

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

M.A.T. 468 of 2022

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I.A. No. CAN/1/2022

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IA No: CAN/2/2022

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IA No: CAN/3/2022

Tanuja Begum Laskar

v.

The State of West Bengal & Ors.

WITH

MAT 486 of 2022

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IA No: CAN/1/2022

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IA No: CAN/2/2022

Nemai Sardar & Ors.

v.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the Appellant : Mr. Arun Kumar Maiti, Adv.
Mr. Pradip Sardar, Adv.
Mr. Ushananda Jana, Adv.
Mr. Mohit Gupta, Adv.
Mr. R.R. Mohanty, Adv.
Ms. Diya Bain, Adv.
Mr. Tapas Mandal, Adv.

For the State : Mr. Lalit Mohan Mahata, AGP.
Mr. Raja Saha, Sr. Govt. Adv.,
Ms. Tanusri Chanda, Adv.

For the Respondents nos. : Mr. Saptansu Basu, Sr. Adv..
7 to 15 Mr. Sudarshan Ghosh, Adv.
Mr. Suman Agarwal, Adv.

For the added Mr. Swarup Banerjee, Adv.
respondents Ms. Kaberi Sengupta Mohanty, Adv.
Ms. Komal Shaw, Adv.

Judgment On : 18.05.2023

Arijit Banerjee, J.:

1. These two appeals are directed against the judgment and order dated March 29, 2022, whereby the writ petition of the appellant in MAT 468 of 2022, being WPA No. 4584 of 2022, was disposed of. Being aggrieved, the writ petitioner has filed MAT 468 of 2022. MAT 486 of 2022 has been filed by four persons claiming to be members of the concerned Panchayat. The appellant no. 1 in that appeal claims to be the leader of the opposition. The appellants in MAT 486 of 2022 claim that they were necessary parties to the writ petition but were not impleaded as respondents. They were thus deprived of the opportunity of placing their case before the learned Single Judge. By reason thereof, they have suffered prejudice. They have taken out an application for leave to appeal against the judgment and order dated March 29, 2022. We are not inclined to grant such leave. These intending appellants are essentially supporting the appellant in M.A.T 468 of 2022 who has been heard *in extenso* on several dates. M.A.T 486 of 2022 along with the connected applications are accordingly disposed of.

2. The aforesaid intending appellants in M.A.T. 486 of 2022 have also taken out an application for being added as respondents in MAT 468 of 2022. For the same reason for which we declined leave to appeal to them, we

reject the application whereby the said persons seek to be added as respondents in MAT 468 of 2022.

3. The appellant in MAT 468 of 2022 approached the learned Single Judge challenging a motion dated March 3, 2022, brought by the requisite number of members of the concerned Panchayat, for removing her from the office of Pradhan. The appellant/writ petitioner also challenged the notice dated March 7, 2022, issued by the Prescribed Authority under Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975. The grounds on which the motion and the notice of meeting issued by the Prescribed Authority were assailed, as would appear from the writ petition, were as follows:-

“I. For that the Prescribed Authority and the Block Development Officer Joynagar – I, Block Development at Baharu, District 24 Parganas ignored the provision of Section 12(3) of West Bengal Panchayat Act, 1973 by not sending the notice before clear 7 days to your petitioner for consideration of conducting a meeting and for taking decision on it.

II. For that the Prescribed Authority and Block Development officer did not observe the compliance of Section 12(2) of the West Bengal Panchayat Act, 1973 before issuing the notice dated 07.03.2022.

III. For that as per Section 12(3) of the West Bengal Panchayat Act, 1973 the Prescribed Authority and the Block Development Officer, Joynagar – 1 Block Development, Officer at Baharu, District –

South 24-Parganas is duty bound to send the notice within clear 7 days to your petitioner.

IV. For that since the West Bengal Panchayat Act gives a direction upon the Prescribed Authority to perform the mandatory duty by issuing notice within five working days from the receiving of the notice for the purpose of conducting meeting of removal of Pradhan in the Rajapur Karabeg Gram Panchayat by suppressing the notice dated 07.03.2022.

V. For that the Prescribed Authority cannot issue notice for conducting the meeting during the stay period arising out of C.A.N. 1+2 of 2022 in W.P.A. No. 171 of 2022.

VI. For that the Prescribed Authority cannot issue the notice dated 07.03.2022 since it is not the compliance of solemn order passed by the Hon'ble Justice Sabyasachi Bhattacharya on 10.01.2022 in W.P.A. No. 171 of 2022."

4. There appears to have been several rounds of litigation between the parties hereto. Let us briefly discuss the factual background of the present litigation.

5. A Motion dated November 23, 2021, for removal of the appellant as Pradhan was brought by 9 out of 17 members of the Panchayat. Alleging inaction on the part of the Prescribed Authority, the requisitionists approached a learned Single Judge of this Court by filing WPA 20743 of 2021. On the day the matter came up before the learned Single Judge i.e.,

December 23, 2021, 30 days had elapsed from the date of the motion. Section 12(10) of the West Bengal Panchayat Act, 1973 (in short the said Act), required the entire process from receipt of the motion by the Prescribed Authority to any action finally taken by him to be completed within 30 days. Accordingly, the learned Judge disposed of the writ petition by granting leave to the writ petitioners, as prayed for, to bring a fresh motion in accordance with the provisions of the said Act.

6. The said requisitionists brought a fresh motion of 'no-confidence' and for removal of the Pradhan (the appellant herein) on December 29, 2021. Again, alleging that the Prescribed Authority had not taken steps to convene a meeting in terms of Section 12(3) of the said Act, the requisitionists approached a learned Single Judge by filing WPA No. 171 of 2022. The said application was disposed of by an order dated January 10, 2022, with the following direction:-

“Accordingly, W.P.A. No. 171 of 2022 is disposed of by directing the respondent no. 6 to convene a meeting in terms of Section 12(3) of the 1973 Act, pursuant to the notice of the petitioners for moving a motion of no-confidence and/or removal of the Pradhan within January 22, 2022.

Within five days thereafter, that is, by January 27, 2022, the respondent no. 6 shall comply with all formalities as contemplated in sub-section (10) of Section 12 of the 1973 Act by taking such further action as contemplated therein.”

7. The appellant herein filed an application being CAN 1 of 2022 for recall of the order dated January 10, 2022. Another application being CAN 2 of 2022 was also filed by the appellant herein against the writ petitioners in WPA no. 171 of 2022 (the requisitionists) under Section 340 of the Code of Criminal Procedure. In the mean time, the requisitionists had filed a contempt application being CPAN 79 of 2022 for alleged violation of the order dated January 10, 2022, by which WPA No. 171 of 2022 had been disposed of.

8. All the three applications were listed before the learned Single Judge on March 1, 2022. By an order of that date, the two applications of the present appellant being CAN 1 of 2022 and CAN 2 of 2022 were dismissed with costs. The contempt application was adjourned. We have not been apprised of the fate of such contempt application, nor, in our opinion, the decision in such application would have any bearing on the present proceedings.

9. It appears that during pendency of the application for recall of the order dated January 10, 2022, and the application under Section 340 of the Code of Criminal Procedure, the requisitionists again brought a motion of no-confidence for removal of the Pradhan on February 1, 2022. By an interim order dated February 25, 2022, passed in CPAN 79 of 2022, the learned Single Judge restrained the Prescribed Authority from acting on the basis of the notice issued by him pursuant to the motion of no-confidence.

10. The contempt application being CPAN 79 of 2022 was next listed before the learned Single Judge on March 10, 2022, whereupon, on the prayer of the applicants in the contempt application the matter stood adjourned till March 24, 2022. In the mean time a fresh motion of no confidence was again brought by the requisitionists who are respondents herein, for removal of the Pradhan. The Prescribed Authority issued notice on March 7, 2022, convening a meeting on March 14, 2022.

11. Challenging the notice of motion dated March 3, 2022, and the Prescribed Authority's notice dated March 7, 2022, the appellant approached the learned Single Judge in the present round of litigation. The grounds of challenge as enumerated in the writ petition have been extracted above. It appears that the writ petition was filed on March 14, 2022. In the absence of any interim order of restraint, the meeting scheduled for March 14, 2022, was held. Ten members voted in favour of the motion for removal of the Pradhan. The motion was carried through. Under cover of a letter dated March 14, 2022, the Prescribed Authority forwarded a copy of the resolution removing the Pradhan (appellant herein) to the District Panchayat and Rural Development Officer, South 24 Parganas.

