BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), SITTING AT CHENNAI

Appeal No. 14/ 2020

BETWEEN:

Yelahanka Puttenhalli Lake
and Bird Conservation Trust (Regd.)

.....APPELLANT

AND

Ministry of Environment & Forest and Ors.

.....RESPONDENTS

INDEX

Place: Bangalore

Date: 22/10/2021

Advocate for Respondent No.4

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.4

The Respondent No.4 humbly states as follows:

1. The instant Appeal has been filed by the Appellant under Sections 14, 15(1), 16(h) and 18 of the National Green Tribunal Act, 2010.The Appellant has stated that the setting up of a Gas based Combined Cycle Power Plant ***("Power Plant")*** by the Respondent No.4 has allegedly given rise to a substantial question relating to the Environment which requires to be adjudicated by this Tribunal. The Appellant has alleged that there has been damage to Environment by the Respondent No.4 in setting up the Power Plant requiring restitution of the Environment. The Appellant has also challenged the Environmental Clearance ***("EC")*** issued to the Respondent No.4 for the establishment of the Power Plant stating that the same is *void ab initio*.

LIST OF DATES AND EVENTS

Date	Event
14/09/2006	The 2006 Environment Impact Assessment ("EIA") Notification, is issued by the Union Ministry of Environment and Forest ("MoEFCC").
28/07/2014	The Government of Karnataka gives approval to the Respondent No.4 for setting up of a 370 MW capacity Combined Cycle Power Plant.
20/12/2014	The Respondent No.4 applied for grant of Environmental Clearance to the SEIAA as per the 2006 EIA Notification, along with pre-feasibility report.

13/01/2015 14/01/2015	SEAC held meetings to consider the grant of EC to the Respondent No.4 for the Project.
19/01/2015	SEAC issued Terms of Reference to the Respondent No.4 for the Project.
23/07/2015	Respondent No.4 submitted an EIA Report, prepared by a consultant accredited by MoEF and which also included a detailed project report, to the SEAC.
05/08/2015 06/08/2015	SEAC holds two appraisal meetings wherein it recommends the issuance of EC in favour of the Respondent No.4. It also seeks certain clarifications from the Respondent No.4.
10/08/2015	Respondent No.4, by its letter addressed to SEAC, responds to the queries raised by SEAC at its meetings dated 05.08.2015 and 06.08.2015.
25/08/2015	Respondent No.4, by its letter addressed to SEAC, answers further queries raised by SEAC.
01/09/2015	SEIAA grants EC to the Respondent No.4 for setting up the Project in Yelahanka, Bengaluru.
06/09/2015 08/09/2015	The Respondent No.4 caused publication of the EC in newspapers, calling for objections.
10/09/2015	The Puttenahalli Lake is notified as a Bird Conservation Reserve in the Official Gazette.
02/11/2015	The Karnataka State Pollution Control Board issued its Consent for Establishment in favour of the Respondent No.4's Project.
03/11/2015	The Respondent No.4, by a letter of award to Bharat Heavy Electrical Limited, assigned them as the contractor to build the Project.
10/12/2016	The Appellant alleges that it received knowledge of the Project.
25/01/2017	Heritage Estate Apartment Owners Association file Original Application No.57/2017 before this Hon'ble Tribunal praying for a direction to the Appellant not to set up the Project and to restore the Environment.
25/01/2018	The Appellant by its letter, made a representation before the MoEFCC stating the project would impact the Yelahanka Puttenahalli Lake System and therefore to cancel the EC.
08/03/2018	The Appellant, by its letter made another representation before the MoEFCC seeking to cancel the EC granted to the Respondent No.4 for the Power Plant.

24/04/2018	The Appellant made yet another representation before the MoEFCC regarding cancellation of EC granted to the Respondent.
11/06/2018	Two years and nine months after the grant of the EC, the Appellant filed Writ Petition No.25189/2018 before the Hon'ble High Court of Karnataka asking for a direction to MoEFCC to consider the representations dated 25/01/2018 and 08/03/2018
05/09/2018	In consideration of the representation of the Appellant, the Officials of the MoEFCC make a site visit to the Respondent No.4's Project.
03/10/2018	The MoEFCC Regional Office, Southern Zone, makes a report regarding the issues raised by the Appellant.
08/03/2019	The Hon'ble High Court of Karnataka, by its judgment in Writ Petition No.25189/2018, dismissed the writ petition and held that: *"The said order is appealable, to the National Green Tribunal. Therefore, it is not appropriate to entertain this petition. Even otherwise, on considering the material on record, we do not find that there was any violation of law in granting the environmental clearance. The environmental clearance is granted in a manner known, to law, after following the procedure involved therein."* The Appellant had concealed the fact of consideration of their representation by MoEFCC from the Hon'ble High Court.
22/04/2019	A SLP No. 10555/2019 was filed by the Appellant before this Hon'ble Court. Even before the Supreme Court, it is deliberately and wilfully concealed that the MoEFCC has already considered their representation.
22/08/2019	Heritage Estate Apartment Owners Association along with three others filed IA No.127298/2019 seeking impleadment in the SLP.
13/01/2020	Heritage Estate Apartment Owners Association along with three others were permitted by the Hon'ble Supreme Court to intervene in the SLP
10/06/2020	The Hon'ble Supreme Court relegates the Appellant to this Hon'ble Tribunal.
24/06/2020	The Appellant filed the instant Appeal before the National Green Tribunal seeking a challenge to the EC granted to the Respondent No.4 under Sections 18(1) read with Sections 15(1) and 16(h) of the NGT Act.

31/07/2020	The Respondent filed an IA for clarification (I.A. No. 71497 of 2020), regarding the Order passed by the Hon'ble Supreme Court through Miscellaneous Application No(s). 1527 of 2020 in C.A. No.2552/2020
09/09/2020	The Supreme Court passed an Order in I.A. No. 71497 of 2020, for clarification holding that: "Order requires no clarification. However, all the contentions of the parties are left open to be considered by the NGT."
28/06/2021	This Hon'ble Tribunal allows the Application for Condonation of delay.

2. **Issues pertaining to alleged damage to and restitution of the Environment have already been studied-** It is submitted that the contentions regarding alleged damage to the Environment due to the setting up of the Power Plant by the Respondent No.4 and the requirement of restitution of the Environment have already been investigated and studied by an Joint Committee set up by this Hon'ble Tribunal as per Order dated 19/08/2020 in OA 57/2017- Heritage Estate Apartment Owner Association vs. MoEFCC and Ors. The Joint Committee was comprised of the following members : 1) Senior officer from Regional office, Ministry of Environment, Forest and Climate Change, Bangalore, 2) Senior officer from State Environmental Impact Authority, Karnataka, 3) Senior officer from Principal Conservator of Forests, Head of Forest Post (HOFP) to be deputed by the Principal Chief Conservator of Forests not below the rank of Chief Conservator of Forests and, 4) Senior Scientist from Central Pollution Control Board, Regional office, Bangalore. The Joint Committee was required to go into the question as to whether there was any possibility of any environmental degradation likely to be caused on account of the establishment of the Power Plant in the disputed area and whether there were any violations committed by the Respondent No.4 in carrying out the construction activities against the terms and conditions of the Environment Clearance or the Consent For Establishment granted by the Karnataka State Pollution Control Board; whether there is any impact on livelihood on

account of the activities of the 4th Respondent unit on the Yelahanka-Puttenahalli Lake and Bird Sanctuary; and if there was any violation found, to assess the environment compensation and to also suggest the remedial measures for restoration of damage, if any caused. The Joint Committee Report was submitted with the recommendations before this Hon'ble Tribunal. In the report, while making certain recommendations for conservation/protection of the environment, the Joint Committee found no violations or damage caused to the Environment by the Respondent No.4. This Hon'ble Tribunal asked the Respondent No.4 to consider the recommendations and the representation made. Subsequently, the Respondent No.4 filed a memo stating that it would abide by all the recommendations and take steps to implement them. This Hon'ble Tribunal has accordingly accepted the Report of the Joint Committee and has passed orders dated 28/06/2021 pursuant thereto in OA 57/2017. This order has not been challenged by either the Appellants or the Heritage Apartment Owners Association.

