Supreme Court of India
Itc Bhadrachalam Paperborads & ... vs Mandal Revenue Officer, ... on 9 September, 1996
Equivalent citations: JT 1996 (8) 67
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
ITC BHADRACHALAM PAPERBORADS & ANR.

Vs.

RESPONDENT:
MANDAL REVENUE OFFICER, ANDHRAPRADESH AND ORS.

DATE OF JUDGMENT: 09/09/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
JT 1996 (8) 67

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY,J.

Leave granted.

The Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 [the Act] levies non-agricultural land assessment [NALA] for each fasli year at the rates specified. The rate varies depending upon the nature of user. Section 3 is the charging section. Section 7 of the Act provides for remission of NALA. It reads:

> "7.Remission :-- The Government may, by general or special order and for just and sufficient reason to be recorded therein, remit in whole or in part, the assessment payable under this Act in respect of any non-agricultural land in a local area."

Section 11 confers upon the government the power to exempt any class of non-agricultural lands from the levy. Since it is this section which falls for consideration in the appeal, it would be appropriate to set it out in full:

> "11. Power to exempt:-- (1) The GOvernment may, by order, published in the Andhra Pradesh Gazette, setting out the grounds therein, exempt either permanently or for a specified period, any class of non- agricultural lands from the levy of assessment under this Act, subject to such restrictions and conditions as the Government may consider necessary to impose.
>
> (2) Every order made under sub- section (1) shall, immediately after it is made be laid on the table of the Legislative Assembly if it is in session, and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification in the order or in the annulment of the order, the order shall thereafter have effect only in such modified form, or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order."

Section 13 confers upon the government the power to make rules to carry out the purposes of the Act.

In the year 1965, the government issued G.O.Ms.No.877 dated June 16, 1965 under Section 7 of the Act directing that "with a view to provide incentives to the industries established both in the public and private sector in the State, either becoming or either the Ist July, 1963, half of the assessment payable under the Act in respect of the non- agricultural lands in the entire area of the industrial undertakings shall be remitted for a period of five years from the date of establishment, or upto the date of production of rated capacity of such undertakings, whichever is earlier". The validity of the G.O. is not in issue nor is it sought to be enforced by the appellant. It is referred to more as representing the first step in the matter of providing incentives to newly established industries.

In December 17, 1976, the government in Social Welfare department issued G.O.Ms. No.201. The G.O. does not purport to have been issued under any enactment(s). At the end of the G.O., it is recited that it is issued "by order and in the name of the Governor of Andhra Pradesh". The contents of the G.O. are to the following effect: with a view to explore the possibilities of rapid industrialisation of scheduled areas in the State, the government had set up an expert committee which had submitted its report in February, 1976. The expert committee had recommended the setting up of a High-Power Committee to formulate and implement industrial schemes in the scheduled areas. Government, accordingly, constituted a High-Power Committee in May, 1976. The High- Power Committee recommended certain incentives and concessionsto industries to be established in scheduled areas. The government examined the said recommendations in consultation with the Revenue, Industries and Commerce, Finance and Planning departments and, hence, the said order. Four types of exemptions are provided by the G.O., viz., (i) exemption from

sales tax on purchase of raw material, machinery etc.; (ii) a total exemption from Stamp duty;

(iii) fifty percent exemption in the charges for water used for industrial purposes drawn from sources maintained at the cost of government or any local body; and (iv) exemption from non-agricultural assessment. It says, "according to the orders issued in G.O.Ms. No.377 Revenue dated 16.6.1965, the entrepreneurs who have established industries whether before or after 1.7.1963 are required to pay half the assessment payable under the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 in respect of non-agricultural land in the entire areas of the industrial undertakings for a period of five years from the date of establishment or upto the date of production of rated capacity of such undertakings, whichever is earlier. In the case of industries set up in the scheduled areas, it is hereby ordered that the usual land revenue be levied on the extent of land instead of non- agricultural asses". It is stated that the orders issued in the said G.O. shall come into force with immediate effect. The Director of Information and Public Relations, DIrector of Industries and Director of Tribal, Cultural Research and Trading Institute and the Convenor of High Power Committee were requested to see that the scheme is given full publicity. Though the G.O. seeks to provide exemption from the relevant provisions of the Andhra Pradesh General Sales Tax Act, Stamp Act, laws concerning the municipalities [water charges] and Andhra Pradesh Non-Agricultural Lands Assessment Act, it does not refer to the provisions for exemption, it any, in any of the said enactments nor does it recite that it is issued under those provisions.

