HIGH COURT OF MADHYA PRADESH: JABALPUR

(Full Bench)

Writ Appeal No. 880 of 2018

Om Kar Mahole ...….....APPELLANT

Versus

State of Madhya Pradesh
And Others …….RESPONDENTS

CORAM:

Hon'ble Mr. Justice Hemant Gupta, Chief Justice
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge
Hon'ble Mr. Justice Subodh Abhyankar, Judge

Appearance:

Mr. Akash Choudhary, Advocate for the Appellant.

Mr. Purushaindra Kaurav, Advocate General with Mr. R.K. Verma, Additional Advocate General and Mr. Amit Seth, Government Advocate for the respondents No.1, 2 and 4/State.

Mr. Paritosh Trivedi, Advocate for the Respondent No.5.

Whether Approved for Reporting: Yes

Law Laid Down:

- Where there is no consequence provided in the statute that in the event of non-completion of inquiry within the period prescribed or even the extended period, the inquiry will stand abated – an inquiry against an elected representative cannot be set at naught only for the reason that it has not been completed within the time mentioned in the proviso. In such circumstance, the failure to complete the inquiry within the time prescribed will not confer advantage to the member, who is facing inquiry.

- The use of word "shall" is not determinative of the fact whether the proviso to Sub-section (1)(c) of Section 40 of the Act is mandatory. The proviso is meant to complete the inquiry into the allegations of misconduct against the elected member of Panchayat. Such provision is not to make the inquiry

proceedings redundant if it is not completed within the period prescribed. -

Relied:

1. *(2015) 16 SCC 22 (New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited);*
2. *(2005) 6 SCC 344 (Salem Advocate Bar Assn. (II) v. Union of India);*
3. *2005) 4 SCC 480 (Kailash v. Nanhku);*
4. *(2003) 2 SCC 111 (Bhavnagar University v. Palitana Sugar Mill (P) Ltd.);*
5. *(2002) 6 SCC 635 (Dr. J.J. Merchant v. Shrinath Chaturvedi);*
6. *(1995) 5 SCC 159 (Karnal Improvement Trust v. Parkash Wanti);*
7. *(1975) 4 SCC 676 (Dr. Ram Singh Saini v. Dr. H.N. Bhargava);*
8. *(1973) 3 SCC 546 (Municipal Corporation of Greater Bombay v. The B.R.S.T. Workers Union);*
9. *AIR 1962 SC 1694 (Collector of Monghyr v. Keshav Prasad Goenkar);*
10. *AIR 1961 SC 849 (Banwarilal Agarwalla v. State of Bihar),*
11. *AIR 1955 SC 233 (Hari Vishnu Kamath v. Ahmad Ishaque);*
12. *M.P. No.2271/2018 (M/s Crest Steel and Power Private Limited v. Punjab National Bank) decided on 10.05.2018;*
13. *W.A. No.533/2017 (Vijaya Bank and another v. Shyam Nagarkar) decided on 04.07.2018*
14. *W.P. No.20647/2017 (Kameshwar Sharma v. State of M.P.) decided on 25.01.2018;*
15. *(2006) 3 CHN 655 (Md. Yeasin v. State of West Bengal);*

- Division Bench judgments of this Court in *Dhanwanti v. State of M.P., 2013 (1) MPLJ 549*; *Santosh Raghuvanshi v. State of M.P., 2013 (11) MPWN 28* and Single Bench order dated 01.02.2018 in *Rajesh Barkade v. State of M.P*. passed in W.P. No.18135/2017 are ***overruled***.