12. By a memo dated March 29, 2022, addressed to the Ex-Pradhan, the Upa-Pradhan and the Secretary of the concerned Panchayat, the Prescribed Authority stated as follows:-

“This is to notify that, as The Pradhan of Rajapur Karabeg Gram Panchayat under Joynagar – I Development Block, has already

been removed dated on 14.03.2022 and there is no interference by the Hon'ble High Court i.c.w. WPA No: 4584 of 2022. The Charge of the Prodhan, of Rajapur Karabeg Gram Panchayat would be made over to the Upa-Prodhan, of Rajapur Karabeg Gram Panchayat as on 01.04.2022 at 11.30 A.M. or as soon as the business permits.

Notice be effected to the Ex Prodhan, Upa-Prodhan and the Secretary of the Rajapur Karabeg Gram Panchayat for completion of the making over of the charge of Prodhan to the Upa-Prodhan according to law.

Copy of Hand over of Charge should be immediately sent to the office of the undersigned without fail.

This may be treated as Most Urgent.”

13. The learned Single Judge pronounced the judgment and order impugned in this appeal on March 29, 2022.

14. The learned Judge disposed of the writ petition with the following observations:-

“16. The impugned requisition was brought on March 3, 2022. The said requisition does not suffer from any illegality. The requisition is also not barred by the statute as the earlier requisitions/motions had not been acted upon. Thus, even if no liberty had been granted, unless hit by the provisions of Section

12(11), the requisitionists were entitled to bring the requisition as the life of the earlier requisitions had lost their force and had died a natural death, due to efflux of time. The impugned requisition is not a consequence of the order passed either in WPA 171 of 2022, or in WPA 20743 of 2021. Those requisitions expired during the pendency of the recalling applications.

17. This Court holds that there has been sufficient compliance of the provisions of Section 12(2) by the requisitionists and the motion cannot be set aside. The Pradhan was neither available at his residence nor at his office and, as such, the requisitionists rightly served the motion upon the Secretary. In addition to the same, the motion was also sent by registered post to the panchayat office and the residence. Delivery of the motion upon the Pradhan, by one mode would be sufficient compliance as has been held by this Court in similar matters. The law envisages that the motion has to be delivered either by hand or by registered post at the panchayat office and sent by registered post to the residence of the Pradhan. In this case, the motion was delivered upon the Secretary of the panchayat office, as the Pradhan was not available.

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19. With regard to the allegation of non-service of the notice dated March 7, 2022 issued under Form 1E, Mr. Mahata has produced

the entire records relating to the removal of the petitioner. It appears that the said notice was not accepted either by the Pradhan or by the members who were supporting the Pradhan. A letter to that effect was submitted before the prescribed authority by Biswajit Singha the special messenger (peon) who went to serve the notice. It has been further submitted that with the help of the police officers those notices were affixed at conspicuous places at the residence of each of the members who had refused the same, including the Pradhan. The letter of the peon and the photographs have been produced before this Court.

20. In view of the order dated March 1, 2022 there was no further restriction on the prescribed authority to issue any notice on the motion dated March 3, 2022. The law does not prevent the requisitionists from bringing the motion as the earlier motions had not been acted upon. An appeal had been preferred from the order dated March 1, 2022. The Hon'ble Division Bench passed an order of stay of the order dated March 1, 2022, by an order dated March 15, 2022. The motion had been carried by majority vote on March 14, 2022.

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23. Under such circumstances, the Court does not find any defect in the procedure adopted by the prescribed authority in calling the meeting for removal of the Pradhan by a notice dated March 7,

2022, on the basis of the motion dated March 3, 2022. The prescribed authority had satisfied himself with regard to the service of the motion upon the Pradhan. The prescribed authority also satisfied himself regarding the other compliances of the provisions of Section 12(2) of the said Act. Thereafter, the prescribed authority issued the notice within five working days from receipt thereof and the meeting had been called on March 14, 2022. There had been sufficient compliance of the provisions of Sections 12(3) and 12(4) by the prescribed authority. The Pradhan was removed from office by majority vote on March 14, 2022.

24. In my opinion, the provision for removing an elected representative such as the Pradhan is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure transparency and accountability in the functions performed by the elected representatives. These institutions must run on democratic principles. In democracy, all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. If the Pradhan has lost support of the majority of the members, she cannot remain in office for a single day.

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26. There was no bar on the part of the requisitionists from bringing the motion. The motion had otherwise satisfied the provisions of Section 12(2) of the said Act. Thus, the Court does not find any irregularity in the procedure adopted by the prescribed authority. The Pradhan who had been removed by the majority vote, cannot continue in office for a single day as the same would not only amount to denial of a democratic process, but also render the provisions for removal of a Pradhan as nugatory. The entire functioning of the gram panchayat will be hampered. Several attempts have been made by the petitioner to stall such removal. The subject matter of the appeal is neither the motion dated March 3, 2022, nor the notice dated March 7, 2022. The order of the Hon'ble Appeal Court was passed on March 15, 2022 staying the operation of the order dated March 1, 2022, but the motion was moved and carried by the members before the order was passed by the Hon'ble Appeal Court. The subject matter before the learned Appeal Court are the earlier motions and the orders passed by the Hon'ble co-ordinate Benches. The subject matter of contempt, is a separate cause of action. Whether the communication of the members and the notice issued by the prescribed authority on February 1, 2022 amounted to violating the order of the Court, will be decided by the appropriate court. The contempt application shall proceed in accordance with law before His Lordship. Thus, the motion which has been carried on March 14, 2022 has been done in accordance with law. The

Pradhan has been removed. The same appears from the communications issued by the prescribed authority, which have been produced before this Court by the learned Advocate for the State respondents. All the documents filed in the Court have been kept on record.

27. Judicial review of administrative action is permissible only on the grounds of jurisdictional error, procedural impropriety, procedural irregularity and irrationality. In this case, this Court does not find that the motion dated March 3, 2022 and the procedure adopted by the prescribed authority calling the meeting for removal the Pradhan on the basis of the requisition dated March 3, 2022, suffers from any of the defects mentioned hereinabove and as such the Court declines to interfere either with the said motion or with the notice dated March 7, 2022. The Pradhan has already been removed by majority vote and the consequences will follow. This Court refuses to interfere with the proceedings.”

15. Appearing on behalf of the appellant/writ petitioner, Mr. Arun Maiti, learned Senior Counsel, argued several points. Some of such points may not have been urged before the learned Single Judge as would appear from the judgment and order impugned. However, the new points urged are essentially points of law and hence we are inclined to deal with the same. The points urged by Mr. Maiti may be summarised as follows:-

- (i) Right from the beginning of the issuance of notice of motion, till the end of the purported resolution removing the Pradhan (appellant), there has been complete non-compliance of the provisions of Section 12 of the West Bengal Panchayat Act which deals with the procedure for removal of Pradhan from his office.
- (ii) The notice of motion was dated March 3, 2022. However, it was delivered to the Prescribed Authority only on March 4, 2022. There is no explanation as to why on the date of the notice of motion the same was not delivered to the Prescribed Authority.
- (iii) The notice of motion was sent to the Pradhan to an incorrect residential address. On March 7, 2022, notice of meeting was made ready by the Prescribed Authority. The messenger/peon received such notice only on March 8, 2022, for effecting service on the members of the Panchayat. However, on March 7 itself, all the 9 requisitionists and another member procured the notice of meeting, clearly indicating their unholy nexus with the Prescribed Authority.
- (iv) The provisions of Section 12(3) of the Panchayat Act were not complied with. 7 days' notice was not given to the Pradhan. Only on March 11, 2022, at 5:38 p.m. the Pradhan received the notice through Panchayat Mail.
- (v) The Prescribed Authority acted irregularly by providing police assistance for effecting substituted service of the notice of meeting.

There is no such provision in the Panchayat Act or the Rules framed thereunder.

