered or a member or any adult member of his family

refuses to receive the notice, it may be served by affixing on the outer door or some other conspicuous part of the house of the member in

presence of not less than two witnesses. The service-return containing the signature of witnesses during such service shall be attached to the office

copy of the notice along with a brief note of the entire procedure by the Secretary or in his absence by any other Panchayat employee, other than

Gram Panchayat Karmee, duly authorised by the Pradhan of the Gram Panchayat.

(2) Every notice under Rule 5 shall be displayed on the notice board of the Gram Panchayat at last seven days before the time fixed for a meeting

other than an emergent meeting. In case of an emergent meeting, such notice shall be displayed three days before the time fixed for such meeting.

(3) When notices convening any meeting have been put to service, such meeting shall not be cancelled by the Pradhan or the Upa-Pradhan.

21. Section 12 is an in-built full-fledged provision prescribing the service of notice only upon the prescribed authority by terming the said meeting a

special convened meeting" by the majority elected members. Rule 5 aforesaid has not prescribed any procedure as to be followed to convene a

"Special Meeting".

22. Having regard to our discussions above, now the issue to be dealt with which is the subject matter of the appeal herein. It is an admitted fact

that the majority members being total seven out of thirteen initially requested the Pradhan to convene a meeting for his removal by terming the same

as a notice u/s 12 read with section 16 of the said Act. They waited for 15 days as per second proviso of section 16, Thereafter, they convened a

meeting being the majority elected members out of 13 members and notice of such was posted on 19th February, 2008 and a meeting held on

27th February, 2008. So far as the second phase of meeting is concerned, it is true that seven clear days" notice was not given to all the members

of the Gram Panchayat in terms of second proviso of section 16. Even for argument it is assumed that the word ""Gram Panchayat"" as mentioned in

second proviso of section 16 would be deemed as only elected members when there would be a requisition under third proviso of section 16 of

sub-section (1) by one-third elected members of Gram Panchayat for removal of Pradhan, still then, there was no follow up of seven clear days"

notice. Seven clear days" notice as per our reading should be construed as seven clear days" gap from the date of service of notice and the date of

holding of the meeting. The construction of seven clear days" notice to be construed rigidly in view of the fact that when a requisition meeting is

convened by a minority group, to test the views of the majority so far as removal of Pradhan, other two-third elected members of the Gram

Panchayat must be served strictly as per statutory provision of second proviso of section 16 otherwise there would be a situation that due to lack

of proper notice the minds of the members could not be reflected in the resolution. An elected member has a right to express his opinion on the

issue as to whether an elected Pradhan u/s 9 could be removed or not and on such a situation the service of notice with seven clear days is must

which is admittedly in the instant case has not been done. It appears from the records that notice was posted on 19th February, 2008 and it was

received by some members on 22nd February, 2008 and by some members on 23rd February, 2008 but the meeting held on 27th day of

February, 2008. Hence, the members who have not refused to accept the notice alike to Pradhan received notice with time gap of three days only,

and it has not satisfied ""seven clear days" notice provision"". The decision *Jai Charan Lal Vs. State of U.P. and Others*, as relied upon by the

learned Advocate for the Appellants to contend that mere posting of a notice in the Post Office with proper address would be deemed as a date of

service of notice, has no applicability in the instant case. Therein the statute, namely, U.P. Municipality Act, 1916 wherein provision under sub-

section (3) of section 87A that District Magistrate shall send by registered post a notice of meeting not less than seven clear days before the date

of the meeting was considered. The Apex Court considered the word "send" as a nucleus of the entire issue and held that when the statute have

used the word "send", posting of any notice under registered cover would be deemed as sending of the notice. But in the instant case, the statute

has only prescribed giving of a notice of seven clear days. Statute has not prescribed the mode of service of requisition notice under Form 1C

whereas it has been mentioned about mode of service of notice by hand in respect of other types of notices under Rule 5, namely, the notice by

pradhan, notice of emergent meeting etc. Section 27 of the General Clauses Act also could not be considered as the mode of service of notice has

not been mentioned by post. Had there been any provision about mode of service of notice by post, section 27 of the General Clauses Act could

have been applied to reach to the conclusion that once a letter having proper address and duly stamped and put in under the registered post, would

be deemed as a good service of the letter by post being a presumption of service u/s 27 of the General Clauses Act. Of course, it is a rebuttable

presumption if such situation is proved by the aggrieved parties. As the statute under second proviso has not prescribed the mode of service of

notice by Post and under Rule 5 of the said Rules also there is no such procedure, we cannot reach to the conclusion applying the said General

Clauses Act that the notice was duly served on 19th February, 2008 and the judgment as referred to has no applicability. Furthermore, the word

seven clear days has been dealt with to identify the answer about the difference between the "days" and "clear days". From the Book, Shekleton

Law of notice, Edn. page 46 it appears that 48 hours is considered as a normal time as is consumed by the Post Office to deliver a letter/notice.