Significant Paragraph Nos.: **2, 11 to 24**

O R D E R

[**04.10.2018**]

Per : Hemant Gupta, Chief Justice:

The challenge in the present appeal is to an order passed by the learned Single Bench on 11.05.2018 in W.P. No. 4946/2018 (*Omkar Mahule*

v. State of M.P. & others) whereby relying upon a Division Bench judgment of this Court in **Santosh Raghuvanshi v. State of M.P., 2013 (11) MPWN 28** and a Single Bench judgment of this Court in **Rajesh Barkade v. State of M.P. and others** passed on 01.02.2018 in **W.P. No.18135/2017**, it was held that the inquiry against the respondent No.5 cannot proceed after the expiry of 90 days and even extendable period of 30 days.

2. The facts of the case, in nutshell, are that on the complaint filed by the appellant, the respondent No.5 was removed from the post of Sarpanch vide order dated 22.11.2017 and he was directed to deposit a sum of Rs.66,491/- whereas similar amount was directed to be recovered from the Secretary of the Society. Against the order dated 22.11.2017, the respondent No.5 preferred an appeal before the Commissioner, Jabalpur Division, Jabalpur. The appeal filed by the respondent No.5 was allowed vide order dated 21.02.2018 and the inquiry proceedings were set at naught on account of violation of Sub-section (1)(b) of Section 40 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (for short "the Act"), as the inquiry was not completed against the respondent No.5 within 120 days, as an order was passed on 22.11.2017 after 159 days. It is the said order of the Commissioner passed on 21.02.2018, which was challenged unsuccessfully by the petitioner in the writ petition.

3. The provisions of Section 40 of the Act are required to be examined as to whether the period of completion of inquiry is mandatory or directory. It would be apt to quote the Section 40, which reads as under:-

"40. Removal of office-bearers of Panchayat. - (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office-bearer,-

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation. - For the purpose of this subsection "Misconduct" shall include,-

(a) any action adversely affecting,-

(i) the sovereignty, unity and integrity of India;

or

(ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or

(iii) the dignity of women; or

(b) gross negligence in the discharge of the duties under this Act.

(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

Explanation. - For the purpose of this clause, the expression 'relative' shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law:

Provided further the final order in the inquiry shall be passed within 90 days from the date of issue of show cause notice to the concerned office-bearer and where the pending case is not decided within 90 days, the prescribed authority shall inform all facts to his next senior officer in writing and request extension of time for disposal of the inquiry but, such extension of time shall not be more than 30 days.

> (2) A person who has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such person shall also be disqualified for a period of six years to be elected under this Act.

The proviso to Sub-section (1)(c) was substituted by M.P. Act No.20 of 2005. Prior to 30.08.2005, the following provision was in existence:-

> "Provided that the final order in the inquiry shall as far as possible be passed within 90 days from the date of issue of show cause notice to the concerned office bearer."

4. A Division Bench of this Court during the course of hearing of this matter on 17.09.2018 expressed reservation with the view of two Division Bench judgments of Gwalior Bench of this Court in **Santosh Raghuvanshi**'s case (supra) and **Dhanwanti v. State of M.P. and others, 2013 (1) MPLJ 549** and thus, referred the following question for the opinion of the Larger Bench:-

> "Whether the provisions of Section 40 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 fixing the time limit for completion of inquiry against the office-bearer of Panchayat are mandatory provisions or directory provisions?"

5. Learned counsel for the appellant as well as the learned Advocate General for the respondents-State raised an argument that proviso to Sub-section (1)(c) of Section 40 of the Act is directory inasmuch as the completion of the inquiry is to be conducted by a public Authority over which the parties have no control. Therefore, such provision cannot be said to be mandatory. The mere fact that the proviso uses the expression "shall" but without there being any consequences of non-completion of the inquiry

within the time prescribed, will not render the inquiry to be redundant after 90 days or 120 days. It is argued that an allegation of misappropriation of funds against an elected office bearer cannot be set at naught in such manner to ensure probity in the public life.