- (vi) No Presiding Officer was appointed in terms of Rule 5B(3) of the West Bengal Panchayat (Constitution) Rules, 1975.
- (vii) The Prescribed Authority did not verify the service return in terms of Rule 7 of West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. The relevant portion of the said rule reads thus:- "... and the Prescribed Authority before commencement of the meeting shall ensure that notice has been duly served to every member in the manner laid down in this behalf ...". One of the elected members, namely, Rekha Naiya received the notice of meeting only on March 14, 2022, after the meeting was held. 6 other members of the Gram Panchayat did not receive the notice at all. The Prescribed Authority did not ensure compliance with the provisions of Sections 12(3) and 12(5) of the Panchayat Act without reasonable or probable cause. This amounted to malice in law apart from violation of statutory provisions.
- (viii) On March 10, 2022, three office staff were engaged for assisting the Presiding Officer. In fact however, no Presiding Officer was ever appointed.
- (ix) Since no Presiding Officer was ever appointed, the person who is alleged to have acted as Presiding Officer at the meeting held on

March 14, 2022, is *non-est* in law. The meeting held on March 14, 2022, stands vitiated and the resolution for removal of Pradhan adopted at the said meeting is invalid and void.

- (x) There were 17 members of the Gram Panchayat but only ten ballot papers were shown to have been used in the purported meeting held on March 14, 2022. Hence, there was non-compliance with Section 12(6) of the Panchayat Act. Further, the voters did not cast votes by ballots in terms of Rule 12 of West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.
- (xi) The list of business was not prepared by the secretary in consultation with the executive assistant under the instruction of Pradhan or upa-pradhan as required under Rule 4 of the 2004 Rules.
- (xii) According to Rule 6(1) of the 2004 rules, delivery of notice to the members is to be effected by sending notice through the Secretary of the Gram Panchayat to each member thereof by a messenger. This Rule was not adhered to.
- (xiii) The presiding member did not verify the service return of the office copy of the notice of the list of business as required by Rule 7 of the 2004 Rules.
- (xiv) The Secretary of the Gram Panchayat is required to maintain an attendance Register cum minute Book in Form 2, which was not

done. The Prescribed Authority violated Rule 10 without lawful excuse which amounts to malice in law.

- (xv) Only 10 ballot papers were issued although there were 17 members of the Gram Panchayat. The Presiding Officer did not sign on the reverse of each ballot paper.
- (xvi) Rule 15 of the 2004 rules required the Secretary of the Gram Panchayat to record the proceedings at the meeting dated March 14, 2022. The Secretary did not do so. The person who recorded the proceedings was not authorised by the presiding member to do so.
- (xvii) The minutes of the meeting dated March 14, 2022, were not recorded in the manner prescribed by Section 12(7) of the Panchayat Act.
- (xviii) The executive assistant did not forward a copy of the minutes of the meeting dated March 14, 2022, to the Prescribed Authority, as required by Section 12(9) of the Panchayat Act.
- (xix) The Prescribed Authority did not take any action in terms of Section 12(10) of the Panchayat Act.
- (xx) There was no election of Pradhan in terms of Section 13 of the Panchayat Act read with Rules 6(1) of the West Bengal Panchayat (Constitution) Rules 1975 Rules within 30 days from the date of casual vacancy having arisen in the post of Pradhan.

(xxi) The Upa-Pradhan continues to act as Pradhan in Charge. This is detrimental to the interest of the people in the concerned locality.

(xxii) The performance of the appellant as Pradhan has been impeccable. Her removal from the post of Pradhan was on account of bias, prejudice, and in gross violation of the principles of natural justice.

(xxiii) The whole exercise of power by the Prescribed Authority is the outcome of malice in law. From the initiation of the proceeding till the end thereof, the same cannot be said to have been done in alleged exercise of democratic right of the requisitionists, but in furtherance of their oblique motive.

16. Mr. Maiti relied on the following decisions:-

(i) ***Nazir Ahmad v. Emperor, reported at AIR 1936 PC 253, Taylor v. Taylor (1875) Ch D 426, Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors. reported at (2014) IPLJR (SC) 531, Cherukuri Mani v. Chief Secretary Govt. of A.P. & Ors. reported at 2005(13) SCC 722, Chief Information Commr. & Anr. v. State of Manipur & Anr Civil Appeal Nos. 10787-10788 of 2011 arising out of S.L.P. (C) 32769/2010***, These decisions were relied upon for the proposition of law that when a statute gives a power to an authority to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

(ii) ***Accountant General, State of Madhya Pradesh v. SK. Dubey & Anr. reported at (2012)4 SCC 578.*** Paragraph 23 of the aforesaid decision was relied upon by learned Counsel, which reads as follows:-

“23. We cannot ignore that the provisions of statute and the rules are to be read as they are. As stated by Justice G.P. Singh in Principles of Statutory Interpretation (13th Edition, Chapter 2 page 64), “the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.”

[See also Crawford vs. Spooner 4 Moo Ind. App 179 and Nalinakhya v. Shyam Sunder AIR 1953 SC 148 Para 9 quoting with approval Crawford vs. Spooner.] we may as well refer to the observations of this Court in para 10 of State of Kerala vs. K. Prasad reported in 2007(7) SCC 140 to the following effect:-

“..... It needs little emphasis that the Rules are meant to be and have to be complied with and enforced scrupulously. Waiver or even relaxation of any rule, unless such power exists under the rules, is bound to provide scope for discrimination, arbitrariness and favouritism, which is totally opposed to the rule of law and our constitutional values. It goes without saying that even an executive order is required to be made strictly in consonance with the rules. Therefore, when an executive order is called in question, while exercising the power

of judicial review the Court is required to see whether the Government has departed from such rules and if so, the action, of the Government is liable to be struck down.”

(iii) ***Messrs. Dwarka Prosad Laxmi Narain v. State of Uttarpradesh & Ors. reported at AIR 1954 SC 224.*** This judgment was relied upon in support of the submission that the Prescribed Authority’s actions were tainted by malice in law. In particular, the following portion of Paragraph 8 of the reported judgment was relied upon:-

“8. It was pointed out and with perfect propriety by Mr. Justice Mathews in the well-known American case of – ‘Yick Wo v. Hopkins’, (1886) 118 US 356 at p. 373 (B) that the action or non-action of officers placed in such position may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to every man, without the necessity of detailed investigation. In our opinion, the provision of Clause 4 (3) of the U.P. Coal Control Order must be held to be void as imposing an unreasonable restriction upon the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution and not coming within the protection afforded by cl. (6) of the Article.”

(iv) ***Yick W.O. v. Peter Hookins, Sheriff, etc. (In error to the Supreme Court of the State of California) reported at (1888) 118 U.S. 356 at page 272(B).*** The following portion of the judgment was relied upon:-

“..... But it commits to the unrestrained will of a single public officer the power to notify every person who now employs a steam-engine in the prosecution of any business in the city of Baltimore to cease to do so, and, by providing compulsory fines for every day’s disobedience of such notice and order of removal, renders his power over the use of steam in that city practically absolute, so that he may prohibit its use altogether. But if he should not choose to do this, but only to act in particular cases, there is nothing in the ordinance to guide or control his action. It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented. It is clear that giving and enforcing these notices may, and quite likely will, bring ruin to the business of those against whom they are directed, while others, from whom they are withheld, may be actually benefitted by what is thus done to their neighbours; and, when we remember that this action of non-action may proceed from enmity to prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives easy of concealment, and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives

to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.' This conclusion, and the reasoning on which it is based, are deduction from the face of the ordinance, as to its necessary pendency and ultimate actual operation."

(v) ***Sri Rajesh Chandra Ghosh v. State of West Bengal, reported at (2005)2 CAL LT44 (HC)***. Paragraph 58 of this judgment was placed before us. The said paragraph reads as follows:-

"58. Mr. Bose in support of his contention relied on two more decisions the first one is by the U.S. Supreme Court in the case of YICK & W.V. Peter Hookins (1888) 118 US 356 at page 272 (B) and a decision in Messers. Dwarka Prosad v. State of Uttar Pradesh reported in AIR 1954 SC 224. Since the passage from the said judgment of the U.S. Supreme Court relied upon by Mr. Bose is quoted with approval in the said judgment of Supreme Court in Messrs. Dwarka Prosad v. State of Uttar Pradesh reported in 1954 page 224, only the passage of our Supreme Court from the judgment of His Lordship Mr. Justice Bijon Kumar Mukherjee (as His Lordship then was) at page 227, in paragraph 8, is referred to for the present purpose.