Having regard to such concept, the views expressed by the English Court that when statute speaks about a gap of a meeting in between the date of

service and the date of meeting, both the two dates, namely, the date when it is actually served and the date of meeting to be excluded to count the

time limit as prescribed by the statute. It has been further held that time of service of notice to be counted from the actual date of service and not

from the date when the letter is posted. Reliance may be placed to the judgment passed in the cases Mercantile Investment and General Trust

Company, reported in 1893 1 Ch. 484 and R. Hereford Shire, reported in (1820) 3 B.A. 581 as it appears at page 135 of the said Book of

Shekleton and in the judgment passed in the case Re: Hector Whaling, reported in 1936 Ch. 208.

23. Having regard to such legal position, we are of the view that the second proviso of section 16 so far as service of notice maintaining "seven

clear days" was not satisfied. Whether for such defect in service, the decision of the majority members as taken in the meeting removing the

Pradhan could be considered as bad in law and it should be null and void which now to be addressed by us.

24. On that question there are conflicting views by the respective Division Benches of this Court. The Bench presided over by Justice Bhaskar

Bhattacharya in the case Upananda Chatterjee Vs. State of West Bengal and Others, held the provision of service of clear seven days notice is not

mandatory relying upon the views expressed by the Apex Court in the case K. Narasimhiah Vs. H.C. Singri Gowda, . The judgment passed in the

case Gowda (supra) arose out of interpretation of Mysore Municipal Act, being Act 1922 of 1951, wherein there was a special provision that

irregularities of notice will not vitiate the resolution of a meeting. The Apex Court relied upon mainly that provision to hold that even if there was a

defect in the service of notice, resolution could not be said as invalid resolution. Similar provision is not there in the Panchayat Act by stipulating

that any irregularity of service of notice shall not vitiate any resolution of the meeting. It is the settled legal position that the ratio decidendi of the

judgment is of binding nature and it has precedential value. It further appears that two separate provisions, namely, Mysore Municipal Act, 1951

and the West Bengal Panchayat Act, 1973 are not pari materia with reference to the effect of service of notice. Hence the views expressed in the

case H.C. Singri Gowda (supra) is of little assistance for adjudication in the present case under the Panchayat Act. A judgment is a precedent in

respect of the legal question answered on the reflection of the law of the field and the factual matrix concerned. Reliance may be placed to the

judgement passed in the case State of Punjab Vs. Baldev Singh, , a Constitution Bench wherein the Apex Court held that even a change of any

word in factual matrix will lead to different results wherein, the Apex Court while dealing with the statutory provision for determining the age for the

purpose of trial of a criminal case held that the earlier views expressed by the Apex Court passed in the case by holding that on the date of passing

the judgment, the age would be a determinant to decide the applicability of the concerned Act and not the age as was in existence on the date of

commission of the offence, on interpreting the Act of 2006, was not a good law. The Apex Court discussed the principle of law about the binding

precedent to that effect when in the field both the Acts provides identical provision. The West Bengal Panchayat Act, 1973 and the Mysore

Municipal Act, 1951 are not pari materia with reference to the invalidity of any resolution on the defect of the service of notice and in view of the

absence of any such provision similar to the said Act of 1951 in the statute, namely, Panchayat Act, the views expressed in the case H.C. Singri

Gowda (supra) cannot be considered as a binding precedent to adjudicate this matter. Another views expressed by this High Court by a Bench

presided over by K.J. Sengupta, J., being an unreported decision under cause title Smt. Madhumita Biswas v. The State of West Bengal and

others (M.A.T. No. 3686 of 2006) wherein the Court held that clear seven days notice must be given due to use of the word "clear" and thereby

the Court held that the said provision was mandatory. In view, of the conflicting opinion of the two Division Benches, though under the doctrine of