On May 2, 1990, the Government of ANdhra Pradesh issued another order contained in G.O.Ms. No.386. The G.O. is in two parts, the non-statutory part and the statutory part. In the non-statutory part of the G.O., reference is made to G.O.Ms. No.877 dated June 16, 1965 and to G.O.Ms. No.201 dated December 17, 1976. It referes to the contents of G.O.Ms. No.877 and to the contents of G.O.Ms. No.201 [insofar as it related to exemption under the Act]. It then states that G.O.Ms. No.201 was not published in the Andhra Pradesh Gazette as required under Section 21 of the Andhra Pradesh General Clauses Act, 1891 and that it also did not clarify whether the concession granted thereby was a permanent one or was operative only for five years as was provided in G.O.Ms. No.877. The G.O. then recites: "A doubt has, therefore, arisen with regard to implementation of the above concession and the District Collectors of Adilabad and Khammam have sought for a clarification", that the government has examined the matter carefully in consultation with the Commissioner of Land Revenue and is issuing the appended notification which was directed to be published in the extra-ordinary issue of Andhra Pradesh Gazette dated May 5, 1990. The Statutory part of the G.O. may now be set out It reads:

"In exercise of the powers conferred by sub-section (1) of section 11 of the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 (Andhra Pradesh Act 14 of 1963), the Governor of Andhra Pradesh hereby directs that with a view to provide incentives to the industries already established or to be established both in Public and Private Sectors in the Scheduled Areas of the State, be exempted from payment of assessment under the Non-Agricultural Lands Assessment Act, 1963, but the usual land revenue be levied on the extent of land instead of Non-

Agricultural Lands Assessment as per rules.

The above concession shall be applicable for a period of 5 years from the date od establishment of the industry or till the industry reaches its rated capacity in its production whichever is earlier and thereafter full assessment under Non-Agricultural Land Assessment Act should be levied and collected from such undertaking/entrepreneurs.

This notification shall be deemed to have come into force with effect from 17th December, 1976.

A.N.TIWARI SECRETARY TO GOVERNMENT"

The appellant, Bhadrachalam Paper Boards Limited, established a factory on an extent of about 507 acres 10 guntas of land in Sarapaka Village in the scheduled areas of Khammam district. The land was acquired by the State for the purpose of the appellant. The appellant says that it completed the construction of the factory in 1979 and commenced production on and from Ist October, 1979. When a demand was made by the Tehsildar in the year 1980 for payment of NALA in respect of the said land, the appellant submitted that by virtue of G.O.Ms. No.201 dated December 17, 1976, it is not liable to pay the said tax. Representations were also made to the Collector and the Secretary to the Government in Revenue department. Notwithstanding that the matter was being considered at higher levels, the Mandal Revenue Officer continued to issue demand notices from time to time. Ultimately, on Februray 14, 1990, the authorities under the Act raised a demand in a total sum of Rs.23,10,149.50p for the fasli years 1393 to 1399 [1983-84 to 1988-89] and for another sum of Rs.3,07,850/- [for the year 1989-90] and sought to attach the movables of the appellant. In those circumstances, the appellant filed a writ petition [No.3091 of 1990] in the High Court of Andhra Pradesh for issuance of an appropriate writ, order or direction declaring the said demand of NALA as illegal and unenforceable and to direct the respondents not to take any action to collect the said assessment from the appellant. It may be noticed that the writ petition was filed sometime prior to May 2, 1990, on which date the aforementioned G.O.Ms. No.386 was issued.

The respondents opposed the writ petition contending that G.O.Ms. No.201 dated December 17, 1976 was not effective or enforceable in law that the only exemption to which the appellant is entitled is the one proviede in the G.O.Ms. No.386 issued on May 2, 1990. The respondents pointed out that G.O.Ms. No.386 has been given retrospective effect from December 17, 1976 which means that it supersedes G.O.Ms. No.201, thereby rendering the latter G.O. totally ineffective and inoperative.

The High Court dismissed the writ petition upholding he contentions of the respondents. It also negatived the plea of promissory estoppel and legitimate expectation put forward by the appellant.

In this appeal, Sri Soli J.Sorabjee, learned counsel for the appellant, urged the following contentions: (1) G.O.Ms. No.201 dated December 17, 1976 is a valid order issued under Section 11 of the Act. THough the G.O. does not recite the source of power or the provision under which it has been issued, it must be related to the government's power under Section 11. The G.O. has been issued complying with all the requirements of Section 11 except two, viz, (i) publication in the Andhra Padesh Gazette and (ii) 'laying; before the legislature fro the requisite period. Both th said are not mandatory. It must be held that the said G.O. is an order of exemption validity issued under

section 11 of the Act.

(2) Though not published in the Gazatte, the G.O. itself directs the several authorities of the government to give it wide publicity and we must presume that it was so given. Having regard to the fact that the object of giving publicity is to acquaint the people of the issuance/existence of such an order, the publicity given must be deemed to be sufficient. The mere non-publication in the Gazette is not fatal.

(3) G.O.Ms. No.201 does not infringe upon or curtail the rights of anyone. It does not create any liability of tax nor does it create any other charge upon anyone. It embodies the policy of the government granting incentives to new industries set up in scheduled areas of the State. It is an invitation, an assurance and a promise to potential entrepreneurs to establish industries in the scheduled areas of the State.

(4) The appellant has no control over the Andhra Pradesh government. It was the duty of the Andhra Pradesh government to have published the said G.O. in the Gazette. It is well- settled that where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect thereof would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without promoting the essential aims of the legislature, such prescriptions should be treated as directory. Non-compliance with such prescriptions does not affect the validity of the act done in disregard of them.

(5) It is well-settled by a catena of decisions that 'non- laying' of the rules/orders on the floor of the Legislature as required by laws does not render the rules or the order void or non-existent. The requirement has been held to be directory only.