"It was joined out and with perfect propriety by Mr. Justice Mathews in the well known American Case of Wick Wo v.

Hopkins' (1886) 118 US 356 at page 373(B) that the action or non-action of officers placed in such position may proceed from enmity or prejudice from partisan zeal or animosity, from favouritism and other improper, influences and motives which are easy of concealment and difficult to be detected and exposed, and consequently the injustice capable of being wrought under cover of such unrestricted power becomes apparent to everyman, without the necessity of detailed investigation.”.”

(vi) ***Ravi Yashwant Bhoir v. District Collector Raigad & Ors. reported at (2012)4 SCC 407.*** This decision was relied upon to explain what is “malice in law”. Paragraphs 47, 48 and 70 of the reported Judgement were relied upon, which read as follows:-

“47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: *ADM. Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207; *Union of India v. V. Ramakrishnan*, (2005) 8 SCC 394; and *Kalabharati yjAdvertising v. Hemant Vimalnath Narichania*, AIR 2010 SC 3745).

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70. Thus, the instant case has been a crystal clear-cut case of legal malice and therefore, the impugned orders are liable to be quashed. The duly elected member/Chairman of the Council could not have been removed in such a casual and cavalier manner without giving strict adherence to the safeguards provided under the statute which had to be scrupulously followed.”

17. Appearing for the Prescribed Authority, Mr. Lalit Mohan Mahata, learned Advocate, placed paragraph 4 of the affidavit of the Prescribed Authority being the respondent no. 6 in the appeal, affirmed on April 19, 2022. In the various sub-paragraphs under paragraph 4 of the said affidavit, the prescribed Authority has detailed the steps that were taken pursuant to

the notice of motion being delivered to him by the requisitionists. It may be helpful to extract paragraph 4 of the said affidavit:-

“(a) It is stated that though there is checkered history relating to removal of the appellant/petitioner since 23.11.2021 but the instant appeal is concerned from the date of requisition w.e.f. 03.03.2022.

(b) It is stated that there are all together 17 elected members of Rajapur-Karabag Gram Panchayat, Post Office – Dakshin Barasat within the jurisdiction of Jaynagar Police Station in the District of South 24 Parganas and the official address along with phone numbers of the elected members as have been recorded in the official record and furnished by the Executive Assistant, Rajapur – Karabag Gram Panchayat dated 04.03.2022, Photostat copy of which is annexed hereto and marked with letter “R-1” to this affidavit.

(c) On 03.03.2022, 9 elected members issued a motion of requisition addressed to the office of the answering deponent which was duly received by the Secretary, Rajapur-Karabag Gram Panchayat on 03.03.2022, a Photostat copy of which is annexed hereto and marked with letter “R-2” to this affidavit.

(d) On the self-same date i.e. 03.03.2022, the motion of requisition was sent through the speed post properly and correctly addressed to the Pradhan at his official address as well as at the residential

address disclosing the proper address including the correct Pin Code Nos. Xerox copies of the postal receipts are annexed hereto and marked with letter “R-3” to this affidavit.

(e) On 04.03.2022, the requisition of the requisitionists was served to the office of the prescribed authority which was duly received on 04.03.2022, a Photostat copy of which is annexed hereto and marked with letter “R-4” to his affidavit.

(f) Having received the notice of requisition and being satisfied relating to the service to the Pradhan at the office of the gram Panchayat through the Secretary and by speed post to the office of the Gram Panchayat as well as the residential address on 03.03.2020 as per provisions of Section 12(2) of the West Bengal Panchayat Act, 1973 as amended up-to-date, the answering deponent issued notice under Sub-Section (3) of Section 12 of the West Bengal Panchayat Act, 1973 within 5 working days and issued notice addressed to the Executive Assistant/Secretary, Rajapur – Karabag Gram Panchayat on 07.03.2022 regarding servicing of notice (Form – 1E) for removal of the Pradhan on 14.03.2022 in accordance with law. Photostat copy of the said order as well as the notice in Form -1E issued by the answering deponent dated 07.03.2022 are annexed hereto and marked with letter “R-5” to this affidavit collectively.

(g) It is evident from the service of notice dated 07.03.2022, that the respondent nos. 7 to 15 and one Kaushalya Naskar have duly received the notice of the meeting of removal issued by the answering deponent on 07.03.2022. Photostat copies of the personal receipts are annexed hereto and marked with letter “R-6” to this affidavit.

(h) On the self-same date, the Executive Assistant of Rajapur-Karabag Gram Panchayat, Joynagar-I took steps to serve the notice dated 07.03.2022 through personal service as per established procedure but the seven elected members including the appellant/petitioner refused to accept the said notices and thereafter, the said Executive Assistant has sent the notice through Whats app to the appellant/petitioner and three others whose whats app was available i.e. Nemai Sardar, Sumitra Sardar and Sulata Halder. Photostat copy of the report of the Executive Assistant is annexed hereto and marked with letter “R-7” to this affidavit.

(I) Again on 8th March, 2022, one Sri Biswajit Singha, a Panchayat Peon of Jaynagar Development Block went to serve the notices to the 7 elected members who refused to accept the notice under Form-1E dated 07.03.2022 through Executive Assistant of the Gram Panchayat namely the appellant/petitioner, Sulata Halder, Nemai Sardar, Suchitra Sardar, Sudhamay Gayen, Rekha Naiya and Kattyamuni Halder. They refused to accept the notice of

removal and thereafter, on 11th March, 2022, the said office peon of the Block Office along with two police personnel went to serve the notices personally when neither of the elected members nor their family members accepted the notice and thereby, in presence of the police, the notice was pasted on the door of the elected members who refused to accept the notice and has taken the photographs.

Photostat copies of notice dated 11.03.2022 along with the Photographs are annexed hereto and marked with letter "R-8" to this affidavit.

(j) For abundant caution on 11th March, 2022, the office of the answering deponent again sent the notices through speed post, Xerox copies of the postal receipts are annexed hereto and marked with letter "R-9" to this affidavit.

(k) It is pertinent to mention herein that on 10th March, 2022 the answering deponent issued a letter addressed to the Inspector-in-charge Joynagar Police Station for deployment of the police for removal meeting of the Pradhan, Rajapur-Karabag Gram Panchayat. Xerox copy of the letter dated 10.03.2022 is annexed hereto and marked with letter "R-10" to this affidavit.

(l) On 14.03.2022, the meeting of no-confidence or removal of the appellant/petitioner was held at 12 Noon as per scheduled in terms of the notice dated 07.03.2022 and 10 elected members

were present and removed the Pradhan as per their requisition by the majority of the elected members by passing a resolution of no-confidence. Photostat copy of the said resolution dated 14.03.2022 is annexed hereto and marked with letter “R-11” to this affidavit.

(m) It is stated that on 29.03.2022, the answering deponent being the prescribed authority, Joynagar-I Development Block issued a letter requesting the appellant/petitioner to handover the charge of the Pradhan of Rajapur-Karabag Gram Panchayat on 01.04.2022 as per provisions of Sub-section (4) of Section 9 of the West Bengal Panchayat Act, 1973 and the charge was handed over to the Upa-Pradhan on 01.04.2022 which was duly intimated to the District Panchayat and Rural Development Officer, South 24 Parganas.

Photostat copies of the notice dated 29.03.2022 as well as the order dated 01.04.2022 are annexed hereto and marked with letter “R-12” to this affidavit collectively.

(n) Thus, it is evident from the facts and circumstances of this case that there is neither any irregularity or illegality in conducting the meeting dated 14.03.2022 and by passing a resolution of no-confidence against the Pradhan and giving effect of the removal as per provisions of Section 12(10) of the West Bengal Panchayat Act, 1973 in any manner whatsoever.”

18. Appearing for the requisitionists, Mr. Saptansu Basu, learned Senior Advocate submitted that even assuming for the sake of argument, but not

admitting, that there was violation of some statutory provision, that itself will not persuade the Court to interfere. The aggrieved party must show that he has suffered prejudice by reason of non-adherence to a statutory provision. Mr. Basu placed the writ petition and submitted that there is no pleading of any prejudice having been suffered by the writ petitioner by reason of alleged short notice or infraction of any statutory provision.