3. It is also pertinent to mention that this Hon'ble Tribunal, in OA 57/2017, had directed the Forest Department to file an affidavit regarding the matter and it is understood that the Forest Department has filed an affidavit indicating *inter alia* that, the Puttenahalli Lake is situated upstream of the Power Plant. The Affidavit also indicates that the Respondent No.4 is in the process of setting up a Zero Liquid Discharge system and once commissioned no water will be let out either into the Puttenahalli or the Yelahanka Lake. The Forest Department has also observed that the Power Plant is in the stage of the commissioning and that the noise level that will be generated from the same cannot be properly assessed presently. However, acoustic enclosures have been installed in the plant for reduction of sound generated within the plant premises. Further, the water requirement for the project would be supplied from the Jakkur Plant and no water would be taken from either the Puttenahallli or Yelahanka Lakes. It also notes that in order to maintain a green belt, the Respondent No.4 has completed planting of 1000 trees in Phase 1 of tree planting, 500 trees

in the Phase 2 of the tree planting and is in the process of planting 500 more trees at the site presently. Therefore, from the Affidavit it is clear that the Forest Department does not foresee any possible harm to the Bird Conservation Reserve.

4. Further the Appellant has also produced the report showing the inspection and study done by the Ministry and Environment,Forest and Climate Change (MoEFCC) pursuant to the representations of the Appellant ***(Annexure 8 at Page 202)*** .The Report does not state that there has been any environmental damage due to the actions of the Respondent No.4 which requires restitution or restoration of the Environment. In light of the same, it is submitted that the prayer (2) and (3) sought for by the Appellant do not require to be adjudicated upon by this Hon'ble Tribunal.

5. **The Appeal is collusive and mala-fide:** One Heritage Estate Apartment Owners Association ('Apartment Association') had filed OA 57 of 2017 before this Hon'ble Tribunal alleging the same facts and pressing for identical reliefs as sought by this Appellant. Before this Hon'ble Tribunal, when the Apartment Association realized that the relief for cancellation of the Environmental Clearance was barred by time, the prayer seeking a declaration that the EC is bad in law, was deliberately struck out. Further, no interim stay on the EC was pressed for or granted.At the same time, this Appellant approached the Hon'ble High Court principally alleging that the Project of the Respondent No.4 affects the Puttenahalli Lake and that the EC was in violation of law. ***(Annexure A-13 of the Appeal at pg.229 to 246)***

6. The Appellant failed to allege various facts before the Hon'ble High Court of Karnataka including that the Apartment Association had approached the Hon'ble NGT seeking substantially the same reliefs as sought by the Appellant in WP 25189/2018 and had failed to obtain interim relief before the NGT. It is submitted that it is for this reason that the Appellant approached the Hon'ble High Court seeking relief despite knowing that a similar petition in the NGT was pending. In any event, this fact was

disclosed by a memo filed by the Respondent No.4 which the Appellant has chosen not to produce before this Hon'ble Tribunal.

7. The relief sought before the Hon'ble High Court was innocuously worded to the effect that MoEFCC must consider the representation of the Appellant for cancellation of the EC. The Appellant was only trying to obtain liberty from the Hon'ble High Court to overcome the statutory bar of limitation. The Hon'ble High Court however, dismissed the Writ Petition filed by the Appellant. By gross misrepresentation of facts and by suppression of documents, the Appellant then approached the Hon'ble Supreme Court and managed to persuade the Hon'ble Supreme Court to issue notice to the Respondents in SLP. At this juncture, this Hon'ble Tribunal had posted OA 57 of 2017 for final hearing. In order to prevent this Hon'ble Tribunal from hearing the matter on merits, the Apartment Association impleaded themselves before Hon'ble Supreme Court and requested this Hon'ble Tribunal to adjourn the matter. This was a concerted strategy on part of both the Apartment Association and the Appellant to prevent an order on merits which would dissuade the Hon'ble Supreme Court from entertaining the matter. After the Hon'ble Supreme Court dismissed the SLP and permitted the Appellant to approach this Hon'ble Tribunal to agitate the facts alleged, grounds urged and relief sought before the High Court before this Hon'ble Tribunal, the Appellant did a volte-face and sought to file the present Appeal for different reliefs than what was urged before the Hon'ble High Court. This was replicated by the Apartment Association also by filing an amendment application to urge the same grounds. This application for amendment however, came to be rejected by this Hon'ble Tribunal. It is submitted that OA 57/2017 and the instant Appeal were being heard together by this Tribunal. On 28/06/2021, OA 57/2017 was disposed of and has not been challenged by the Heritage Estate Apartment Owners Association. Incidentally, the Counsel for Heritage Estate Apartment Owners Association and counsel for the Appellant are the same and no appeal has been filed against the said order.

8. From the above facts, it becomes evident that the Appellant and the Heritage Apartment Owners Association are hand in glove and the entire proceedings before the Hon'ble High Court, before the Hon'ble Supreme Court and this Hon'ble Tribunal are a subterfuge and only an attempt to overcome the statutory bar under 16 (h) of the National Green Tribunal Act, 2010. The Appellant is only a name lender who is acting entirely at the behest of the Apartment Association.

9. **The Environmental Clearance was not challenged before the Hon'ble High Court and Supreme Court and is being challenged for the first time before this Tribunal-**It is submitted that the Appellant herein filed a WP 25189/2018 before the Hon'ble High Court of Karnataka seeking the following prayers ***(Annexure A-13 at Pgs 229-248 of the Appeal)*** :

   a) *Direct the 1st Respondent to consider the representation submitted by the Appellant and initiate necessary action against the 4th Respondent towards the cancellation of the illegal and void environmental clearance bearing SEIAA 20 IND 2014 dated 01.09.2015 issued by the 2nd Respondent herein*

   b) *Direct the 1st and 3rd Respondent to ensure that all steps are taken and necessary financial allocations are made towards preservation of the Puttenahalli Bird Reserve so as to ensure its restoration to its original pristine state.*

   c) *Pass any other orders in the interest of justice and equity.*

10. A perusal of the same clearly shows that the Appellant had not sought to challenge the Environmental Clearance before the Hon'ble High Court. It is pertinent to mention that the prayers were deliberately and adroitly so worded in order to circumvent the issue of limitation which would otherwise arise if the Appellant were to approach the Hon'ble National Green Tribunal directly. The Hon'ble High Court was pleased to dispose the said Writ Petition by way of its order dated 08/03/2019 stating that the matter came under the purview of the National Green Tribunal. It is also

necessary to note that the MoEFCC had already considered their representation by virtue of Annexure R-8 which was deliberately withheld and concealed from the High Court as it would have rendered the writ petition infructuous.