6. Learned counsel for the appellant refers to a Division Bench decision of this Court in **W.P. No.20647/2017** (**Kameshwar Sharma and another v. State of M.P. and others**) decided on 25.01.2018 and also a judgment of Calcutta High Court in **Md. Yeasin and others v. State of West Bengal and others, (2006) 3 CHN 655** apart from a three Judge Bench judgment of the Supreme Court in **Dr. J.J. Merchant and others v. Shrinath Chaturvedi, (2002) 6 SCC 635**; judgments in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others (2003) 2 SCC 111** and **New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited, (2015) 16 SCC 22**.

7. On the other hand, learned counsel for the respondent relies upon two judgments in **Santosh Raghuvanshi'**s case (supra) and **Dhanwanti**'s case (supra) in support of his argument that since the time is fixed in the statute, such statutory provisions cannot be ignored. The learned counsel for the respondent also placed reliance upon a Single Bench decision of this Court rendered in **Rajesh Barkade**'s case (supra).

8. We have heard learned counsel for the parties and find that the Division Bench judgment of this Court in **Dhanwanti**'s case (supra) followed in **Santosh Raghuvanshi**'s case (supra) and Single Bench decision in **Rajesh Barkade**'s case (supra) do not lay down good law.

9. In **Dhanwanti**'s case (supra), the order of removal of Sarpanch in case of misconduct passed by the prescribed Authority beyond the period of 90 days from the date of issuance of show cause notice was held to be without jurisdiction. The Division Bench relied upon a judgment passed by this Court in **Bhuvaneshwar Prasad alias Guddu Dixit v. State of M.P., 2009 (1) MPLJ 434** wherein it was held that the prescribed Authority has no jurisdiction to condone the delay in presentation of the election petition. The relevant extracts of the decision in **Dhanwanti**'s case (supra) read as under:-

> "**10.** After reading the aforesaid proviso, unambiguous and clear meaning is that the prescribed authority has no power and jurisdiction to continue the proceeding beyond the period of 90 days because it is mentioned that if the final order in the inquiry is not passed within a period of 90 days, the prescribed authority shall inform all facts to his next senior officer in writing and request extension of time for disposal of the inquiry but such extension of time shall not be more than 30 days. It means that beyond the period of 90 days from issuance of show cause notice, the prescribed authority has no jurisdiction to continue the inquiry proceedings.
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> **14.** The earlier proviso was that the final order in the inquiry shall as far as possible be passed within a period of 90 days from the date of issuance of show cause notice. Now the present proviso has been substituted. The object of the proviso is that if an office bearer of the Panchayat has committed misconduct, then it is necessary for the prescribed authority to take permission from his senior officer in writing and request extension of time and time shall not be extended more than 30 days. It means that even the higher officer is not competent to grant more than 30 days time to complete the inquiry. It is in consonance with the object that if there are allegations of misconduct against the office bearer of a Panchayat, on which he could be removed, the inquiry must be completed within specific time and if it is held that this is a procedural requirement and on this ground the inquiry would not be vitiated, then the prescribed authority may take indefinite time to

> conclude the inquiry, it would be against the intention and specific unambiguous intention of the statute. In our opinion, it would amount to rewriting the statute.
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> **20**. The matter has to be seen from another angle. If we hold that the time limit is not mandatory, then the inquiry may be continued for unlimited period and that would be against the intention of the legislature because in that circumstance the office bearer, who is eligible for removal on account of misconduct, would continue to work as office bearer of the Panchayat. It would hamper the functioning of the Panchayat and adversely affect the working of the Panchayat. This is also against the principle of good governance and negate the amendment in the proviso of section 40(c) of the Adhiniyam of 1993."

10. In **Santosh Raghuvanshi**'s case (supra), the judgment in **Dhanwanti**'s case (supra) has been made the sole basis of deciding the writ petition. The reliance of a judgment considering the period of limitation of filing election petition is without any parallel. The filing of election petition has to be strictly followed as it entails setting aside election of elected candidate, whereas, in respect of inquiry against an elected representative, the same cannot be set at naught only for the reason that it was not completed within 90 days.