19. Mr. Basu relied on the following decisions:-

(i) ***Usha Bharti v. State of Uttar Pradesh & Ors., reported at (2014)7SCC 663.*** This case was relied upon in support of the proposition that the provision for removing an elected representative such as Panchayat Adhaksya is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure transparency and accountability in the functions performed by the elected representative. Mr. Basu relied on paragraphs 26, 30, 44 and 45 of the reported judgment. I will get back to this judgment later.

(ii) ***Ravi S. Naik, v. Union of India & Ors. reported at AIR 1994 SC 1558.*** I will revert to this case later in this judgment.

(iii) ***Escorts Farms Ltd., v. Commissioner, Kumaon Division, Nainital, U.P. & Ors. reported at (2004)4 SCC 281.*** This case is also on the principles of natural justice. I will refer to this decision later in this judgment.

(iv) ***Fiayaz Ali v. Secretary (Law) & Ors., reported at 2011 (1) CHN (CAL) 16.*** This decision says the same thing as the earlier one.

(v) ***Canara Bank v. V.K. Awasthy, reported at (2005)6 SCC 321.***

Reliance has been placed on paragraphs 7 and 18 of the reported judgment.

(vi) ***Om Prakash Mann v. Director of Education (Basic) & Ors. reported at (2006) 7 SCC 558.*** Paragraph 9 of the decision was relied upon.

(vii) ***Burdwan Central Cooperative Bank Limited & Anr. v. Asim Chatterjee & Anr., reported at (2012) 2 SCC 641.*** Paragraphs 19 and 20 of the judgment were relied upon.

(viii) ***Upananda Chatterjee v. State of West Bengal & Ors., reported at (2007) 4 CHN 605.*** This decision was cited in support of the proposition that giving of at least 7 days' clear notice for holding a meeting for removal of the Pradhan is not mandatory. Reliance was placed on paragraphs 18 to 21 of the reported judgment to which I will advert later in this judgment.

My view

20. This is yet another desperate attempt by a removed Pradhan to cling on to the office of Pradhan although she has lost the confidence of the majority of the members of the concerned Panchayat. I have noticed that this trend is in the rising. Any resolution by which a Pradhan or Upa-Pradhan is removed by the majority of Panchayat members is assailed before the writ Court often on technical and hyper-technical grounds. In a large number of cases, even the notice of motion submitted by the requisite

number of members, requisitioning a meeting for removal of the Pradhan/Upa-Pradhan is challenged before the Court on grounds which are more often than not, frivolous and completely meritless. This trend must be deprecated.

21. In the present case, the appellant challenged the notice of motion dated March 3, 2022, and the Prescribed Authority's notice dated March 7, 2022, before the learned Single Judge. The grounds of challenge have been noted above. We have also noted the relevant observations made by the learned Single Judge in the order impugned whereby the appellant's writ petition was dismissed.

22. Primarily four points have been urged before us on behalf of the appellant. Firstly, the provisions of Section 12 of the West Bengal Panchayat Act, have not been adhered to by the Prescribed Authority. In particular sub-Sections 2 and 3 of Section 12 of the Act have been violated. As a corollary, it has been argued that when a statute prescribes a particular mode of doing something, that thing must be done following that mode or not at all. Any other mode of performance is impliedly barred. Secondly, it has been urged that various provisions of the West Bengal Panchayat (Constitution) Rules, 1975 and West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, have not been followed. In particular, Rule 5(B) and Rule 6(1) of the 1975 Rules and Rules 4, 6(1), 7 and 15 of the 2004 Rule have been violated. Thirdly, it has been argued that the performance of the appellant as Pradhan has been excellent. The process of her removal from the post of Pradhan is tainted by bias and prejudice against her and is in

gross violation of the principles of natural justice. Finally, it has been submitted that the exercise of power by the Prescribed Authority is vitiated by malice in law.

23. Before proceeding further, it may be helpful to notice the provisions of the 1973 Act as well as the 1975 Rules and the 2004 Rules, which according to the appellant have been breached by the respondents.

“Section 12 of the West Bengal Panchayat Act, 1973 reads as follows:-

“12. Motion of no confidence or removal of Pradhan or Upa-Pradhan.-(1) Subject to other provisions of this section, the Pradhan or the Upa-Pradhan of a Gram Panchayat may, at any time, be removed from his office by the majority of the existing members of the Gram Panchayat, referred to in clause (i) of sub-section (2A) of section 4, expressing their lack of confidence against the Pradhan or the Upa-Pradhan or recording their decision to remove the Pradhan or the Upa-Pradhan, at a meeting specially convened for the purpose.

(2) For the purpose of removal of the Pradhan or the Upa-Pradhan, one-third of the existing members referred to in sub-section (1) subject to a minimum of three members shall sign a motion in writing expressing their lack of confidence against the Pradhan or the Upa-Pradhan or recording their intention to remove the Pradhan or the Upa-Pradhan,

indicating party affiliation or independent status of each of such members and either deliver the motion in person through any of the members or send it by registered post to the prescribed authority; one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office and another copy shall be sent by registered post at his residential address.

(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.

(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.

(5) Such meeting shall be presided over by an officer, as may be authorized by the prescribed authority, in the manner as may be directed by order by the State Government or as may be prescribed and the presiding officer before commencement of the meeting shall ensure that notice has been duly served to every member in the manner laid down in this behalf; quorum required for such meeting shall be more than fifty per cent of the existing members referred to in sub-section (1) and the presiding officers shall not be entitled to vote at the meeting although he may advise on one or more points of law without expressing his own views.

(6) If there is no consensus decision in the meeting, voting shall be held by open ballot wherein each participating member shall put his full signature or his left thumb impression to be attested by the leader, referred to in section 213A, of the same political party to which the member belongs or by the said presiding officer on the reverse side of the ballot paper.

(7) The minutes of the meeting shall be written by the Secretary or in his absence, by any other official as authorised by the presiding officer. Such minutes shall record in brief names of the members present, the procedure followed, names of the members who voted for or against the motion and the decision adopted unanimously or by the

majority of its existing members and shall be signed by him as well as by the presiding officer.

(8) After the minutes of the meeting is signed by the Presiding Officer, it shall be read over to all the attending members who shall thereafter put their signatures or left thumb impressions, as the case may be, on the minutes in conformation of the proceedings recorded. Then the presiding officer shall again put his signature on the same document after recording the names of members, if any, who have declined to sign or left earlier and thereafter he shall collect a copy of the minutes before leaving the premises.

(9) (a) The Executive Assistant or in his absence the Secretary of the Gram Panchayat shall, within three working days of the meeting, forward a copy of the minutes of the meeting to the prescribed authority.

(b) The presiding officer shall also submit a separate report in writing along with a copy of the minutes of the meeting within the aforesaid time to the prescribed authority.

(10) On receipt of the minutes of the meeting and the report under sub-section (9), the prescribed authority shall, within next five working days, take such action as he may deem fit and the entire process commencing from submission of

motion to the prescribed authority up to the action finally taken by him shall be completed within thirty days.

(11) If the motion is not carried by the majority of its existing members or the meeting cannot be held for want of quorum, no notice of any subsequent motion for the removal of the same office bearer shall be taken into cognizance within a period of one year from the date appointed for such meeting.

[(12) Notwithstanding anything contained in sub-section (1), no meeting for removal of the Pradhan or the Upa-Pradhan under this section shall be convened within a period of two and a half years from the date of election of the Pradhan or the Upa-Pradhan either at the first meeting following reconstitution of Gram Panchayat or for filling casual vacancy in the said office.]

Rules 5B and Rule 6(1) of the 1975 Rules reads as follows:-

“**5B.** (1) The prescribed authority appointed under Section 12, Section 101 or Section 146, as the case may be, on receipt of a legally acceptable motion referred to in sub-section (2) of any of the aforesaid section, as may be relevant, specially convene a meeting of the Gram Panchayat or the Panchayat Samity or the Mahakuma Parishad or Zilla Parishad, as may be appropriate, by issue of notice in Form 1E.

(2) In the notice referred to in sub-rule (1), the prescribed authority shall specify the item of agenda and the place, date and hour of the meeting as may be fixed by him and shall cause copies of such notice to be sent either by registered post with acknowledgement due or by special messenger on obtaining acknowledgement of receipt as may be deemed reasonable by him, at least clear seven days before the date fixed for the meeting, upon all members referred to in sub-section (1) of Section 12 or section 101 or Section 146, as the case may be. He shall also cause to display a copy of the notice in the notice board of the Panchayat concerned.