11. Thereafter, instead of approaching this Hon'ble Tribunal, the Appellant moved the Hon'ble Supreme Court by way of a Special Leave Petition bearing No. 10555/2019 challenging the impugned order dated 08/03/2019 passed by the Hon'ble High Court of Karnataka. Therefore, the EC was not challenged before the Hon'ble Supreme Court.

12. The Appellant has now approached this Hon'ble Tribunal by way of Appeal No.14/2020 seeking the following reliefs ***(Pg 82-83 of the Appeal)***:

a) Declare the Environment Clearance vide SEIAA 20 IND 2014 dated 01.09.2015 granted by the Karnataka State Environment Impact Assesment Authority (Respondent No.2) ("EC"), to the Karnataka Power Corporation Ltd. (Respondent No.4 herein) as null and void and contrary to the provisions of Environmental Impact Assessment Notification, 2006, and hence cancel the same;

b) Direct the Karnataka Power Corporation Ltd. (Respondent No.4 herein) not to put up the Gas-based Combined Cycle Power Plant at the present site in the vicinity of the Puttenahalli Bird Conservation Reserve and thereby restore the damage done by Puttenahalli-Yelahanka Lakes by illegal encroachment on the lake areas, and

c) Issue an order directing the Respondent No.4 for restitution of environment and to ensure protection of bio-diversity of the Puttenahalli and Yelahanka Lakes and to ensure protection of aquatic life, flora and fauna, and

d) Grant such other relief/reliefs that the Hon'ble Tribunal deems fit in the facts and circumstances of the case, in the interests of justice.

13. It is submitted that the Hon'ble Supreme Court has permitted the Appellant to approach this Hon'ble Tribunal only in respect of the reliefs sought before the Hon'ble High Court in WP 25189/2018. As the Appellant has raised totally different reliefs before this Hon'ble Tribunal contrary to the direction of the Hon'ble Supreme Court, the Appeal cannot be entertained as the same would be in violation of the directions of the Hon'ble Supreme Court.

14. **Misrepresentation and wilful concealment by the Appellant-**The Appellant has falsely represented that Puttenahalli Lake was declared a Bird Conservation Reserve before the Environmental Clearance was given. It is submitted that although the State Government may have commenced the process of declaring Puttenahalli Lake as a Bird Conservation Reserve, the declaration would come into effect only on the date on which it was notified in the Official Gazette i.e. on 10/09/2015. It is trite law that a Notification will only apply with prospective effect from the date of its publication in the gazette. *(Municipal Corporation of Greater Mumbai vs Anil Shantaram Khoje (2016)15 SCC 726,B.K.Srinivasan and Others vs State of Karnataka and Ors. (1987) 1SCC 658.)* Therefore, till the Puttenahalli Lake was notified as a Bird Conservation Reserve by publication in the Official Gazette i.e. till 10/09/2015, the SEIAA was empowered to grant the EC to the Respondent No.4 as the project would not come under the General Conditions of the EIA Notification. It is pertinent to mention that the Respondent No.4 filed its application for Environmental Clearance as early as 20/12/2014 and received the Environmental Clearance on 01/09/2015. In the interim, it has conducted extensive studies and has considered all aspects of the area surrounding the project. The Gazette Notification notifying Puttenahalli Lake as a Bird Sanctuary was issued only on 10/09/2015 after the EC had been granted to Respondent No.4.

15. Further, the Appellant had also concealed that in consideration of the representations dated 25/01/2018, 08/03/2018 and 24/04/2018 made to it by the Appellant, the MoEFCC by way of its Letter dated 30/07/2018 to the

MoEFCC, Southern division had ordered for a factual report to be drawn up after a site visit. A team of MOEFCC officials then visited the site on 05/09/2018 and gave their report on 03/10/2018. ***Annexure 8 of the Appeal (Pg 202)*** Although the MOEFCC officials met with the officials of Respondent No.4, the final report was not sent to Respondent No.4. It is submitted that the Report does not indicate that there is any requirement of restitution of the Environment on the part of the Respondent No.4. It is pertinent to mention that the Appellant despite knowing its representation had been considered by the MoEFCC, and that a study had been conducted did not bring the same to the notice of the High Court of Karnataka or to the notice of the Hon'ble Supreme Court so as to prevent the petitions filed by it from being declared infructuous. It is submitted that even though the Report was not served upon the Respondent No.4, if required, the Respondent No.4 is willing to abide by the recommendations of the MoEFCC.

16. **The SEIAA (Respondent No.2) had the jurisdiction to grant the EC to the Respondent No.4 project and there is no illegality in the same-** The Project of the Respondent No4. was rightly categorised as a Category 'B' Project as per the terms of the EIA Notification and therefore the Respondent No.4 has correctly approached the SEIAA for issuance of the Environmental Clearance. The Puttenahalli Lake was notified in the Official Gazette as a Bird Conservation Reserve only on 10/09/2015 which is after the granting of the EC i.e. on 01/09/2015. ***(Complete Notification-Annexure R-17, Pgs 756-759 of Counter Statement)*** In fact, at the time Respondent No.4 made an application for the EC, i.e. on 20/12/2014, Puttenahalli Lake had neither been declared nor notified as a Bird Conservation Reserve. The notification would come into force only prospectively from the date on which the same was published in the official gazette. ***(Para 56, Pg 23 of the Counter Statement)*** Therefore as on the date the Application was made to the SEIAA, the project of the Respondent No.4 was rightly categorised as a Category 'B' project and the SEIAA was empowered to issue the Environmental Clearance to it. The General

Condition of the EIA Notification would therefore not be applicable to the project of the Respondent No.4.

17. In any case, in consideration of the representations dated 25/01/2018, 08/03/2018 and 24/04/2018 made to it by the Appellant, the MoEFCC by way of its Letter dated 30/07/2018 to the MoEFCC, Southern division had ordered for a factual report to be drawn up after a site visit. A team of MOEFCC officials then visited the site on 05/09/2018 and gave their report on 03/10/2018. ***Annexure 8 of the Appeal (Pg 202)*** It is submitted that in its report, the MoEFCC has considered the aspect of Environmental Clearance and found that:

"2.2 Environmental Clearance and other statutory clearances
On 20th December 2014, M/s KPCL approached SEIAA, Karnataka seeking prior environmental clearance for establishment of a 350 ±20% MW capacity Gas based Combined Cycle Power Plant. Since the proposed power generation capacity of the project is <500 MW, as per the EIA Notification (2006), the project proponents required prior environmental clearance from the Karnataka State Environmental Impact Assessment Authority (SEIAA). Accordingly, the proposal was considered by the SEAC and ToRs were issued on 19th January 2015 for conducting EIA studies. Consequently, EIA studies were undertaken by M/s MANTEC Consultants Pvt. Ltd.(New Delhi) and report submitted by the proponent on 23rd July 2015. As the project is coming up within a notified industrial area (as also pointed in the EC letter), no public consultation was conducted. Based on the SEAC meeting held on 5th -6th August 2015 and SEIAA meeting held on 29th August 2015, environmental clearance was granted to the project proponent for the establishment of a 350± capacity Gas based Combined Cycle Power Plant vide its letter No.SEIAA 20 IND 2014 dated 01.09.2015 over a preoccupied (since 1994)plot area of 26.4ha.

It was gathered from the site visit to M/s KPCL that the proponents have obtained required statutory permits including consent for establishment

from the Karnataka State Pollution Control Board, height clearance from the Airport Authority of India, Ministry of Defense etc."