(6) The government having issued G.O.Ms. No.201 cannot and should not be allowed to question its validity. More so, because the appellant has acted on it. Where the government acts within the scope of its ostensible authority and makes a representation on which another acts, it must be held bound by it. A defect in procedure or any irregularity can be waived so as to render the representation vaild. Representations and promises can be embodied in non- statutory executive orders as well. In other words, the non- compliance with statutory requirement does not affect the 'representation' contained in G.O.Ms. No.201 in any manner. The doctrine of promissory/equitable estoppel and of the legitimate expectations are attracted in such a case. (7) Accepting the contention of the respondents would amount to permitting them to commit a legal fraud. It would amount to subjecting a person to hardship for the fault of the government in carrying out the requirement of publication and the requirement of 'laying'. Such a course would neither be fair nor reasonable. G.O.Ms. No.386, insofar as it purports to give retrospective effect to the concession contained therein on and from December 17,1976 is invalid and incompetent. G.O.Ms. No.386 is in the nature of the delegated legislation. It is well-settled that in the absence of a specific provision in the Act, the rule-making authority cannot give retrospective effect to the rules made by it.

On the other hand, Sri Ram Kumar, learned counsel for the State of Andhra Pradesh, urged the following submissions in support of the judgement under appeal:G.O.Ms. No.201 is not valid or

enforcable since it was not published in the Gazette nor was it laid before the Legislature as required by Section 11. The requirement of publication in the Gazette is mandatory and not directory. The power of exemption is not a species of delegated legislation; it is an instance of conditional legislation. The power under Section 11 can be exercised only in the manner and in accordance with the requirements of Section 11 and in no other manner. It does not take effect and become enforcable until and unpublished in the manner prescribed, i.e., in the Gazette. The power of exemption should be strictly constructed. The order which is not in conformity with the requirements of Section 11 cannot be treated as an order thereunder, nor can it give rise to or form a foundation for the pleas of promissory/equitable estoppel or to legitimate expectations. It is already held by this Court that no exemption notification is effective until and unless it is published in the Gazette as required by the Act. Public interest demands strict compliance with the said requirement. Moreover, G.O.Ms. No.386 has been validly issued and the retrospective effect given to it on and from December 17, 1976 is equally valid. It means that G.O.Ms. No.386 must be deemed to have been issued on December 17, 1976; it is admittedly a statutory G.O. If so, there cannot be another non-statutory G.O. on the same subject inconsistent with the terms of the statutory G.O. covering the same period. For this reason too, G.O.Ms. No.201 is neither effective nor enforcable.

The first question we have to answer is whether the publication of the exemption notification in the Andhra Pradesh Gazette, as required by Section 11(1) of the Act, is mandatory or merely directory? Section 11(1) requires that an order made thereunder should be (i) published in the Andhra Pradesh Gazette and (ii) must set out the grounds for granting the exemption. The exemption may be on a permanent basis or for a specified period and shall be subject to such restrictions or conditions as the government may deem necessary. Dri Sorabjee's contention is that while the requirements that the power under Section 11 should be expressed through an order, that it must contain the grounds for granting exemption and that the order should specifiy whether the exemption is on a permananet basis or for a specified period are mandatory, the requirement of publication in the Gazette is not. According to the learned counsel, the said requirement is merely directory. It is enough, says the counsel, if due publicity is given to the order. He relies upon certain decisions to which we shall presently refer. We find it difficult to agree. The power under Section 11 is in the nature of conditional legislation, as would be explained later. The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the authority of the government. Publication of an order or rule in the Gazette is the official confirmation of making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspaper or may be broadcast by radio or television. If a question arises when was a particular order or rule was made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media [See Pankaj Jain Agencies v. Union of India [1994 (5) S.C.C.198]. In other words, the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on a particular day [where the order or rule takes effect from the date of its publication] and is made by a particular authority; it is also the official version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation in, an Act, Rule or Order. Section 83 of the Evidence Act says that the court shall presume the genuineness of the Gazette. Court will take judicial notice of what is published therein, unlike the publication in a newspaper, which has to be proved as a fact as

provided in the Evidence Act. If a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it would become necessary to refer to the original itself, involving a good amount oenience, delay and unnecessary controversies. It is for this reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official Gazette. To call such a requirement as a dispensable one - directory requirement - is, in our opinion, unacceptable. Section 21 of the Andhra Pradesh General Clauses Act says that even where an Act or rule provides merely for publication but does not say expressly that it shall be published in the official Gazette, it would be deemed to have been duly made if it is published in the official Gazette*. As observed by Khanna,J., speaking for himself and

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Shelat,J. in Sammbha Nath Jha v. Kedar Prasad Sinha & Ors. [1972 (1) S.C.C.573 at 578], the requirement of publication in the Gazette "is an imperative requirement and cannot be dispensed with". The learned Judge was dealing with Section 3(1) of the Commissions of Inquiry Act, 1952 which provides inter alia that a Commission of Inquiry shall be appointed "by notification in the oGazette". The learned Judge held that the said requirement is mandatory and cannot de dispensed with. The learned Judge further observed:

> "The commission of inquiry is appointed for the purpose of making an inquiry into some matter of public importance. The schedule containing the various allegations in the present case was a part of the notification, dated March 12, 1968 and specified definite matters of public importance which were to be inquired into by the Commission. As such, the publication of the schedule in the Official Gazette should be held to be in compliance with the statutory requirement. The object of publication in an official Gazette is twofold: to give publicity to the notification and further to provide authenticity to the contents of that notification in case some dispute arises with regard to the contents."
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> To the same effee observations in B.K.Srinivasan v.