11. The known rule of interpretation is to examine whether the use of expression "shall" is mandatory or directory, the Court is not only to consider the actual words used but also the scheme of the statute, the intended benefit to public or what is enjoined by the provision and material danger to the public by the contravention of the same. In celebrated judgment of seven Judges in the case of **Hari Vishnu Kamath v. Ahmad Ishaque and others, AIR 1955 SC 233**, the Supreme Court held that an enactment in form man-

datory might in substance be directory, and that the use of the word "shall" does not conclude the matter., when it was held as under:-

> **"(26).** It is well established that an enactment in form mandatory might in substance be directory, and that the use of the word "shall" does not conclude the matter. The question was examined at length in Julius v. Bishop of Oxford, (1880) LR 5 AC 214 (S), and various rules were laid down for determining when a statute might be construed as mandatory and when as directory. They are well-known, and there is no need to repeat them. But they are all of them only aids for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend on the context. What we have to see is whether in Rule 47 the word "shall" could be construed as meaning "may".
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> Rule 47(1) deals with three other categories of ballot papers, and enacts that they shall be rejected. Rule 47(1)(a) relates to a ballot paper which "bears any mark or writing by which the elector can be identified". The secrecy of voting being of the essence of an election by ballot, this provision must be held to be mandatory, and the breach of it must entail rejection of the votes. That was held in Woodward v. Sarsons, (1875) 10 CP 733 (T), on a construction of Section 2 of the Ballot Act, 1872. That section had also a provision corresponding to Rule 47(1)(b), and it was held in that case that a breach of that section would render the vote void. That must also be the position with reference to a vote which is hit by Rule 47(1)(b).
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> Turning to Rule 47(1)(d), it provides that a ballot paper shall be rejected if it is spurious, or if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established. The word "shall" cannot in this sub-rule be construed as meaning "may", because there can be no question of the Returning Officer being authorized to accept a spurious or unidentifiable vote. If the word "shall" is thus to be construed in a mandatory sense in Rule 47(1)(a), (b) and (d), it would be proper to construe it in the same sense in Rule 47(1)(c) also. There is another reason which clinches the matter against the first respondent. The practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter it is sufficient that it is substantially complied with. How is this rule to be worked when the Rule provides that a ballot paper shall be rejected? There can be no

> degrees of compliance so far as rejection is concerned, and that is conclusive to show that the provision is mandatory."

12. Therefore, mere fact that the Statute uses the expression "shall" is not conclusive of the fact as to whether the provision is directory or mandatory. A Division Bench of this Court in **W.A. No.533/2017 (Vijaya Bank and another v. Shyam Nagarkar)** decided on 04.07.2018 quoted from the Supreme Court judgment in **Dhampur Sugar Mills Ltd. v. State of U.P. (2007) 8 SCC 338** and held as under:-

> "**18.** The use of word "may" or "shall" is not conclusive. Whether the provision is merely directory or mandatory, was examined by Hon'ble the Supreme Court in a judgement reported as *(2007) 8 SCC 338 (Dhampur Sugar Mills Ltd. vs. State of U.P.)*, wherein it has been held that whether the provision is directory or mandatory is required to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. The Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue……."

13. Some of the Judgments as to when a provision is mandatory or directory may be mentioned now. Such as Supreme Court judgment in **Banwarilal Agarwalla v. State of Bihar and others, AIR 1961 SC 849** wherein, the Court held as under:-

> "**(6)** It was not disputed before us that when the Regulations were framed, no Board as required under S. 12 had been constituted, and so, necessarily there had been no reference to any Board as required under S. 59. The question raised is whether the omission to make such a reference make the rules invalid. As has been recognised again and again by the courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity or only

> directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that non-observance of this would entail invalidity or did it not? To decide this we have to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same. In the present case we have to determine therefore on a consideration of all these matters whether the legislature intended that the provisions as regards the reference to the Mines Board could be contravened only on pain of invalidity of the regulation.
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> **(13)**. An examination of all the relevant circumstances, viz., the language used, the scheme of the legislation, the benefit to the public on insisting on strict compliance as well as the risks to public interest on insistence on such compliance leads us to the conclusion that the legislative intent was to insist on these provisions for consultation with the Mining Board as a prerequisite for the validity of the regulations."