Therefore, even the MoEFCC (Respondent No.1) has considered the issue of legality of the Environmental Clearance and found the same to be in order. Therefore, the contention of the Appellant that the MoEFCC was the competent authority to issue EC is liable to be rejected.

18. **The Respondent No.4 had no prior knowledge of the decision to declare the Puttenahalli Lake a Bird Conservation Reserve-** The Appellant has alleged that since it is the Chief Minister of the State who officiates as the Chairman of Respondent No.4; the Respondent No.4 would have had prior knowledge of the decision to declare Puttenahalli Lake as a Bird Conservation Reserve. Therefore, it is contended that the EC which has been granted without considering Puttenahalli Lake a 'protected area' should be declared null and void. It is submitted that the decision to declare the Puttenahalli Lake a Bird Conservation Reserve would lie with the Department of Environment and Forests ***(Respondent No.3)*** whilst the Respondent No.4 comes under the direct control of the Energy Department of the State of Karnataka. Therefore, the Respondent No.4 would not have been party to the process of identifying, studying and declaring Puttenahalli Lake as a Bird Conservation Reserve. Further the Lake had not been notified as a Bird Conservation Reserve as on the date on which the application for Environmental Clearance was made by the Respondent No.4.

19. **The Project of the Respondent No.4 was exempt from having to conduct a Public Consultation:** It is submitted that the SEIAA vide its letter dated 19/01/2015 had exempted the project from having to conduct a public consultation as per Section 7(III) (i) (b) of the EIA Notification. Section 7(III)(i)(b) exempts all projects or activities located within industrial estates or parks approved by the concerned authorities, from having to undertake Public Consultation for the Project. It is submitted that

the Power Plant has been set up at the site of a previously existing diesel based power plant in a Karnataka Industrial Area Development Board (KIADB) notified Industrial Area. This was considered by the SEIAA whilst exempting the Project from the Public Consultation. The EC was accorded to the above project on 01/09/2015 and the same was advertised on 6th and 8th Sept 2015 as per the directions of SEIAA, vide General Conditions No-11 of the EC letter. The Ministry of Environment and Forests thereafter issued an Office Memorandum No..J-11013/36/2014-IA-1 dated 04/04/2016 stating that large scale projects even thermal projects in Industrial areas would not be exempt from holding Public Consultations. It is submitted that the Office Memorandum dated 04/04/2016 was issued the year after the EC was obtained.It is further submitted that a plain reading of the EIA notification along with the Office Memorandum clearly shows that the Office Memorandum issued is in the nature of an amendment to the EIA notification,2006 making an exception previously available to certain industries, unavailable thereon and is clearly in the nature of an amendment to the same. Therefore, the Office Memorandum would only apply prospectively and not retrospectively to projects which have already received Environmental Clearances pursuant to the exemption under the EIA Notification,2006.

20. **The Respondent No.4 has provided no false and misleading information in the Application for EC or the EIA Report:** There is no false and misleading information provided by the Respondent No.4 in the Application for Environmental Clearance submitted by it on 20/12/2014. As mentioned above, the Respondent's Power Plant was rightly categorised as a 'Category B' Project and did not attract the General Conditions of the EIA Notification, 2006. It is submitted that on the date on which the said application was submitted to the SEIAA,i.e. on 20/12/2014, the Puttenahalli Lake had not been notified as a Bird Conservation Reserve. In fact, the lake had not been notified as Bird Conservation Reserve till even after the Environmental Clearance was issued to the Respondent No.4, therefore, there was no notified eco-sensitive area that was required to be declared by

the Respondent No.4 in the Application. The Project of the Respondent No. 4 is established in a previously existing industrial zone and the Respondent No.4 has been obtained all required permissions and clearances required for the Project. Respondent No.4 has not utilised any forest land for the construction of its power plant, the same was only used for plantation purposes.

21. The Appellant has chosen to extract and rely on only certain paragraphs of the EIA Report without considering it in its entirety. There is no contradiction where the Respondent No.4 has stated that there are no Sanctuaries, National Parks, Biosphere reserve and migratory routes that have occurred in the study area of the EIA Report, because at the time there were no such notified areas within the study area. A further reading of Section 5.6.3 of the EIA Report, following the portion extracted by the Appellant in the Appeal ***(Para 28 of the Appeal)*** states that even though the Yelahanka Lakes were once breeding grounds for certain birds, due to large scale urbanisation and release of untreated domestic waste, the bird population visiting the lakes have dwindled and now only local species are seen therein.

22. Further, while mentioning the possible impacts of Respondent's project on the lakes, the EIA Report specifically states that there will be a negligible impact on the air environment of lakes as the maximum concentration of NOx, SO2 and particulate emissions from the site will be negligible. The EIA Report also states that only treated water will be released into the lake from the Project; however, presently, the Respondent No.4 will not be making any discharge of effluents, treated or otherwise, into the lake pursuant to the Zero Liquid Discharge condition imposed by the KSPCB. Further the EIA report states that the proposed project will not have any effect on the soil quantity as well as sediment quality and it will not generate any solid waste. The Appellant has conveniently chosen to ignore these findings of the EIA Report for its own malafide purposes.

23. **Environmental concerns with respect to Establishment of the Power Plant in the vicinity of an Eco-sensitive Zone and residential areas-**

a) It is submitted that Respondent No.4 has undertaken several steps to ensure that the lake eco-system is preserved. In order to do so, Respondent No.4, through its MoEFCC approved consultant, has studied the lake eco-system extensively while drawing up the EIA Report. The EIA report is a comprehensive document and has considered the impact on the environment and wildlife in the surrounding areas due to the establishment of the Power Plant.There will be no negative effect on the birds and their migratory patterns from the heat, air, light and noise generated from the Power Plant. The EIA Report also recommends an Environment Management Plan which is presently being followed by the Respondent No.4.

b) With respect to the contention of the Appellant that, Gas Based Combined Cycle Power Plants are declared a polluting activity as they have been classified as RED category industries (industries with pollution score of 60) according to the 2016-Re-classification of industries by the CPCB, and should therefore not be established near an eco-sensitive zone; it is submitted that the very purpose of the re-categorization of industries by the CPCB was to list non-polluting or "White industries" who would not have to obtain an Environmental Clearance, and that they would be encouraged and given more help in obtaining finance from lending institutions. The new categorization studied the pollution potential of industries to ensure that industries are established in a manner consistent with environmental objectives.

c) With respect to the contention, that MOEFCC has issued guidelines dated 09/02/2011 which states that there is a necessity of eco-sensitive zones which act as shock absorbers and transitory zones for protected areas and that Gas based combined cycle power plants are a red category industry and an activity having a big environmental footprint under the

EIA Notification; it is submitted that the Respondent No.4 has followed all prescribed rules in obtaining the EC and the same would not come into the teeth of the Guidelines as the industrial site in which the Power Plant is located was pre-existing and was not being set up in the vicinity of the Puttenahalli Lake.It is submitted that the area in which the Power Plant was set up was a notified industrial area. Prior to the establishment of the Combined Cycle Power Plant using Natural Gas, there was a Diesel power plant at the site. The latter was shut down and a more ecologically friendly Natural Gas based power plant has now been set up in its place. The Diesel based Power Plant was set up as early as 1993. It is submitted that at the time when the DG Plant was established, there was very little development in the area and the area was purely industrial. The area where the DG Plant was located was initially completely isolated and the city grew over the years and due to lack of residential spaces within the vicinity of the city, lands in industrial areas were sought to be utilized for the same. Thereafter, as the city of Bangalore expanded more residences were set up around the industrial area. A copy of the CDP map showing the industrial area surrounded by recent residential development (***Annexure R-16 of the Counter Statement at Pg 756)*** The Puttenahalli Lake is currently fed by rainwater and from STP effluent discharges from the surrounding apartments. The same came to be notified as Bird Conservation Reserve only as recently as 10/09/2015.