(3) The prescribed authority shall authorize in Form 2A an officer to preside over the meeting referred to in sub-rule (1) and such officer shall be not below the rank of an Extension officer posted in a Block in case of a Gram Panchayat, not below the rank of a Joint Block Development Officer in case of a Panchayat Samity and not below the rank of an Additional District Magistrate in case of a Mahakuma Parishad or Zilla Parishad. The prescribed authority shall hand over the service returns of notices to the presiding officer before he proceeds for the meeting.

(4) At the appointed hour of the day, the presiding officer shall take up the business of the meeting on ascertaining and apprising the members present that the notices have been duly served upon all members. If he finds at the time that the quorum for the meeting has not been formed, he may wait for one hour and no

longer reckoned from the appointed hour of the meeting. On the occasion when the quorum is not formed within such extended period of one hour, he shall declare the meeting as cancelled and once he declares so, he shall not hold the meeting afterwards even if the quorum is formed later on arrival of one or more members. The fact of cancellation of the meeting shall be recorded in the minute book referred to in sub-rule (7).

(5) Once quorum is reached, it shall remain valid throughout the meeting even if one or more members meanwhile depart from the meeting place.

(6) The presiding officer shall allow a member to join the meeting at any time before its closure subject to the condition that such member shall not claim reopening of any earlier stage of the proceedings already concluded before his arrival.

(7) The proceedings of the meeting shall be recorded by the Secretary of the concerned Panchayat or in his absence by any other employee except for Group-D employee as may be authorized by the presiding officer, in the Attendance Register-cum-Minute book specially provided by the prescribed authority with his authentication. Every member on his arrival shall put his signature or his left thumb impression on the minute book against his name. The secretary or the employee authorised to record the proceedings, shall attest such left thumb impression and also

record the time of arrival of each member under the supervision of the Presiding Officer.

(8) The presiding officer at the initial stage shall read out the motion brought before the meeting and ask the members present to express their views. He may state the legal provision on any related matter raised by any member but shall not express any view in this regard. When there is no consensus decision in the meeting, he shall call upon the members to cast their votes through open ballot system. He shall cause to be prepared as many ballot papers as there are members present noting the motion of the meeting and showing two separate columns of 'For' and 'Against' the motion. The presiding officer shall then put his full signature with date on the back of each ballot paper and shall hand over such ballot paper to each member present after complying with the provision under sub-section (6) of the aforesaid section relating to signature or left thumb impression with attestation of the member.

(9) The presiding officer shall ask each member to record his vote by placing the mark 'x' in the column of 'For' or 'Against' the motion and to return it to the presiding officer.

(10) Immediately after all ballot papers are received back, the presiding officer shall, in presence of the attending members, count them and record the number of votes cast for and against

the motion. The presiding officer may, on demand of a member show both sides of a ballot paper without allowing any member to touch it.

(11) The presiding officer may reject a ballot paper which in his opinion, raises a reasonable doubt as to whether the vote has been cast 'For' or 'Against' the motion. A note to that effect shall be recorded by the presiding officer upon the ballot paper so rejected as well as in the minutes of the meeting and such paper shall not be counted for decision. However, the presiding officer may not reject a ballot paper on any flimsy ground or for any minor procedural defect if the ballot paper is genuine and intention of the voter is clear.

(12) Although the presiding officer shall announce the number of votes cast in favour of 'For' and 'Against' the motion, he shall not formally declare the result or the effect of the meeting. The presiding officer after recording the entire proceedings of the meeting in terms of sub-section (7) and then complying with the provisions of sub-section (8) of any of the Section referred to in sub-rule (2) shall conclude the meeting.

(13) The presiding officer before leaving the premises shall hand over a copy of the minutes to the Executive Assistant or in his absence to the Secretary of the Gram Panchayat, to the Executive Officer or in his absence, to the joint Executive Officer of the

Panchayat Samiti, to the Executive Officer or in his absence to the Additional Executive Officer of the Zilla Parishad or Mahakuma Parishad as the meeting may relate to, for forwarding a copy of the minute to the prescribed authority in terms of sub-section (9) of Section 12 or 101 or 146, as the case may be.

(14) Then the presiding officer within three working days of the meeting shall submit a report in writing along with a copy of the minutes and all other documents of the meeting to the prescribed authority who shall, within next five working days, take such action in terms of sub-section (10) as he may deem fit.

6. (1) As soon as may be but not later than thirty days from the date of any casual vacancy in the officer of Pradhan or Upa-Pradhan, Sabhapati or Sahakari Sabhapati or Sabhadhipati or Sahakari Sabhadhipati by reason of death, resignation, removal or otherwise, or within such further time as may be allowed by the District Panchayat Election Officer for reasons to be recorded by him in this behalf the prescribed authority referred to in sub-rule (1) of rule 3, sub-rule (1) of rule 4, sub-rule (1) of rule 5, or sub rule (1) of rule 5A shall call a meeting of all the members eligible to participate under rule 3, rule 4, rule 5 or rule 5A, as may be appropriate for the election of a Pradhan or an Upa-Pradhan, a Sabhapati or a Sahakari Sabhapati a Sabhadhipati or a Sahakari Sabhadhipati, as the case may be, by fixing a date, place and time and causing a written notice to this effect in Form 1 to be served

on each such member at least 7 days before the date fixed for such meeting.”

Rules 4, 6(1), 7, 15 of the 2004 Rules read as follows:-

“4. Preparation of a list of business. - The list of business to be dealt with at every meeting of the Gram Panchayat, except at an adjourned meeting, shall be prepared by the secretary in consultation with the Executive Assistant under the instruction of the Pradhan or, in his absence under the instruction of the Upa-Pradhan and shall be entered in the book of agenda to be maintained for the purpose and countersigned by the Pradhan or Upa-Pradhan, as the case may be.

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 office 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.

7. Presiding member to verify the service-return of the office copy of the notice of the list of business.- On the date of meeting, the Pradhan, the Upa-Pradhan or the presiding member, as the case may be, shall verify the service-return of the notice containing the list of business in the office copy and on being satisfied that the notice has been duly served on all the members, the business shall be taken up by him for discussion. If the notice is not served on any one of the members, the meeting may be postponed and the Pradhan or the Upa-Pradhan may fix another date by giving fresh notice of seven days on all the members in Form 3.

15. Person responsible to record the minute. - The proceedings of a meeting shall be recorded by the Secretary of the Gram Panchayat or, in his absence, by the Sahayak of the Gram

Panchayat or in their absence by such employee, other than a Gram Panchayat Karmee of the Gram Panchayat, or in their absence by such member of the Gram Panchayat as may be authorised by the presiding member in this behalf.”

24. Mr. Maiti, learned Advocate appearing for the appellant has vociferously argued that 7 days’ clear notice of the meeting for testing the no-confidence motion, as mandated by Section 12(3) of the 1973 Act, was not given to all the members of the Panchayat. He said that the appellant received notice of the meeting scheduled for March 14, 2022, only on March 11, 2022 at 5.38 p.m. through Whatsapp. Section 12(2) stipulates that one copy of the motion shall be delivered to the concerned office bearer either by hand or by registered post at the Gram Panchayat office and another copy shall be sent by registered post to his residential address. Neither requirement was complied with.

25. The scheme of the 1973 Act and in particular Section 12 thereof is commendably balanced. On the one hand it ensures that a meeting for testing a motion of no-confidence against a Pradhan/Upa-Pradhan shall be held only upon giving sufficient notice to the concerned office holder and that no such motion can be proposed excepting by at least one third of the existing members subject to a minimum of three members. Other directions have been given in the various sub-sections of Section 12 for the purpose of ensuring that a fair procedure is followed for removal of an elected office holder like the Pradhan/Upa-Pradhan. On the other hand, Section 12 also provides that the Pradhan/Upa-Pradhan of a Gram Panchayat can be

removed at any time by a majority of the existing members of the Gram Panchayat.

26. Although Section 12(3) of the 1973 Act requires the Prescribed Authority to give 7 clear days' notice of the proposed meeting to all the members and the word "shall" is used in that context, that *per se* does not make the notice period mandatory. The consequences of a shorter notice are not mentioned in any of the sub-sections of Section 12. The statutory provisions in Section 12(3), in my view is a procedural one and even the use of the word "shall" in such provision will not make it mandatory. It is nobody's case that the appellant did not receive any notice of the meeting at all. On her own admission, she received notice by Whatsapp on March 11, 2022, at 5.38 p.m. She stayed away from the meeting obviously because she knew that the majority would vote against her. She did not suffer any prejudice by reason of a shorter notice nor any case of prejudice has been pleaded in the writ petition.