Judicial precedent we have the liberty either to follow one of them by applying different tests as propounded by the Apex Court in that field, but for

adjudication of this present case, we are of the view that we need not to consider that aspect. In the case of conflicting judgment of the Bench with

the same strength, it is the view expressed by the Calcutta High Court by different judgments that there may be outcome of three propositions of

law, namely, (i) that the judgment as delivered earlier could be construed as judgment holding the field. Reliance may be placed to the case Bogota

Sundari v. Prasannanath reported in AIR 1917 Cal. 668 (DB); (ii) that the latest judgment should be considered as holding the field. Reliance may

be placed to the case passed in the case Pramatha Nath Mitter and Others Vs. Hon^{ble} The Chief Justice of the High Court at Calcutta in the

State of West Bengal and Others, (Special Bench); (iii) that the subsequent Bench has the liberty to consider any of the judgments as binding

precedent which, as per consideration of that Bench, would be considered as right legal proposition. Reliance may be placed to the judgment

passed in the case reported in Harendra Nath Burman Vs. Sm. Suprova Burman and Another, . However, aforesaid diverge principles have been

set at rest by the Apex Court by observing that in the event of any conflict, it is the duty of the Bench to refer the matter to a larger Bench so that

there may be a certainty of the views expressed by the Court of law with reference to the legal question involved for the sake of public interest.

Reliance may be placed to the judgment passed in the case Pradip Chandra Parija and Others Vs. Pramod Chandra Patnaik and Others,

25. For adjudication of this case, we are of the view that the said question in this case need not be addressed to decide whether the notice

provision & mandatory or directory and as such we are not deciding whether due to lack of proper notice, resolution would be vitiated or not.

26. Having regard to our earlier observation and discussion we have already held that section 12 of the said Act speaks about specific provision

for removal of the Prodhan whereas section 16 of the said Act also is for removal of Prodhan by following the procedure laid down and the only

difference an between the two procedures is one is initiated by majority elected members and another is initiated by 1/3rd elected members. In

view of our discussion, accordingly we are of the view that when the majority elected members decide to remove the Prodhan as per statutory

mandate u/s 12 of the said Act, it could be done by holding specially convened meeting and by passing a resolution to that effect on giving a notice

to the prescribed authority only. In the instant case, it appears that initially the majority elected members served a notice to the Prodhan requesting

him to convene a meeting for his removal by terming the said notice as per their understanding as a notice u/s 12 read with section 16 of the said

Act. However, the Prodhan under the second proviso of section 16 of the said Act failed to convene any requisition meeting when by giving a

notice to the prescribed authority as well as service of notice under registered post with A/D to the rest of the elected members who were minority

group, a meeting was held and decision to remove Prodhan was taken. Hence it appears that majority have taken a decision for removal of the

Prodhan. So we are of the view that the subsequent convening of the meeting by the majority members when Prodhan failed to convene a meeting,

could be saved as a valid meeting in terms of section 12 of the Panchayat Act, 1973 as u/s 12 of the said Act, statute has prescribed that ""at any

time"" the majority elected members convening a special meeting, may remove the Prodhan only upon serving a notice to the prescribed authority, a

condition precedent. Condition of convening of a special meeting was fulfilled so far as the meeting dated 27th February, 2008 is concerned,

accordingly we are terming it as a special meeting in terms of section 12 of the said Act conveyed by majority members of the Gram Panchayat

with an agenda for removal of the Prodhan when as per notice served to the prescribed authority, an observer in his behalf was present in the

special meeting. Considering the aspect in that angle that subsequent meeting was held u/s 12 of the said Act, we are of the view that there was no

illegality in taking such resolution for removal of the Prodhan and as such there was no merit in the writ application assailing such resolution and the

subsequent action of the prescribed authority removing the Prodhan and directing her to hand over the charge.

27. Both the writ applications, being W.P.4087(W) of 2008 and W.p. 4085(W) of 2008, accordingly failed and stand dismissed and interim order

stands vacated.

28. Both the appeals, being A.S.T. 195 of 2008 and A.S.T. 196 of 2008, accordingly stand allowed with the aforesaid finding and observation.

Both the stay applications, being A.S.T.A. 29 of 2008 and A.S.T.A. 28 of 2008, accordingly stand disposed of.

Urgent xerox certified copy of this order, if applied for be given.

Manik Mohan Sarkar, J.--I agree.