d) The Environmental Clearance had been granted to the Respondent No.4 even before the Puttenahalli Lake was notified as an 'eco-sensitive zone' and therefore the requirement to obtain permission from the National Board of Wildlife would not apply. Hence there was no illegality committed by the SEIAA in issuing the Environmental Clearance to the Respondent No.4 without consulting the National Board for Wildlife.

e) Further the watershed area of the two lakes and the hydrology of the region is not affected. The concrete box drain established by Respondent No.4 was done at the behest of the BBMP as the storm water drain was

filled with sewage and the same was spilling out from the storm water drain into the surrounding areas. The BBMP had suggested that a bund be constructed and storm water be diverted into the water body by deepening the drain so that the remaining areas on both sides of the drain could be developed into a Green Area. ***(Annexure R-18 at Pg 760-761 of the Counter Statement)*** It was in view of the request of the BBMP and recommendation of the EIA report that the Respondent No.4 proceeded to construct the box drain. In any case, as per the recommendations of the Committee constituted by this Tribunal in OA 57/2017, no new structures, changing of existing wetland by removing or adding to existing flora and fauna, will be done by the Respondent No.4 without the consultation of the Chief Wildlife Warden. Further, in order to protect and conserve the wetland, the Respondent No.4 is undertaking studies on the restoration of the wetland and to implement restoration measures in consultation with the Department of Forest, Ecology and Environment, Government of India.

f) With respect to any concerns regarding discharge of effluents into the water bodies, it is submitted that as per the Consent for Establishment letter issued by the Karnataka State Pollution Control Board ("KSPCB"), dated 02/11/2015, and the EC issued by the SEIAA, the treated effluents conforming to the prescribed standards will be recirculated and reused. Therefore the waste water generated in the Power Plant will be used within the Plant itself. The Respondent No.4 is also establishing an Ozonisation plant for water treatment instead of chlorination treatment in the Power Plant at an additional cost of Rs.8 crores to pre-empt any environmental hazards that may be caused by chlorine leakage. The Respondent No.4 will be strictly following the condition of Zero liquid discharge as required by the KSPCB in the CFE letter dated 02/11/2015.The Respondent is presently installing a ZLD Plant with the Premises. ***(at Annexure 20 at Pg 764 of the Counter Statement)***

g) The Respondent No.4 is taking all required steps for developing the greenery around the lake. It is submitted that 33 percent of the total area of the Power Plant site has been reserved for tree plantation. Respondent No.4 has already taken steps towards plantation of trees in the area in 2 phases. The Respondent No.4 has already planted 1000 tree saplings in the first phase of plantation and has completed planting 1000 more tree saplings in the second phase. The same is concentrated on the North Western boundary where the residences are located. Species planted include Mahogany, Neem, Akashmallige, Kodamba and Ashoka. Six Acres of Plantation has been done. ***(Annexure R21 and R21 at Pg 780 of the Counter Statement)***

h) With respect to the contention that the Power Plant will exceed the noise levels of around 85 dB(A) while the prescribed noise levels are less than 55 dB(A) for residential areas and 45 dB(A) during night times for residential areas; it is submitted that the Respondent No.4's Power plant is clearly located within a pre-existing Industrial Zone and would only be required to maintain the noise levels specified for such a zone. It is submitted that the surrounding residences and residential complexes have been established only fairly recently. Notwithstanding the above, it is only the turbine and Gas Booster Compressor ***("GBC")*** within the Gas power plant that would generate 85 dB(A) when measured at a distance of 1 metre from the gas turbine itself. It is submitted that the sound would decrease significantly as the distance from the turbine is increased. Additionally, Respondent No.4 is taking steps to install acoustic enclosures/barriers within the gas turbine building, to minimise the sound escaping from the same.The distance between boundary of the Power Plant and the equipment (gas turbine) would be more than sufficient distance for the sound to dissipate significantly. Respondent No.4 is also installing acoustic enclosures and natural barriers by planting a 15 to 20 metre wide buffer zone of trees all along the compound wall to further decrease the sound levels below the specified norms from all the equipment installed within the plant boundary. Further, with respect to the monitoring and reduction of Noise generated

from the Power Plant, as per the recommendations of the Committee set up by this Tribunal in OA 57/2017, the Respondent No.4 along with the KSPCB has surveyed and identified 3 (three) locations along the northern boundary (towards where the residences are located) which have been finalised for noise monitoring. A tender is being issued for installation of Noise Monitoring Stations and the measured Noise Levels from the Noise Monitoring Stations will be interfaced with the Day and Night visible Data Display System in front of the main gate of the Power Plant so that Noise Levels will be displayed to the public. There will also be a provision for data transfer of the Noise Levels to the KSPCB server from the Noise Monitoring Station. The Respondent No.4 will also be undertaking further noise mitigation measures by appointment of a specialised consultant who will advise on the same. A tender is being issued for this purpose. It is further submitted that the noises described by the Appellant at the Plant, is likely caused due to the commissioning of machinery and once the Power Plant is completely commissioned the Noise generated from the Plant will significantly reduce.

i) With respect to the contention that the environmental impact of M/s GAIL putting up a pipeline from the outer ring road till the proposed plant site has not been evaluated so far; it is submitted that the Respondent No.4 entered into an agreement with M/s GAIL (India) Limited for supply of Natural Gas to the Power Plant. It is submitted that the M/s GAIL (India) Limited herein has built a pipeline from Dabhol to Bangalore extending for about 1000 kms. Only a small part of the pipeline i.e., from the outer ring road to Respondent No.4's power plant of 12.55 kms has been constructed within the city limits. The pipeline and its impact has been studied and Respondent No.4 has been assured that precautions have been taken to make sure that the transmission of the natural gas would be safely done by M/s GAIL (India) limited. It is pertinent to mention that underground gas pipelines are in fact being laid across the city of Bangalore for the supply of

Natural Gas to residences and residential apartments within the City. It is submitted that the gas pipeline is constructed with technology that detects any leakage of the gas and the supply of gas through the pipelines will be shut off immediately preventing any disasters. Therefore, adequate safeguards have been deployed for the same. M\s GAIL has safely and successfully executed similar pipelines in the metros like Delhi, Mumbai, and Chennai, to meet the domestic/ Industrial/ automobile requirements.

j) With respect to stack height and emissions, the Respondent No.4 has increased the chimney height to 58.5 mts, in consideration of the health concerns of the neighbouring residents at an additional cost of 3.3 crores. Further, as Natural gas is being used for this project, i.e. NOx, SOx and particulate matter emissions would be low and within the limits prescribed by Central Pollution Control Board.

k) It is submitted that this Hon'ble Tribunal has by way of its Order dated 19/08/2020, appointed a Joint Committee in OA 57/2017 to give a factual finding on certain questions raised by the Tribunal. The Committee so appointed has made a site visit and has dealt with all the questions upon which they were to give a factual finding in the report. The Joint Committee examined the compliance status of EC conditions and Consent for Operation order and observed that no violations have been committed by the Respondent No.4. The Committee has also observed that as per the documents / monitoring reports on air, water and noise, the construction phase has not caused any environmental degradation. The Committee also observed that NOx SOx and heat emissions from the plant would extremely low and that there would be no discharge of effluents from the plant into the lakes.