State of Karnataka [1987 (1) S.C.C.658]. While pointing out the importance of subordinate legislation in the affairs of the modern State,Chinnappa Reddy,J., speaking for himself and G.L.Oza,J., made the following observations:

"But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobstrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner,

whether such publication or promulgation is prescribed by he parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication."

The above decisions of this Court make it clear that where the parent statute prescribes the mode of publication or promulgation that mode has to be followed and that such a requirement is imperative and cannot be dispensed with.

G.O.Ms. No.201 purports to exempt a class of persons from the levy created by a statute. A levy created by a statute can be lifted, suspended or withdrawn only by a statute on in the manner prescribed by the statute creating the levy. Dispensing with the levy or payment of tax is a serious matter. It is done only with a view to promote a countervailing public interest. When such a power is conferred by the Legislature upon another authority, that authority has to, and can, exercise that power only in strict compilance with the requirements of the provisions conferring that power. It is in the interest of general public that such notification are not only given wide publicity but there should also be no dispute with respect to the date of their making or with respect to the language and contents thereof. We see no reason to hold that while the other requirements mentioned in Section 11(1) are mandatory, only the requirements of publication in the Gazette is not. We see no reason to make such a distinction in the context of the said sub-section. The power given by Section 11 is of an exception. For this reason too, the provision conferring that power has to be complied with fully, i.e., in all respects.

Sri Sorabjee relied upon certain decisions in support of his contention to which a reference would be in order. The first decision relied upon is in Bangalore Wollen and Cotton Silk Mills v. Corporation of City of Bangalore [1961 (3) S.C.R.707], rendered by a Constitution Bench. The procedure for levying municipal taxes is provided in Section 98 of the City of Bangalore Municipal Corporation Act. It requires that the resolution intending to impose a tax should be published in the Official Gazette and in the local newspapers. The rate-payers can submit their objections in response to such publication, after considering which the Corporation may levy the tax or duty by a resolution which is also required to be published in the Official Gazette and in the local newspapers. The corporation passed a resolution levying the tax but the notification levying the tax was not published in the Gazette. It was contended by the appellant before this Court that the said non-publication was fatal to the legality of the imposition of tax. Reliance was placed on the decision of this Court in Harla v. State of Rajasthan [1952 S.C.R.110] and State of Kerala v. P.J.Joseph [AIR 1958 SC 296]. The COnstitution Bench did not say that the requirement of publication in the Official Gazette is not mandatory or that it is directory. It merely held that Section 38(1) cured the said defect/irregularity. Section 39(1) provides that "no act done or proceeding taken under this Act shall be questioned merely on the ground.....(b) of any defect or irregularity in such act or proceeding not affecting the merits of the case". The COnstitution Bench held that the provision in Section 38(1)(b) is

"unambiguous and clear and it validates any defect in any done or proceedings taken under the Act and makes it immune from being questioned on the ground of defect or irregularity in such act or proceegs not affecting the merits of the case". The Court referred to the fact that the said resolution was published in the newspapers and was well-known. The Court held that the failure to publish it in the government Gazette did not affect the merits of the imposition and that, therefore, the validity of the levy cannot be questioned. It cannot be said that the said decision supports the proposition of Sri Sorabjee in any manner. The entire decision turned upon the provision in and effect of Section 38(1)(b) of the said Act.

The next decision relied upon is in Municipal Board, Sitapur v. Prayag Narain Saigal & Firm Moosaram Bhagwandag [1969 (3) S.C.R.387]. The Uttar Pradesh Municipalities Act, 1916 prescribes the procedure for levy of water tax in Sections 131 to 135. Now, what happened in that case is: the Municipal Board prepared a draft of the rules proposing to levy tax as required by Section 131(2) and published it in the manner prescribed by Section 94. To wit, the draft rules were published in "Rashtra Sandesh", a local newspaper published in Hindi. Objections were received and were duly considered by the Board. The Board decided to modify the original proposals by reducing the rate of tax. Though the modified proposals were also required to be published just like the original proposals, they were not so published as a fact. After receiving the sanction of the appropriate authority, the Board passed a special resolution on April 23, 1957 as contemplated by Section 134(2) of the Act directing that the imposition of the tax shall take effect from October 1, 1957. This special resolution was not published in the manner prescribed by Section 94. Be that as it may, on receipt of the special resolution, the prescribed authority, acting under Section 135(2), notified in the Official Gazette dated August 3, 1957 that the tax imposed shall take effect from the appointed day. Sub-section (3) of Section 135 provides that " a notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act". Three objections were raised by the rate-payers to the levy of water tax, viz., (a) omission to publish the preliminary proposal in the manner prescribed by Section 131(3) read with Section 94, (b) non-publication of the modified proposal in accordance with Section 132(2) and