14. In **Collector of Monghyr v. Keshav Prasad Goenka and others**, **AIR 1962 SC 1694**, the Supreme Court held that the question as to whether the provision is mandatory or directory has to be decided not merely on the basis of any specific provision, which for instance sets out the consequences of the omission to observe the requirement but for the purpose for which the requirement has been enacted particularly in the context of the other provisions of the Act and the general scheme thereof. The relevant extract from the said judgment, reads thus:-

> "**12**. We feel unable to accept the submission of learned Counsel that in the context in which the words "for the reasons to be recorded by him" occur in S. 5-A and considering the scheme of Ch. II of the Act, the requirement of these words could be held to be otherwise than mandatory. It is needless to add that the employment of the auxiliary verb "shall" is inconclusive and similarly the mere absence of the

> imperative is not conclusive either. The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which, for instance, sets out the consequences of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof. It would, inter alia, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve."
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> (emphasis supplied)

15. In another judgment in **Municipal Corporation of Greater Bombay v. The B.R.S.T. Workers Union (1973) 3 SCC 546**, the Supreme Court held that the Court is required to ascertain the real intention of the legislature which will include the examination, nature and design of the statute, the consequences which would follow from construing it one way or the other and whether the object of the legislation would be defeated or furthered by a particular construction. The relevant excerpt from the decision reads, thus:-

> "**18**. There is a very elaborate discussion by this Court in State of Uttar Pradesh v. Babu Ram Upadhya [AIR 1961 SC 751] regarding the various principles that have to be borne in mind in deciding whether the use of the word 'shall' in a statute makes the provision mandatory or directory. It has been emphasised that for ascertaining the real intention of the Legislature the court, among other things, may consider the nature and the design of the statute, the consequences which would follow from construing it one way or other and whether the object of the legislation will be defeated or furthered by a particular construction. The question whether an award of an Industrial Tribunal ceases to be effective due to the non-publication of the same by the appropriate Government within a period of thirty days from the date of its receipt under section 17(1) of the Industrial Disputes Act, 1947, has been considered by this Court in *The Remington Rand of India. Ltd v. Workmen* [AIR 1968 SC 224]. Section 17(1), omitting the unnecessary parts. reads as follows "

> "..... every arbitration award and every award of Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit".
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> (emphasis supplied)

16. In **Kamleshwar Sharma**'s case (supra), the Court held that the absence of provision for consequence in case of non-compliance with the requirements prescribed would indicate directory nature despite use of word "shall". The Court held as under:-

> "**23-** In *State of Mysore versus V.K. Kangan, reported in AIR 1975 SC 2190*, the Supreme Court held that in determining the question whether a provision is mandatory or directory, one must look into the subject-matter and the relation of that provision to the general object intended to be secured. It was held that, no doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview but it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. The said intention has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other.
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> **26-** In a judgment reported as *Amardeep Singh Vs. Harveen Kaur, (2017) 8 SCC 746*, the Supreme Court held that the Court is required to consider the nature and design of the statute; the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for contingency of the non-compliance with the provisions; the fact that the non-compliance with the provision is or is not visited with some penalty; the serious or the trivial consequences, that flow therefrom; and the factors which are required to be determined whether the provision is mandatory or directory. ……...