27. The learned Single Judge had called for and perused the records of the case as would appear from the judgment under challenge in this appeal. The learned Judge found that the appellant and the members who were supporting her had refused to accept the notice of the meeting. Under such circumstances with the help of police officers, the notices were affixed at conspicuous places at the residence of each of the members who had refused to accept service thereof, including the appellant herein. The learned Judge also came to the finding that there was sufficient compliance of sub Sections 2, 3 and 4 of Section 12 of the 1973 Act and in my view, rightly so.

28. As regards the other point urged by Mr. Maiti, the principle of law that when a statute requires something to be done in a particular manner, that thing shall be done in that manner only or not at all, is well established in our jurisprudence. In the present context, Section 12 of the Panchayat Act requires the motion for removal of Pradhan/Upa-Pradhan to be delivered to him/her and prior notice of the meeting to be convened by the Prescribed Authority for testing the motion, is to be served on all the members of the Panchayat including the Pradhan/Upa-Pradhan whose removal is sought. In the present case, admittedly the Pradhan received the motion and also prior notice of the meeting that was held on March 14, 2022. It is true that 7 days' notice may not have been served on the members of the Pradhan. However, a Division Bench of this Court in the case of ***Upananda Chatterjee v. State of West Bengal & Ors., (supra)*** has held that 7 days' clear notice for holding and meeting for removal of the Pradhan is not mandatory. In paragraphs 18 to 21 of the reported judgment, it was held as follows:-

“18. We, therefore, agree with the learned Single Judge that the writ petitioner was not at all prejudiced for the absence of the actual service of notice upon him, as the law does not provide for actual service of such notice particularly when he had full knowledge of such meeting. We are also not impressed by the submission of Mr. Basu that at the relevant point of time, his client was away from his residence. If a *Pradhan after being asked* to convene a meeting for his removal, instead of calling such meeting, remains away from the

village with the object of avoiding the said meeting in order to frustrate the process of his removal in accordance with law, a Writ Court will not entertain his application challenging the legality of such meeting on the ground of non-service of notice of such meeting.

19. We also agree with the learned Single Judge that the giving of clear seven days' notice as mentioned in section 16 of the Act is not mandatory as held by a Division Bench of this Court in case of *Aloke Pramanik v. State of West Bengal*, reported in 1996 (1) CLJ 434, while considering similar provision contained in section 105 of the Act. In this connection, Mr. Basu, the learned Advocate appearing on behalf of the appellant placed reliance upon an unreported decision of a Division Bench of this Court in the case of *Sm. Madhumita Biswas v. State of West Bengal being M.A.T. No. 3686 of 2006*, disposed of on April 5, 2007 where the Division Bench disagreed with the view taken in the case of *Aloke Pramanik (supra)*, without referring the matter to the Hon'ble Chief Justice for constitution of a Larger Bench. It is now settled law that in case of conflict of the decision of two Benches of equal strength, the former will prevail unless the principle laid down in the former one has been overruled by a Superior Court or unless due to change of law, the former one is no longer applicable. The latter Division Bench, as it appears from the judgement placed before us, has disagreed with the view taken in the case of *Aloke Pramanik* on the ground of misapplication of the principles laid down in the decision of the Supreme Court in the case of *K. Narasimiah v. H.C.*

Singri Gowda, reported in AIR 1966 SC 330, to the facts of the said case and for non consideration of some other decisions of the Supreme Court laying down the principles to be followed in deciding whether a statutory provision is mandatory or not. In our view, once a Division Bench, has taken a stance that a particular decision of the Supreme Court is applicable in the facts of a case and by relying upon such decision comes to a conclusion on a particular facts of a case, the latter Bench, if it intends to disagree in the similar facts, should refer the matter to the learned Chief Justice for constitution of a Larger Bench. In this connection, it will be profitable to refer to the following observations of the Apex Court in the case of *State of Bihar v. Kalika Kuer*, reported in AIR 2003 SC 2443:-

“In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a co-ordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered *per incuriam* and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the latter bench of co-ordinate jurisdiction. Easy course of saying that earlier decision was rendered *per incuriam* is not permissible and the matter will have to be resolved only in two ways—either to follow the earlier decision or

refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

20. We are, therefore, unable to follow the latter decision placed before us by Mr. Basu.

21. In our view, the provisions of giving seven clear days' notice as mentioned in the second proviso to section 16 of the Act is a directory provision and not a mandatory one as rightly held in the case of *Aloke Pramanik (supra)* while construing a similar provision of the same statute. It is now settled by the Apex Court that if a particular statutory provision is a procedural one, even the use of the word “shall” in such provision will not make it mandatory unless consequence of disobedience has been indicated in the statute. The exceptions to the previously mentioned rule of interpretation are in the cases where there is either “no notice”, or “no opportunity” or “no hearing”. In this connection, we may refer to the following observations of the Supreme Court in the case of *State Bank of India v. S.K. Sharma*, reported in AIR 1996 SC 1669 at 1683:—

“A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

In the case of violation of a procedural provision, the position is this. Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They

are, generally speaking, conceived in his interest. Violation of any and 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.”

29. I am in respectful agreement with the principle of law laid down in the said judgment. I do not find any infraction of any of the sub-sections of Section 12 of the Panchayat Act in the facts of this case. Although the decision in Upananda was rendered in the context of the Second proviso to Section 16 of the 1973 Act which also talks of 7 days’ notice to the members of the Gram Panchayat, the reasoning and logic behind holding that the 7 days’ notice is not a mandatory requirement would apply *mutatis mutandis* to the 7 days notice mentioned in Section 12(3) of the Panchayat Act.

30. The second point on behalf of the appellant is that Rule 5B and Rule 6(1) of the West Bengal Panchayat (Constitution) Rules, 1975, have been breached. Rule 5B, which has been extracted above, lays down the procedure to be followed by the Prescribed Authority for convening a meeting upon receipt of a motion from the requisite number of members of the Panchayat for removal of the Pradhan/Upa-Pradhan. One of the points raised by the appellant is that no presiding officer was appointed by the Prescribed Authority for the purpose of conducting the meeting. We have gone through the records. Presiding Officer was appointed. Another point

argued was that only ten ballot papers were issued although there were 17. This point is also without merit. Ten ballot papers were used as only 10 ballot members attended the meeting, all of whom voted in favour of the motion for removal of the Pradhan. The remaining ballot papers are there in the records. The Pradhan and her supporters stayed away from the meeting and they would be having no personal knowledge of what in fact transpired at the meeting. From the records produced before us, it does not appear that there was any violation of Rule 5B of the 1975 Rules.

Rule 6(1) of the 1975 rules requires the Prescribed Authority to call a meeting for election of a Pradhan/Upa-Pradhan within 30 days or such extended time as may be allowed by the Post Panchayat election officer, from the date of the office of Pradhan/Upa-Pradhan falling in vacant by reason of death/resignation, removal or otherwise. This rule has no bearing on the conduct of the meeting held for removal of the Pradhan.

31. Rules 4, 6(1) and 7 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 pertain to preparation of a list of businesses to be dealt with at a gram Panchayat meeting, procedure of delivery of notice of list of businesses to the members and the duty of the presiding member to verify the service return of the office copy of the notice of the list of businesses on the date of the meeting. It does not appear that the appellant/writ petitioner urged before the learned Single Judge that these Rules were breached. In any event, we are of the view that these rules are directory in nature and not mandatory for the reasons discussed by the earlier Division Bench in the case of ***Upananda Chatterjee v. State of***

West Bengal & Ors., (supra). Hence, even assuming for the sake of argument that Rules 4, 6 and 7 of the 2004 rules were not complied with, in our opinion, the same would not vitiate the meeting held on March 14, 2022, or the resolution passed in the said meeting.

However Rule 15 of the 2004 Rules indicates which person would be responsible to record the minutes of the meeting. It does not appear that the appellant argued before the learned Single Judge that this Rule was breached.