(c) non-publication of the special resolution directing the imposition of tax in accordance with Section 94. All the three objections were negatived by a three-Judge Bench of this Court. With respect to the first objection, it was held that though the publication was not in the prescribed form, yet the omission was a mere irregularity and since the objec of publication under Section 131(3) is to inform the inhabitants of the proposal and to enable them to file objection, that object was achieved by publication in the local daily "Rashtra Sandesh". With respect to the second objection, it was held that since the local inhabitants did have the notice of the proposal and did indeed submit their objections, no prejudice is caused by not inviting fresh objections to the modified proposals. The Court also pointed out that the modified proposals raised the exemption limit and reduced the rate of tax and was thus in no way prejudicial to the inhabitants. With respect to the third objection, the Court observed that the special resolution did not require to be published in accordance with Section

94. Even if it is assumed that it required to be so published, the Court held, the non-publication was a mere irregularity for the reason that the inhabitants had no right to file any objections to the

special resolution. The Court also observed that the inhabitants had clear notice of the imposition of the tax from the notification published in the Official Gazette on August 3, 1957 and that the defect of non-publication of special resolution in the manner prescribed by Section 94 was cured by sub-section (3) of Section 135. It would be noticed immediately that the objection of non-publication pertained to the proposals and modified proposals to levy taxes and that requirement was held to be not mandatory. So far as the special resolution is concerned, the Court held that it did not require to be published in the manner prescribed by Section 94. Even if it is required to be published, the Court held, the said defect of non-publication was cured by sub-section (3) of Section 135 which provided that "a notification of the imposition of a tax under sub-section (2) [of Section 135] shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act". This decision too does not say that where a notification levying tax is required by the Act to be published in the Official Gazette, the non- publication of the Gazette does not vitiate the levy. The decision thus turned upon the particular facts of that case and the particular provisions concerned therein.

Sri Sorabjee then relied upon the decision in Raza Buland Sugar Co.Ltd. v. Municipal Board, Rampur [1965 (1) S.C>R.970]. This was also a case of levy of water tasx by Rampur Muncipal Board under the provisions of the Uttar Pradesh Municipalities Act, 1916. The draft rules proposing the levy of water tax were not published in the manner required by Section 131(3) read with SEction 94(3) of the said Act. In other words, the draft proposals were not published in the Hindi newspaper but were published in a local newspaper published in Urdu though the notification as published was in Hindi. The complaint did not pertain to the non-publication of the final notification levying taxes but only to publication of draft proposals. The majority [Galendragadkar,CJ., Wanchoo and Raghubar Dayal,JJ.] held that SEction 131(3) read with Section 94(3) consists of two parts, the first one providing that the proposals and the draft rules for a tax intended to be imposed should be published for the objections of the public, if any, and the second laying down that the publication must be in the manner prescribed in Section 94(3)*. The majority held that having regard to the object underlying the provision for publication, it must be held that while the first part is mandatory, the second part is not. In that case, it was held, the first part was complied with the second part inasmuch as instead of publishing in a local newspaper in Hindi, the proposals were published in a local paper published in Urdu though the publication itself was in Hindi language. It was also found that there was no regularly published locasl Hindi newspaper in Rampur. It was held that there was substantial compliance with Section 94(3) in the circumstances of the case and further that Section 135(3) which created a conclusive presumption that the tax had been imposed in accordance with the provisions of the Act, excludes any complaint of defect in procedure. We are unable to see how this decision helps the apellants contention. There was a publication indeed in that case as required by the law.

*Section 94(3) read as follows:"Every resolution passed by a board at a meeting shall, as soon as may be, be published in a local paper published in Hindi and where there is no such local paper, in such manner as the State Governmnt may, by general or special order, direct".

The only defect was instead of publication in a local newspaper published in Hindi [as a matter of fact there was no such paper in Rampur], the notification was effected in Urdu newspaper though notification published was in Hindi. We are, therefore of the opinion that the decisions relied upon

do not support the proposition that an exemption notification, which is a species of conditional legislation, need not be published in the Official Gazette though it is so required expressly by the statute itself.

Sri Sorabjee then relied upon the proposition repeatedly affirmed by this Court that "generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done" (Dattatraya Moreshwar v. State of Bombay [1952 S.C.R.612] reiterating the proposition in J.K.Gas Plant Manufacturing Company (Rampur) Limited v. Emperor [1947 F.C.R.141]. There can be little doubt about the proposition but it is difficult to agree that this principle can be employed to dispense with a mandatory requirement. It can certainly be invoked where the omission or irregularity is directory in nature but certainly not where the requirement is mandatory. No case has been brought to our notice holding otherwise. In this view of the matter, we do not think it necessary to deal with the decisions cited at any length - except with Dattatraya Moreshwar. The matter arose under the Preventive Detention Act. 1950. The decision of the government confirming the detention order was not authenticated in the manner prescribed by Article 166. It was argued that since the decision of the government is not so expressed, it must be deemed that there is no decision by the government. This contention was repelledholding firstly that the Preventive Detention Act did not prescribe any particular form for expressing the decision of the government confirming the detention. Even if it is assumed that the decision being an executive decision, has to be expressed and authenticated in the manner laid down in Article 166, the Court held, the omission to comply with those provisions does not render the executive action a nullity. Where such a decision has in fact been taken by the appropriate government, it was held, there is no further requirement of law which has to be complied with. It is in this connection that the aforesaid principle was invoked and relied upon. There is a qual;itative difference between the situation dealt with in Dattatraya Moreshwar and the situation before us. There the Prevention Detention Act did not require that the decision of the government should be expressed or authenticated in a particular manner. Since it was a decision of the government, it was argued that it had to be expressed and authenticated in the manner prescribed by Article 166. Thus, the defect pointed out in that case merely related to the form in which the decision was communicated. Whereas in the case before us, the requirement relates to the very manner in which the order is to be made. The decision in the State of Uttar Pradesh v. Manmohan Lal Srivastava [1958 S.C.R.533] relied upon by Sri Soranbjee also related to a directory provision [Article 320(3)(c) of the Constitution].