24. **The Puttenahalli and Yelahanka Lakes are being polluted by the establishments and residences in the surrounding areas:** It is submitted that several establishments surrounding the Puttenahalli and Yelahanka

lakes have been unauthorizedly discharging untreated sewage water and solid waste into the lakes, thereby polluting the environment of the lake and affecting the flora and fauna of the lakes. In the proposal for declaration of Puttenahalli Tank Area as Bird Conservation Reserve ***(Annexure A2 of the Appeal)***, the Deputy Conservator of Forests has observed that, *"At present the Veerasagara, Ramagondanahalli and Kempanahalli tanks are dry and have not impounded any water over the last five years due to poor monsoons. As a result, there is no inflow of freshwater into the Puttenahalli Tank. A 2ft diameter pipeline empties sewage from the Yelahanka New Town Housing Board Colony and Attur Layout areas into the lake. Besides this, sewage from the nearby housing complexes mainly Ramanashree California Resorts and Prestige Monte Carlo Apartments flow into the tank on its North Eastern Corner via a drain found along the road. Similarly, another small drain brings in more sewage from the BMTC Bus Depot side.* ***(Annexure A2 at Pg 111-112 of the Appeal)*** It is further submitted that some of the residential complexes do not have Sewage Treatment Plants (STP) for the treatment of effluents as is mandated by law.

25. Also, the MoEFCC in its study ***(Annexure A-8 of the Appeal at Pg 204)*** finds that *"Once pristine, the Puttenahalli Lake has almost dried up at present albeit waterways (pipelines) seen(along the eastern boundary) bringing in sewage from the surrounding areas."* It further finds that *"In addition, it appears that the area has undergone extensive change in land use pattern (Fig 1 to4) in recent times(including laying of roads along sides of Yelahanka Lake in 2012-13) that might have brought about alteration in the supply of required water to the wetland. Factors like soil type, management history, climate and soil landscape had possibly played considerable role as well in debilitating the eco-system.* ***(at Annexure A-8 of the Appeal at Pg 205)***

26. The Committee constituted by this Hon'ble Tribunal in OA 57/2017 has also observed that factors like laying of roads along sides of the Yelahanka Lake might have brought about alteration in the supply of required quantity

of water to the wetland and lead to debilitating the ecosystem of the Puttenahalli Lake.

27. Further the EIA Report produced by the Respondent No.4 also states that, *"Due to large scale urbanisation and release of untreated urban domestic waste, the bird population visiting these lakes has dwindled and now only local species like night herons, purple herons, pond herons, egrets are seen extensively."* ***(Annexure R7 of the Counter Statement, at Pg 343)***

28. It is submitted that the eco-system of the Puttenahalli Lake has already been debilitated. The Respondent by a cultivating a Green Belt and undertaking various other restoration and conservation methods will in fact be ensuring that the eco-system of the surrounding areas are restored and maintained.

29. The Respondent No.4's Power Plant is located within an industrial area having several functioning industries including the Rail Wheel Factory and Federal Mogul Factory. The Puttenahalli Lake is surrounded by apartments complexes and residences who have clearly been found to be polluting the said Lake. The Power Plant of the Respondent No.4 was not found to have caused any environmental damage by the Committee set up by this Tribunal in OA 57/2017. The Committee has also found that there is no significant negative impact of setting up the said Power Plant. However, the Appellant has chosen to focus its attention solely on the Respondent No.4, despite the presence of several polluters in the area, due it its own malafide reasons.

30. **Significance of the Respondent No.4 Power Plant :** It is submitted that citizens of Bengaluru and the industrial areas of Bengaluru have been suffering due to chronic shortage of power, especially during the summer months. Further, Bengaluru consumes more than 40% of the power generated in the State of Karnataka. Currently, power generated in far off places is being transmitted to Bengaluru which results in transmission losses as well as deprivation of power to other parts of Karnataka. The Power plant will enable Respondent No.4 to cater to the domestic and industrial needs of the state and particularly to the peak load demand of the

rapidly developing city of Bangalore. It is further submitted that the Power Plant is extremely essential for the stabilisation of the State Power Grid of Karnataka. Respondent No.4 is presently using renewable sources of energy such as solar and wind etc. for the generation of power. However, as these sources are undependable/ not consistent there is a requirement to have a dependable source of power which can be ramped up to balance the grid when these sources are disrupted and there is a variation of load. The Power Plant would therefore greatly improve the flexibility of the Power Grid by providing electricity to tide over any shortfall that may arise due to temporary non-availability of renewable sources of energy. Further, Gas turbines have a special feature of fast start ups by which the unit is synchronized in a short time. This will clearly stabilize the grid in case of tripping of other power stations connected to a single grid in case of emergency. Therefore, the Power Plant is extremely important for the generation of power within the State of Karnataka as it will be the primary source of power to the city of Bangalore. The Respondent No.4 submits that the estimated cost of the project was Rs. 2022.52 crores of which Rs. 1518.90 Crores has already been spent so far. All civil works at the Power Plant have been completed, and the Power Plant is presently being commissioned. Any hinderances to the Project at this late stage would be a severe setback for electricity generation and development in the State of Karnataka.

31. The Respondent No.4 prays for the leave of this Tribunal to raise additional grounds and additional citations in support of its case, at the stage of oral arguments.

Wherefore, it is prayed that the instant Appeal be dismissed with costs, in the interests of Justice and Equity.

Date: 22/10/2021

Place: Bangalore

Advocate for the Respondent No.4

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(2016) 15 Supreme Court Cases 726

(BEFORE T.S. THAKUR AND VIKRAMAJIT SEN, JJ.)

Civil Appeal No. 2918 of 2014†

MUNICIPAL CORPORATION OF GREATER MUMBAI, THROUGH COMMISSIONER .. Appellant;

Versus

ANIL SHANTARAM KHOJE AND OTHERS .. Respondents.

With

Civil Appeal No. 2919 of 2014‡

RAM B. DHUS .. Appellant;

Versus

ANIL SHANTARAM KHOJE AND OTHERS .. Respondents.