> **27-** In *Administrator, Municipal Committee Charkhi Dadri versus Ramji Lal Bagla*, reported in AIR 1995 SC 2329, Supreme Court ruled that absence of provision for consequence in case of noncompliance with the requirements prescribed would indicate directory nature despite use of word "shall".
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> **31-** A Full Bench of this Court in a judgment reported as *Smt. Bhulin Dewangan Vs. State of MP and others, 2000 (4) MPHT 69*, held that use of the word 'shall' is normally construed as mandatory, but it is settled that in the context and object of the statute, it can, to effectuate the meaning of the relevant rule or law, be treated as 'may'. The Court also held that the general rule is non-compliance of a mandatory requirement results in nullification of the act, but there are several exceptions to the same. The nullification of the Act, although mandatory, the requirement of conditions can be waived of if any public interest are involved…."

17. The time limit to do an act falls broadly in two categories; one, when an obligation is cast on a party or a litigant to take an action within the time prescribed, such cases will be like the cases to file statement of defence under the Code of Civil Procedure. In **Salem Advocate Bar Association, T.N. v. Union of India, (2005) 6 SCC 344** and later in **Kailash v. Nanhku and others, (2005) 4 SCC 480**, the Supreme Court held that keeping in view the provisions of Code of Civil Procedure introduced by way of amendment in the year 1999, the use of the word "shall" in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure

which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

18. However, in the matter of filing of written-statement under the special Acts such as the Consumer Protection Act, has been held to be mandatory by the Supreme Court in **Dr. J.J. Merchant** (supra) and later in **Hilli Multipurpose Cold Storage Private Limited**'s case **(supra)**. In **Dr. J.J. Merchant** (supra), the Supreme Court held as under:-

> "**15**. Under this Rule also, there is a legislative mandate that written statement of defence is to be filed within 30 days. However, if there is a failure to file such written statement within stipulated time, the court can at the most extend further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version by the opposite party. Therefore, the aforesaid mandate is required to be strictly adhered to.
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> **17**. In view of the aforesaid provisions, the Commission can certainly refer to Order 7 Rule 14 which provides that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in the Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof to be filed with the plaint. It appears that this mandatory requirement is not followed and thereafter, there is complaint of delay in disposal. Similarly, in case of written statement under Order 8 Rule 1-A, the defendant is required to produce the documents relied upon by him when written submission is presented. The Commission can always insist on production of all documents relied upon by the parties along with the complaint and the defence version.
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> **18**. Further, in the present case, the complainant's case is based upon the negligence of the Doctors in giving treatment to the deceased. Whether there was negligence or not on the part of the concerned

> Doctors would depend upon facts alleged and in such a case there is no question of complicated question of law involved. However, it has been pointed out by the learned senior counsel that recording of evidence of experts including doctors relied upon by the complainant would consume much time and therefore also the complainant should approach the Civil Court. As against this, learned counsel for the complainant submitted that under the Act, the Commission is required to follow summary procedure. It may or may not examine the doctors or experts. It may only rely upon the statements given by such doctors or experts.
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> **20**. In any case, for avoiding the delay the District Forum or Commissions can evolve a procedure of levying heavy cost where adjournment is sought by a party on one or the other ground. This would have its own impact on disposing the complaints, appeals or revisions within the stipulated or reasonable time. For avoiding delay in disposal of cases, the procedure and the time limit prescribed under the Act and the Rules is required to be strictly adhered and followed. If there is proper mind set to do so on the part of all concerned, delay in disposal to a large extent could be avoided."

19. In the proceedings under the Recovery of Debts and Bankruptcy Act, 1993, as amended by Central Act No.31 of 2016 and Central Act No.44 of 2016, the filing of written-statement by the borrower was held to be mandatory by a Division Bench of this Court in **M.P. No.2271/2018 (M/s Crest Steel and Power Private Limited and others v. Punjab National Bank & others**) decided on 10.05.2018. The Division Bench held as under:-