We may next consider the nature of the power under Section 11. The question is whether the power conferred thereunder is a species of delegated legislation or is it conditional legislation. The matter is no longer resintegra. In Jalan Trading Company v. Mill Mazdoor Union [1967 (1) S.C.R.15]. one of the question raised and answered pertained to the nature of the power conferred upon the government by Section 36 of the Paymnet of Bonus Act, 1965. Section 36 empowered the government to exempt an establishement or a class of establishement form the operation of the Act

provided the government is of the opion that having regard to the financial position and other relevant circumstances of the establishment, it would not be in the public interest to apply all or any of the provisions of the Act. Shah, J., speaking for the majority, held that " the power so conferred does not amount to delegation of legislative authority. Section 36 amount to conditional legislation, and is not void. It was futher observed that "condition for exercise of that power is that the Government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishement or class of establishments, and that opinion is founded on a consideration of the financial position and other relevant circumstances. Parliament has clearly laid down principles and has given adequate guidance to the appropriate Government in implementing the provisions of S.36.....Whether in a given case, power has been properly exercised by the appropriate Government would have to be considered when that occasion arises." Hidayatullah,J., speaking for himself and Ramaswami,J., [minority opinion] dis not say otherwise on this aspect. The learned Judge obderved: the Sectionn(36) cannot be lightly be described as a place of delegated legislation.".

In Hamdard Dawakhana v. Union of India [1960 (2) S.C.R.671], this court dealt with the distinction between conditional legislation and delegated between conditional legislation and delegated legislation. The following observations are apposite:

"The distinction betweem conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when a legislative declared rule of conduct shall become effective;

Hampton & Co. v. United States,(1927) 276 U.S.394, and the latter involves delegation of rule making power which constitutionally may be exercised by the adminstrative agent. This means that the legislative having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the adminstrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislatiure conditionally leaving to the discretion of an external authority the time and the manner of carrying its legislation into effect as also the determination of the area to which it is to extend; [The Queen v. Burah, (1878) 3 A.C.889; Russel v. The Queen, (1882) 7 A.C>829, 835; King-Emporer v. Bengarilal Sarma, (1944) L.R.72 I.A.57; Sardar Inder Singh v. State of Rajasthan,(1957) S.C>R.604.] Thus when the delegate is given the power of making rules and regulations in order to fill in the details carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therin created to be enjoyed it is anexercise of the delegated legislation. But when the legislation is complete in itself and the legislation has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation. To put it in the language of another American case:

To assert that law is less than a law because it is made to depend upon a future event or act is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.' The proper

distiction there pointed out was this:

The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things upon which wise and useful legislation must depend which cannot be known to the law making power, and must therefore be subject of enquiry and determination outside the hall of legislature. (In Lockes appeal 72 Pa.491; Field v. Clarke (1892) 143 U.S. 649)."

Hamdard Dawakhana was, of course, a case where clause (d) od Section 3 of the Drugs and Magical Remedies [Objectionable Advertisement] Act, 1954 conferred upon the government the power to specify by Rules made under the Act the diagnosis, cure etc. respecting when the advertisement of a drug was prohibated. The question before the Court was whether it is a case of delegated legislation or conditu\ional legislation. To Court ultimately held that it belongs to the former category and is void being violative of Article 14 of the Constitution.

We may in this connection refer to the decision of the Supreme Court of the United States in Field v. Clarke [(1892) 143 U.S.649 = 36 Lawyers Edn.294]. The Tariff Act of 1890 empowered the President to suspend the operation of the Act, permitting free import of certain products within United States, on being satisfied that the duties inposed upon such products were reciprocally unequal and unreasonable. It was submitted that the said power to the President and, hence unlawful. The attack was repelled holding that the President was a mere agent of the Congress to ascertain and declare the contingency upon which the will of the Congress was to take effect. The Court quoted with approval the following passage from an earlier case:

> "The Legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law mskes, or intends to make, its own action depend. TO deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law making power, and must, therefore, be a subject of enquiry and determination outside the halls of the Legislation."

Reference may also be made to the decision of this Court in Tulsipur Sugar Co.Ltd. v. Notified Area Committee, Tulsipur [1982 (2) S.C.C.295] where the power conferred upon the government by Section 3 of the Uttar Pradesh Town Areas Act, 1914 to extend the limits of town area was held to be a power in the nature of conditional legislation. It was held that the power was legislative in character and, therefore, the incidents applicable to an adminstrative order do not apply to it.