Civil Appeals No. 2918 of 2014 with No. 2919 of 2014, decided on February 28, 2014

Service Law — Recruitment Process — Norms/Principles/Rules applicable — Date from which rules come into force/commence/become operative — Publication of rules in Official Gazette, stipulating eligibility/criteria (for post of Deputy Municipal Commissioner) — Necessity

— Held, rules become operative only from date of their promulgation by publication in Official Gazette i.e. from 28-4-2011, in present case — Promotions made prior thereto under rules concerned cannot be given effect to — Further held, publication of rules in Official Gazette is also mandatory in terms of S. 23 of 1904 Act — However, on facts directed that promotions given to R-1 & R-5 (already retired) and one *P* (still continuing) prior to 28-4-2011 along with consequential and other benefits not to be altered to their detriment — Bombay General Clauses Act, 1904 (1 of 1904) — S. 23 — Mumbai Municipal Corporation Act, 1988 — Ss. 80-B(4) & (5) and S. 55 — Administrative Law — Subordinate/Delegated Legislation — Commencement/Coming into force of — General Clauses Act, 1897, S. 23 (Paras 13 to 15)

Harla v. *State of Rajasthan*, AIR 1951 SC 467 : (1952) 53 Cri LJ 54 : 1952 SCR 110; *B.K. Srinivasan* v. *State of Karnataka*, (1987) 1 SCC 658; *I.T.C. Bhadrachalam Paperboards* v. *Mandal Revenue Officer*, (1996) 6 SCC 634; *Sammbhu Nath Jha* v. *Kedar Prasad Sinha*, (1972) 1 SCC 573 : 1972 SCC (Cri) 337; *S.K. Shukla* v. *State of U.P.*, (2006) 1 SCC 314 : (2006) 1 SCC (Cri) 366; *Rajendra Agricultural University* v. *Ashok Kumar Prasad*, (2010) 1 SCC 730; *Babu Verghese* v. *Bar Council of Kerala*, (1999) 3 SCC 422; *Taylor* v. *Taylor*, (1875) LR 1 Ch D 426; *Nazir Ahmad* v. *King Emperor*, (1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253(2), *followed*

Anil Shantaram Khoje v. *Municipal Corpn. of Greater Mumbai*, (2010) 2 Bom CR 123, *partly allowed/considered*

† Arising out of SLP (C) No. 15868 of 2010. From the Judgment and Order dated 7-10-2009 of the High Court of Judicature at Mumbai in Writ Petition No. 2191 of 2008

‡ Arising out of SLP (C) No. 12985 of 2011

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Ram B. Dhus v. *Anil Shantaram Khoje*, SLP (C) No. 12985 of 2011, order dated 1-7-2011 (SC). *referred to*

P-D/52956/SL

Advocates who appeared in this case :

Pallav Shishodia, Atul Y. Chitale and P.P. Rao, Senior Advocates (Ms Sanyukta Mukherjee, Ms Jayati Chitale, Ms Suchitra Atul Chitale, J.J. Xavier, Ms U. Deshpande, S.N. Pillai, E.C. Vidya Sagar, Ms Kheyali Sarkar and Akshat Kulshreshtha, Advocates) for the Appellants;

Shankar Chillarge, Additional Government Advocate (State of Maharashtra), T.R. Andhyarujina, P.S. Patwalia and Pallav Shishodia, Senior Advocates (Susheel Mahadeshwar, Uday B. Dube, Soumik Ghosal, E.C. Vidyasagar, Amit Yadav, Ms Sujata Kurdukar, Atul Y. Chitale, Ms Sanyukta Mukherjee, Ms Jayati Chitale, Ms Suchitra Atul Chitale, J.J. Xavier, Ms U. Deshpande, Ms Asha G. Nair, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. SLP (C) No. 12985 of 2011, order dated 1-7-2011 (SC), *Ram B. Dhus* v. *Anil Shantaram Khoje* 727*f-g*
2. (2010) 2 Bom CR 123, *Anil Shantaram Khoje* v. *Municipal Corpn. of Greater Mumbai* 729*a*, 731*f-g*
3. (2010) 1 SCC 730, *Rajendra Agricultural University* v. *Ashok Kumar Prasad* 730*g*
4. (2006) 1 SCC 314 : (2006) 1 SCC (Cri) 366, *S.K. Shukla* v. *State of U.P.* 730*f*
5. (1999) 3 SCC 422, *Babu Verghese* v. *Bar Council of Kerala* 731*d-e*, 731*e-f*
6. (1996) 6 SCC 634, *I.T.C. Bhadrachalam Paperboards* v. *Mandal Revenue Officer* 730*c-d*
7. (1987) 1 SCC 658, *B.K. Srinivasan* v. *State of Karnataka* 730*a-b*
8. (1972) 1 SCC 573 : 1972 SCC (Cri) 337, *Sammbhu Nath Jha* v. *Kedar Prasad Sinha* 730*e-f*
9. AIR 1951 SC 467 : (1952) 53 Cri LJ 54 : 1952 SCR 110, *Harla* v. *State of Rajasthan* 729*f-g*
10. (1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253(2), *Nazir Ahmad* v. *King Emperor* 731*e-f*
11. (1875) LR 1 Ch D 426, *Taylor* v. *Taylor* 731*d-e*

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J.— Leave granted in both these petitions. Although interim orders have not been granted in the appeal arising out of SLP (C) No. 15868 of 2010, in the accompanying matter it had been ordered on 1-7-2011[1] that any promotion that may be made would be subject to the result of the petition.

2. The writ petitioners before the High Court of Bombay were working in Municipal Corporation of Greater Mumbai as Assistant Municipal Commissioners and had prayed that their promotion to the vacant posts of Deputy Municipal Commissioner may be effected in accordance with the

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1 *Ram B. Dhus* v. *Anil Shantaram Khoje*, SLP (C) No. 12985 of 2011, order dated 1-7-2011 (SC), wherein it was directed:

"Any promotion will be subject to the result of the special leave petition. IA No. 2 is disposed of."

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Rules framed under the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the MMC Act"). The relevant provisions are Sections 55 and 80-B of the MMC Act. Section 55 authorises the Corporation to appoint Deputy Municipal Commissioner subject to confirmation by the State Government whereas sub-section (4) of Section 80-B of the MMC Act requires the Corporation to frame Rules stipulating the eligibility and qualification criteria for the post of Deputy Municipal Commissioner in Mumbai Municipal Corporation; sub-section (5) thereafter requires the Rules so framed to be published in the Official Gazette.

3. It appears that the previous Rules were framed in the year 1988 and were duly published in the Official Gazette on 18-8-1988, according to which the post of Deputy Municipal Commissioner was to be filled in by way of promotion from the post of Heads of Major Departments (hereinafter referred to as "HoDs") or holders of equivalent posts having administrative experience of not less than ten years or Ward Officers on the one hand and by selection through the Maharashtra Public Service Commission on the other in the ratio of 1:1, the vacancies being filled in by promotion and selection alternatively. The roster points indicated in the Rules were: A/C/B/C/A/C (A — promotion of Ward Officer, B — promotion from HoDs, and C — selection through MPSC). It was further clarified that the appointing authority will decide whether the post earmarked for promotion is to be filled in by promoting HoD or Ward Officer.

4. Thereafter, the Corporation proposed modifications in the then existing Rules in terms of Resolution No. 531 dated 21-9-2000, which were duly submitted to the State Government for according its approval. The State Government, however, neglected to grant sanction to the said resolution and as a consequence the Commissioner addressed a Letter dated 19-8-2003 to the Corporation suggesting other modifications in the Rules relating to promotions. These suggested amendments came to be approved by the Corporation leading to the passing of Resolution No. 752 dated 20-11-2003 amending the then existing Recruitment Rules and these were then forwarded to the State Government for its approval. The State Government accorded its approval with certain modifications with respect to the chronology to be followed in the roster and appointment by way of deputation/transfer, unfortunately, almost three years later vide its Letter dated 4-10-2006. The said resolution required 75% of the said posts to be filled in by promotion from the Assistant Municipal Commissioners/Ward Officers and 25% to be filled in by promotion of HoD, direct recruitment or by deputation. The roster fixation indicated that the first and second vacancy has to be filled in by promotion from amongst Assistant Municipal Commissioners whereas the third vacancy would be filled up by promotion of HoDs or direct recruitment or by deputation and the fourth vacancy would go to the Assistant Municipal Commissioner and so on and so forth.