> "**19-** Therefore, not only there was earlier Larger Bench judgment in Dr. J.J. Merchant's case (supra), but later Three Judges Bench while Misc. Petition No. 2271/2018 considering somewhat similar provisions contained in the Consumer Protection Act, 1986, held that the time fixed for filing written statement cannot be extended. Therefore, in view of the order passed by the Supreme Court in Hilli Multipurpose Cold Storage Private Limited's case (supra), the period of thirty days is mandatory keeping in view the object of the Act for expeditious disposal of the claim of the secured creditors. The intention for expeditious disposal is

> implicit, when sub-section (24) of Section 19 mandates the Tribunal to conclude the proceedings within two hearings.
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> **20**- Therefore, keeping in view the object and purpose of the statute, we find that written statement was required to be filed within thirty days, which could in exceptional cases or in special circumstances be extended by the Tribunal by another fifteen days. In the present case, the petitioners' were informed by show-cause notice that they have to file their written statement within thirty days. The claim of the Bank is for recovery of over Rs.1400 Crores. Therefore, the provisions of the Act have to be assigned the meaning which is keeping in view the objective of the Act rather than to frustrate the object."

20. Another set of cases is where the time limit is not for the party to perform but for a public Authority to conclude the proceedings. Where a provision of law lays down a period within which the public body should perform any function, that provision is merely directory and not mandatory. In **Dr. Ram Singh Saini v. Dr. H.N. Bhargava, (1975) 4 SCC 676**, the Supreme Court laid down the law as under:-

> "**4**. On behalf of the appellant it was argued that the statute is directory and not mandatory, that in any case the statute is beyond the rule-making power conferred by section 31(aa). A number of decisions were relied upon in support of the submission that where a provision of law lays down a period within which a public body should perform any function, that provision is merely directory and not mandatory. The question whether a particular provision of a statute is directory or mandatory might well arise in a case where merely a period is specified for performing a duty but the consequences of not performing the duty within that period are not mentioned. In this case clearly the statute provides for the contingency of the duty not being performed within the period fixed by the statute and the consequence thereof. This proceeds on the basis that if the post is not filled within a year from the date of the nomination by the Selection Committee the post should be readvertised. So unless the post is readvertised and an appointment is made from among those persons who apply in response to the readvertisement the appointment cannot be said to be valid. Though the reason for the delay

in making the appointment was the wrongful refusal of the Executive Council to act in pursuance of the recommendation of the Selection Committee and the pendency of the writ petition filed by the appellant in the High Court, that does not in any way minimise the effect of sub-rule (2) of statute No. 21-AA. The position may well have been otherwise if there had been a stay or direction prohibiting the Executive Council from making the appointment. Such is not the case here. We do not therefore think it necessary to discuss the various decisions relied upon by the appellant. Nor can we agree that the statute in question is beyond the rule making power. Under section 31(aa) statutes can be made with regard to the mode of appointment of teachers of the University. The statute provides that the appointment should be made after the post is advertised and the applications received considered by a committee of selection. It also provides that if no appointment is made to the post within one year from the date of nomination by the selection committee the post shall be readvertised. The rule therefore certainly relates to the mode of appointment. It cannot be said to be unrelated to the mode of appointment. It apparently proceeds on the basis that after the lapse of a year there may be more men to choose from. Unless it could be said that the rule has no relation to the power conferred by the rule- making power it cannot be said to be beyond the rule-making power. Such is not the position here. We are also unable to agree that the statute is in conflict with or in derogation of the provisions of the statute."