32. The third point argued by learned Counsel for the appellant is that the removal of the appellant from the office of Pradhan was completely unwarranted. The decision is tainted by bias and prejudice against her. Her performance as Pradhan, at all material times, has been exemplary.

Even assuming that the performance of the appellant was excellent, once she lost the support of the majority of the members of the Panchayat, she could no longer continue in the office of Pradhan. This is the democratic principle which governs the functioning of local self-government institutions.

33. In **Usha Bharti v. State of Uttar Pradesh & Ors., (supra)** at paragraphs 26, 30, 44 and 45 of the reported judgment, the Hon'ble Supreme Court observed as follows:-

“26 We also do not find any merit in the submission of Mr. Bhushan that the petitioner being a Scheduled Caste lady cannot be removed through a vote of no-Confidence. We do not find any merit that the provisions contained in Section 28 would frustrate the provisions for

reservation for the Scheduled Caste Ladies. Even if an Adhyaksha belonging to one of the reserved categories, the Scheduled Castes, the Scheduled Tribes and other Backward Classes is removed on the basis of the vote of no-Confidence, she can only be replaced by a candidate belonging to one of the reserved categories. Therefore, the submission of Mr. Shanti Bhushan seems to be focused only on the petitioner, in particular, and not on the candidates elected from the reserved categories, in general. The submission is wholly devoid of any merit and is hereby rejected.

30. We are also unable to agree with the submission of Mr. Bhushan that a person once elected to the position of Adhyaksha would be permitted to continue in office till the expiry of the five years' term, even though he/she no longer enjoys the confidence of the electorate. To avoid such a *catastrophe*, a provision for no-confidence, as observed earlier, has been made in Section 28 of the Act. The extreme submission made by Mr. Bhushan, if accepted, would destroy the foundational precepts of democracy that a person who is elected by the members of the Zila Panchayat can only remain in power so long as the majority support is with such person."

44. We reiterate the view earlier expressed by this Court in *Bhanumati & Ors v. State of U.P.*, reported (2010) 12 SCC 1, wherein this Court observed as follows:-

“57. It has already been pointed out that the object and the reasons of Part IX are to lend status and dignity to Panchayati Raj institutions and to impart certainty, continuity and strength to them. The learned Counsel for the appellant unfortunately, in his argument, missed the distinction between an individual and an institution. If a no-confidence motion is passed against the Chairperson of a Panchayat, he/she ceases to be a Chairperson, but continues to be a member of the Panchayat and the Panchayat continues with a newly-elected Chairperson. Therefore, there is no institutional setback or impediment to the continuity or stability of the Panchayati Raj institutions.

58. These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India.”

45. The whole edifice of the challenge to the constitutionality of Section 28 is built on the status of the petitioner as a member belonging to the reserved category. It has nothing to do with the continuance, stability, dignity and the status of the Panchayat Institutions. In our opinion, the personal desire, of the petitioner to

cling on to the office of Adhyaksha is camouflaged as a constitutional issue. The provision of no-confidence Motion, in our opinion, is not only consistent with Part IX of the Constitution, but is also foundational for ensuring transparency and accountability of the elected representatives, including Panchayat Adhyakshas. The provision sends out a clear message that an elected Panchayat Adhyaksha can continue to function as such only so long as he/she enjoys the confidence of the constituents.”

Therefore, the quality or standard of performance of the appellant as Pradhan is really of no relevance if she has lost majority support, for whatever reason. She must quit. Whether or not the majority of the members are biased or prejudiced against the Pradhan, is not at all germane.

34. It has also been argued by Mr. Maiti that principles of natural justice have been violated in the process of removing the appellant from the office of Pradhan. I do not find any merit in this grievance. Very simply put, the Pradhan and all members of the Panchayat had adequate prior notice of the meeting convened by the Prescribed Authority on March 14, 2022. The appellant and her group did not attend the meeting. 10 out of 17 members showed up at the meeting and unanimously voted for the appellant’s removal from the office of Pradhan. I find no breach of the principles of natural justice.

35. As observed by the Hon'ble Supreme Court in the case of **Ravi S. Naik v. Union of India & Ors. (supra)**, the principles of natural justice are not immutable but flexible, they are not cast in a rigid mould and they cannot be put in a legal straight jacket. Unless the complainant can show that he has suffered prejudice, mere breach of the principles of natural justice may not entitle him to relief.

36. In **Escorts Farms Ltd., v. Commissioner, Kumaon Division, Nainital, U.P. & Ors. (Supra)** at paragraph 64 of the judgment, the Hon'ble Supreme Court observed as follows:-

“64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”

37. In ***Canara Bank v. V.K. Awasthy***, (supra) at paragraphs 7 and 18 of the reported judgment, the Hon'ble Supreme Court observed as follows:-

“7. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, “useless formality theory” can be pressed into service.

18. As was observed by this Court we need not to go into “useless formality theory” in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned Counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned. (see *Godde Venkateswara Rao v. Govt. of A.P. and Ors.*, AIR (1966) SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See *Charan Lal Sahu v. Union of India etc.*, AIR (1990) SC 1480).”

38. In ***Om Prakash Mann v. Director of Education (Basic) & Ors.(Supra)***, at paragraph 9 of the reported judgment held as follows :-

“9. By now it is well settled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in the straitjacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of the principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been prejudiced by non-furnishing of copy of enquiry report. The appellant has filed a detailed appeal before the Appellate Authority which was dismissed as noticed above. It is not his case that he has been deprived of making effective appeal for non-furnishing of copy of enquiry report. He has participated in the enquiry proceedings without any demur. It is undisputed that the appellant has been afforded enough opportunity and he has participated throughout the enquiry proceedings, he has been heard and allowed to make submission before the Enquiry Committee.”

39. In ***Burdwan Central Cooperative Bank Limited & Anr. v. Asim Chatterjee & Anr.***, (supra) at paragraph 19 and 20 of the reported judgment, the Hon’ble Supreme Court held as follows:-

“19. However, there is one aspect of the matter which cannot be ignored. In B. Karunakar case, despite holding that non-supply of a

copy of the report of the enquiry officer to the employee facing a disciplinary proceeding, amounts to denial of natural justice, in the later part of the judgment it was observed that whether in fact, prejudice has been caused to the employee on account of non-furnishing of a copy of the inquiry report has to be considered in the facts of each case. It was observed that where the furnishing of the enquiry report would not make any difference to the ultimate outcome of the matter, it would be a perversion of justice to allow the employee concerned to resume his duties and to get all consequential benefits.

20. It was also observed in B. Karunakar case that in the event the enquiry officer's report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice had been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report had not been supplied to the employee.”

40. In the present case, I have already recorded my opinion that there was no violation of the principles of natural justice. Even assuming that there was any such violation, the appellant has neither pleaded in the writ petition nor made any effort to otherwise demonstrate as to what prejudice she has suffered by reason of breach of the principles of natural justice. The bottom line is that the appellant ceased to enjoy the support of a majority of the members of the Panchayat. Therefore she had to vacate office.

41. The final argument of learned Advocate for the appellant, based on malice in law on the part of the Prescribed Authority, also does not find favour with me. I have noted hereinabove the judgments cited by learned Counsel on the point of malice in law. However, with great respect, those decisions have no manner of application to the facts of the instant case. In ***Ravi Yashwant Bhoir v. District Collector Raigad & Ors.*** (supra), the Hon'ble Supreme Court observed legal malice or malice in law means something done without lawful excuse. It is a deliberate act in disregard of the rights of others. It is an act done with oblique motive. Passing an order for an unauthorised purpose constitutes malice in law.

Going by the aforesaid meaning of 'malice in law', we do not see how any act on the part of the Prescribed Authority in the facts of this case, is tainted by 'malice in law'. Having considered the affidavit filed by the State, the relevant portion whereof I have extracted in this judgment, and having gone through the records of the case, I have no doubt in my mind that the prescribed authority acted in terms of Section 12 of the Panchayat Act. He acted well within his authority and the four corners of the statute. Hence, I am of the considered opinion that no malice in law can be imputed to any of the acts of the Prescribed Authority.

42. In fine, none of the points urged on behalf of the appellant has any merit. The judgment and order assailed before us is a well-reasoned and perfectly justified one. I find no infirmity in the judgment and order under appeal.

43. The appeal and the connected applications are therefore dismissed. There will be no order as to costs.

44. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)