What is, however, relevant is that the power to bring an Act into force as well as the power to grant exemption are both treated, without a doubt, as belonging to the category of conditional legislation. Very often the legislature makes a law but leaves it to the executive to prescribe a date with effect from which date the Act shall come into force. As a matter of fact, such a course has been adopted even in the case of a constitutional amendment, to wit, the Constitution [Forty-fourth Amendment] Act, 1978, insofar as it pertains to amendment of Article 22 of the Constitution. The power given to the executive to bring an Act into force as also the power conferred upon the government to exempt

persons or properties from the operation of the enactment are both instances from the operation of the enactment are both instances of conditional legislation and cannot be described as delegated legislation.

The next question is whether the power of conditional legislation can be exercised with retrospective effect. The decision of this Court in A.Thangal Kunju Musaliar v. M.Venkatachalam Potti, Authorised Official and Income-Tax Officer & Anr. [1955 (2) S.C.R.1196] considered this question. The Travancore Legislature had enacted the Travancore Taxation on Income [Investigation Commission] Act [14 of 1124]. Section 1(3) "authorised the government to bring the Act into force on such date as it may, by notification, appoint". The government issued a notification in exercise of that power on July 26, 1949 stating that the Act is brought into force with effect from July 22, 1949. The contention before this court was that in the absence of an express provision in Section 1(2) authorising the government to fix the date of commencement of the Act with retrospective effect, the government had no power to say on July 26, 1949 that the Act must be deemed to have come into operation on July 22, 1949. This contention was negated by the Constitution Bench of this Court in the following words:

> "The reason for which the Court disfavours retrospective operation of laws is that it may prejudically affect vested rights.
>
> No such reason is involved in this case. Section 1(3) authorises the Government to bring the Act into force on the such date as it may, by notification, appoint. In exercise of the power conferred by this section the Government surely had the power to issue the notification bringing the Act into force or any date subsequent to the passing of the Act. There can, therefore, be no objection to the notification fixing the commencement of the Act on 22-7- 1949 which was a date subsequent to the passing of the Act.
>
> So the Act has not been given retrospective operative, that is to say, it has been made to commence from a date prior to the date of its passing. It is true that the date of commencement as fixed by the notification is anteriror to the date of the notification but that circumstance does not attract the principle disfavouring the retrospective operation of a statute.
>
> Here there is no question of affecting vested rights. The operation of the notification itself is not retrospective. It only brings the Act into operation on and from an earlier date. In this case it was in terms authorised to issue the notification bringing the Act into force on any date subsequent to the passing of the Act and that is all that the Government did."

There appears no reason why the logic of the above holding should not be applied to the power under Section 11(1) of the Act. The sub-section says that the government can grant the exemption "either permanently or for a specified period". Having regard to the nature of the power and the character of the provision, we find no good reasdon to hold that this power can be exercised either

wholly or partly the period anterior to the date of order, so loong as the period specified is subsequent to the commencement of the Act. We are, therefore, of the opinion that the retropsective operation given to the G.O.Ms. No. 386 is valid and lawful. Once this is so, the very existence of G.O.Ms. No.201 becomes doubtful. There cannot be a statutory and non-statutory G.O. on the same subject and covering the same period., inconsistent with each other. While G.O.Ms No.386 provides exemption only for a period of five years prescribed therin, G.O.Ms. No.201 pertains to grant the exemption on a permanent basis. The appellant can, therefore, claim exemption only under and in accordance eith G.O.Ms. No.386.

The next question is whether the requirement of 'laying' before the Legislature is mandatory? Sub-section (2) of Section 11 of the Act requires that an order made under Section 11(1) shall be laid on the Table of the Legislative Assembly for the period prescribed therin and shall be subject to such modifications as may be made by the Legislature. The legislature is also entitled to annul the said order. This is one form of legislative control over subordinate legislation. Sri Sorabjee cited the decision of this Court in M/s. Atlas Cycle Industries Ltd. & Ors. v. State of Haryana [1979 (2) S.C.C. 196] holding that the requirement of 'laying', couched in the language akin to sub-section (2) of Section 11 - a case of 'simple laying' in contra-distinction to 'laying subject to negative resolution' and 'laying subject to affirmative resolution' - is not mandatory notwithstanding the use of the expression "shall" in the relevant provision. The Court was dealing with sub-section (6) of Section 3 of the Essential Commodities Act, 1955 which provides for laying the orders made under the Act before the appropriate Legislature, an instance of 'simple laying' or 'layinf\g without further procedure'. The said decision appears to be consistent with the authorities on the subject, both in India and in the United Kingdom, and is binding upon us. It is brought to our notice that as early as 1956, Subba Rao,C.J. had taken the same view in Andhra Pradesh High Court vide D.K.Krishnan v. Secretary, Regional Transport Authority, Chittoor [1956 A.P.129]. Accordingly, we hold that the requirement of 'laying' prescribed by sub-section (2) of Section 11 is not mandatory and an order of exemption under Section 11 cannot be said to be ineffective or unenforceable for the reason of 'non-laying' as required by Section 11(2) of the Act. Sri Sorabjee next contended that even if it is held that the publication in the Gazette is mandatory yet G.O.Ms. No. 201 can be treated as a representstion and a promise and inasmuch as the appellant had acted upon such representation to his detriment, the government should not be allowed to go back upon such representation. It is submitted that by allowing the government to go back on such representation, the appellant will be prejudiced. Learned counsel also contended that where the government makes a representation, acting within the scope of its ostensible authority, and if another person acts upon such representation, the government must be held to be bound by such representation and that any defect in procedure or irregularity can be waived so as to render valid which would otherwise be invalid. Counsel further submitted that allowing the government to go back upon its promise contained in G.O.Ms. No201 would virtually amount to allowing it to commit a legal fraud. For a proper appreciation of this contention, it is necessary to keep in mind the distinction between an adminstrative act and an act done under a statute. If the statute requires that a particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done by the government is invalid and ineffective for non- compliance with the mandatory requirements of law, it would be rather curious if it is held that notwithstanding such non-compliance, it yet constitutes a 'promise' or a 'representation' for the purpose of invoking the rule of

promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the government or other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and superfluous. Where the field is occupied by an enactment, the executive has to act in accordance therwith, particularly where the provisions are mandatory in nature. There is no room for any adminstrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent Legislature, the executive can act in its executive capacity since the executive power of the State extends to matters with respect to which the Legislature of a State has the power to make laws [Article 162 of the Constitution]. The proposition urged by the learned counsel for the appellant falls foul of our constitutional scheme and public interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of law whereas the said rule, it is well-settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed to be defeated by resort to the rules of estoppel. None of the decisions cited by the learned counsel say that where an act is done in violation of a mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/equitable estoppel. Moreover, when the government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority. If so, it is also not permissible to invoke the principle enunciated by the Court of Appeal in Wells & Ors. v. Minister of Housing & Local Government & Anr. [1967 (2) All.E.R.1041].

Sri Sorabjee, however, relied upon certain observations in the opinion of Chandrasekhara Aiyer,J. in Collector of Combay v. Municiple Corporation of the City of Bombay [1952 S.C.R.48]. We may briefly notice the factual context in which the observations relied upon were made. In the year 1865, the Government of Bombay called upon the predecessor- in-title of the Corporation of Bombay to remove certain existing markets from a particular site to vacate it. In consideration therof, the government passed a resolution approving and authorising the grant of another site to the municipality stating that the government shall not charge any rent for the said site since it was to be used for the benefit of the community. The Corporation accordingly gave up the old markets and constructed a new market in the alternate site alloted by the government. About eighty years later, i.e., in 1940, the Collector of Bombay proposed to levy land revenues on the aforesaid alternate site. The corporation sued for a declaration that the said assessment was illegal and for a further declaration that it was entitled to hold the land for ever without payment assessment. It was held by this court that though there was no effectual grant by the government passing title in the land to the corporation by reason of non-compliance with the statutory formalities, yet inasmuch as the corporation had nevertheless taken possession of the land in terms of the government resolution and continued in such possession openly, un-interruptedly and as of right for over seventy years, the corporation had acquired the limited title it had been prescribing for, i.e., the right to hold the land in perpetuity free of rent for the purpose of the market but for no other purpose. The majority decision did not express any opinion on the question whether the principle of equity enunciated in Ramsden v. Dyson [(1866) LR 1 HL 129] can still prevail in India in the face of the decision of the Privy Council in Ariff v. Jadunath [(1931) LR 58 I.A. 91]. In other words, the majority did not express any opinion on the question whether the principle of equity in Ramsden can be invoked even where the requirements or formalities are laid down in the statute are not complied with.

Chandrasekhara Aiyer,J. too, in his concurring opinion, opined that the corporation had acquired title to the land by operation of law of limitation, i.e., on account of its long standing possession in its own right. Having so held, the learned Judge made the following observations - relied upon by Sri Sorabjee:

> "Can the Government be noe allowed to go back on the representation \,and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed? If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 of the Indian Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfill it. Whether it is the equity recognised in Ramsden's case, (1866) L.R. 1 H.L.129, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkins C.J. in Dadoba Janardhan v. The Collector of Bombay (1901) I.L.R..25 Bom.714, a different conclusion would be 'opposed to what is reasonable, to what is propable, and to what is fair.' I am of the opinion that the decision of the Privy Council in Ariff v. Jadunath (1931) 58 I.A.91 is not applicable to the facts before us, as the doctrine of part performance is not being invoked here as in that case, to clothe a person with title which he cannot acquire except by pursuit of or in conformity with certain legal forms. Here, as pointed out already, the Corporation became the full and absolute owner of the site on the lapse of 60 years from the date of the grant."

We find it difficult to treat the said observations as an authority for the proposition that even where the government has to and can only under and in accordance with a status - and that too a statute containing mandatory provisions - an act done by the government in violation thereof can yet be treated as a representation to found a plea of promissory estoppel. Sri Sorabjee relied upon certain decisions of the Bombay High Court in Dadoba Janardhan v. The Collector of Bombay [(1901) ILR 25 Bom.714 at 746] and Municipal Corporation of the City of Bombay v. The Secretary of State for Indian COuncil [(1905) ILR 29 Bom.580 at 676-78] in support of the said proposition. But in the light of what we have said hereinabove - which in our opinion is consistent with our constitutional scheme and public policy - we do not think it necessary to deal with the facts and ratio of the said decisions. For the above reasons, the appeal fail and are dismissed. No costs.

This order does not preclude the appellant from seeking the benefits of G.O.Ms. No.386 dated May 2, 1990 in accordance with its terms.