(emphasis supplied)

21. In another Judgment reported as **Karnal Improvement Trust, Karnal v. Parkash Wanti and another, (1995) 5 SCC 159**, the Supreme Court held as under:-

"**11**. There is distinction between ministerial acts and statutory or quasi-judicial functions under the statute. When the statute requires that some-thing should be done or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arise; What intention is to be attributed by inference to the legislature? It has been repeatedly said that no particular rule can be laid down in determining whether the command is to be considered as a mere direction or mandatory involving invalidating consequences in its disregard. It is fundamental that it depends on the scope and object of

the enactment. Nullification is the natural and usual consequence of disobedience, if the intention is of an imperative character. The question in the main is governed by considerations of the object and purpose of the Act; convenience and justice and the result that would ensue. General inconvenience or injustice to innocent persons or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment would be kept at the back of the mind. The scope and purpose of the statute under consideration must be regarded as an integral scheme. The general rule is that an absolute enactment must be obeyed or fulfilled exactly but it is sufficient if a directory enactment be obeyed or fulfilled substantially. When a public duty, as held before, is imposed and statute requires that is shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements are not essential and imperative.

12. The question thus arises whether the function by the Tribunal as a body is mandatory or directory? The discharge of the duties under the Act are quasi-judicial. The power to determine compensation and other questions involves adjudication. The discharge of the functions by the Tribunal being quasi-judicial cannot be regarded as ministerial. When the statute directs the Tribunal consisting of three members to determine compensation etc., and designates the award as judgment and decree of the civil court, it cannot be held that the quasi-judicial functions of the Tribunal would be considered as directory, defeating the very purpose of the Act. Though inconvenience and delay may occasion in some cases by holding the provisions to be mandatory, but that is an inescapable consequence. In the light of the aforesaid discussion, it must be held that the adjudication by the three-member Tribunal is imperative and mandatory. Determination of the compensation in disregard thereof renders the adjudication void, invalid and inoperative."

(emphasis supplied)

22. Still further, there is no consequence provided in the statute that in case of non-completion of the inquiry within the period prescribed or even the extended period, the inquiry will stand abated. Therefore, an inquiry

against an elected representative cannot be set at naught only for the reason that it has not been completed within the time mentioned in the proviso. Since the object of the statute is not only to conduct election to the third tier of local administration but to conduct the proceedings of such third tier of local self-government in a transparent manner, therefore, the failure to complete the inquiry within the time prescribed will not confer advantage to the member, who is facing inquiry. Such interpretation would give premium to an elected representative, who is facing inquiry because of allegations. Such interpretation is neither permissible nor will achieve their intention to bring probity in the third tier of local self-government. If such interpretation is adopted, it would be easy for an elected representative to use dilatory tactics to frustrate the inquiry. Such is not the intention of the proviso. The proviso intends that inquiry should be completed at an early date as the inquiry shall stand frustrated if it is not completed within the time prescribed. Still further, the conduct of inquiry is a quasi-judicial function. Such quasi-judicial function cannot depend upon the control of any superior Authority. It has to be exercised by Inquiry Authority as it may consider appropriate. Therefore, we find that information required by the prescribed Authority to be given to the senior officer and request for extension of time has to be read down to the effect that the prescribed Authority may record reasons for not concluding the inquiry within 90 days but the permission of the senior officer impinges upon the independence of the prescribed Authority.

23. In view of the aforesaid judgments, the use of word “shall” is not determinative of the fact whether the proviso to Sub-section (1)(c) of Section

40 of the Act is mandatory. The proviso is meant to complete the inquiry into the allegations of misconduct against the elected member of Panchayat. Such provision is not to make the inquiry proceedings redundant if the inquiry is not completed within the period prescribed so as to allow the elected member to go scot-free.

24. In view of the above, we find that the Division Bench judgments of this Court in **Dhanwanti**'s case (supra); **Santosh Raghuvanshi**'s case (supra) and Single Bench decision in **Rajesh Barkade**'s case (supra) are not the correct enunciation of law – as the time was fixed more to ensure that the proceedings are completed expeditiously rather than to confer advantage to the delinquent elected member. Consequently, the same are *overruled*.

25. Having answered the question referred to us, the matter be placed before the Division Bench as per Roster on **22.10.2018**.

(Hemant Gupta)	**(Vijay Kumar Shukla)**	**(Subodh Abhyankar)**
Chief Justice	**Judge**	**Judge**

S/