5. The petitioners before the High Court, namely, Shri Anil Shantaram Khoje and Shri Prakash Krishnarao Thorat who are the contesting respondents before us, were holding the post of Assistant Municipal Commissioners. Shri Ram B. Dhus was holding the post of HoD, and has filed the present

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appeal along with Mumbai Municipal Corporation for the reason that the impugned judgment dated 7-10-2009[2] has allowed the writ petitions, directing Mumbai Municipal Corporation to effect promotions to the post of Deputy Municipal Commissioner strictly in accordance with Resolution No. 752 dated 20-11-2003, sanctioned by the State Government in terms of its Letter dated 4-10-2006 and the roster point determined therein. We clarify that Shri Ram B. Dhus was the seniormost amongst HoDs, whilst the writ petitioners are Shri Anil Shantaram Khoje and Shri Prakash Krishnarao Thorat, who belonged to the cadre of Assistant Municipal Commissioner/Ward Officer. These two respondents, we reiterate, had sought issuance of directions to Mumbai Municipal Corporation to fill in the 16 vacant posts of Deputy Municipal Commissioner according to the modified Rules i.e. by assigning 75% quota for Assistant Municipal Commissioners/Ward Officers and 25% to the other categories. Prior to the gazetting of the extant Rules that came to be gazetted on 28-4-2011, the Corporation had promoted three persons to the post of Deputy Municipal Commissioner including Shri Anil Shantaram Khoje (contesting Respondent 1) and Shri Babusaheb Pandurang Kolekar (contesting Respondent 5).

6. It also requires to be elucidated that Shri Ram B. Dhus was promoted as Deputy Municipal Commissioner on 16-8-2013. Under the old Rules, ten years' experience in the post of Head of Department was required as eligibility for promotion to the next higher post of Deputy Municipal Commissioner whereas in the subsequent Rules, this eligibility had been lowered by three years, now requiring only seven years' experience. When the writ petitions came to be filed before the High Court, Shri Ram B. Dhus did not possess the stipulated ten years' experience.

7. Shri Ram B. Dhus and the Corporation submit in these appeals that the modified Rules would become operative not from the date on which they were sanctioned by the State Government vide Letter dated 4-10-2006, but from the date of their publication in the Official Gazette as required by law and as specifically stipulated in Section 80-B(5) of the MMC Act.

8. The opinion of the High Court is that the publication in the Official Gazette was not mandatory, but only desirable or directory. A plethora of precedents prevails on this vexed question which continues to exhaust judicial time.

9. In *Harla* v. *State of Rajasthan*[3] the Court's conscience appears to have been shocked by the

> "thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere

2 *Anil Shantaram Khoje* v. *Municipal Corpn. of Greater Mumbai*, (2010) 2 Bom CR 123
3 AIR 1951 SC 467 : (1952) 53 Cri LJ 54 : 1952 SCR 110

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passing of a resolution without anything more is abhorrent to civilised man". (AIR p. 468, para 8)

However, what this Court was confronted with in that case was the failure of the publication of the Jaipur Opium Act, which led to the conviction of the petitioner. It can certainly be argued that imposition of criminal liability is not akin to provisions determining the eligibility for promotions.

10. In *B.K. Srinivasan* v. *State of Karnataka*[4] this Court was concerned with the Outline Development Plan and Regulations pertaining to the construction of high-rise buildings in one of the residential extensions of Bangalore. This Court observed that it is necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, regardless of whether the statutes so prescribed, the subordinate legislation would then take effect only from the date of publication. However, a caveat was articulated to the effect that where subordinate legislation is concerned only with a few individuals or is confined to small local areas, publication or promulgation by other means may meet the mandates of law.

11. In *I.T.C. Bhadrachalam Paperboards* v. *Mandal Revenue Officer*[5] the question was whether the petitioner assessee could claim the exemption from payment of tax on non-agricultural land assessment by virtue of one GOM issued by the Government, but which had not been published or notified at the relevant point of time in the Official Gazette. This Court declined to grant the benefits of the exemption to the assessee holding that that provision would have to be implemented only when finality is attached to it which would be contemporaneous to its publication in the Official Gazette; that the dissemination of the substance of the exemption in the newspapers or in other media was irrelevant. Reference was made to Section 83 of the Evidence Act. The Court did not agree that such publication was only a directory requirement and accordingly a dispensable one and reiterated the observation earlier made in *Sammbhu Nath Jha* v. *Kedar Prasad Sinha*[6], which is to the effect that publication in the Official Gazette "is an imperative requirement and cannot be dispensed with". This view further finds adoption in *S.K. Shukla* v. *State of U.P.*[7], wherein the Court was concerned with unauthorised possession of arms and ammunitions under the Prevention of Terrorism Act, 2002. It was observed by this Court that the notification notifying the State of U.P. as a notified area, thereby prohibiting and criminalising possession of certain arms in the notified area under Section 4(*a*) of the Prevention of Terrorism Act, 2002, would become effective from the date of its publication and reasserted that publication is essential as it affects the rights of the public.

12. *Rajendra Agricultural University* v. *Ashok Kumar Prasad*[8], is directly relevant to the conundrum before us inasmuch as it pertains to promotions

4 (1987) 1 SCC 658
5 (1996) 6 SCC 634
6 (1972) 1 SCC 573 : 1972 SCC (Cri) 337 : 1973 Cri LJ 453
7 (2006) 1 SCC 314 : (2006) 1 SCC (Cri) 366
8 (2010) 1 SCC 730

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in the university, in contradistinction to criminal culpability. Even in those circumstances, this Court had opined that publication in the Official Gazette was a mandatory requirement, although the statute in question providing for a time-bound promotion scheme was assented to by the Chancellor, and pursuant to which a notification was also issued by the petitioner university. The respondents made a failed attempt to distinguish a legislation imposing obligations or creating liabilities from those intended to benefit a specific and limited class of persons inasmuch as publication would be a mandatory requirement in the former case while directory in the latter. The Court disagreeing with the proposition held that the fact that a particular statute may not concern the general public, but may affect only a specified class of employees, is not a ground to exclude the applicability of the mandatory requirement of publication in the Official Gazette in the absence of any exception included in the statute itself.

13. It is relevant for us to mention Section 23 of the Bombay General Clauses Act, 1904, which provides thus:

> "**23.** ***Publication of orders and notifications in the Official Gazette to be deemed to be due publication.***—Where, in any Bombay Act (or Maharashtra Act), or in any rule passed under any such Act, it is directed that any order, notification or other matter shall be notified or published, then such notification or publication shall, unless the enactment or rule otherwise provides, be deemed to be duly made if it is published in the Official Gazette."

14. We are immediately reminded of the observations made in *Babu Verghese* v. *Bar Council of Kerala*[9], when this Court was called upon to consider a case under the Advocates Act. While doing so, we applied the principles earlier enunciated in *Taylor* v. *Taylor*[10] and in *Nazir Ahmad* v. *King Emperor*[11]. The Court observed as follows: (*Babu Verghese case*[9], SCC p. 432, para 31)

> "*31.* It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all."

15. In this conspectus we find ourselves unable to accept the position favoured by the High Court in the impugned judgment[2]. The extant Rules would become operative only from the date of its promulgation by publication in the Official Gazette i.e. on 28-4-2011. Promotions made prior to 28-4-2011 under the extant Rules promoting Shri Anil Shantaram Khoje (contesting Respondent 1), Shri B.P. Kolekar (contesting Respondent 5) and Shri P.J. Patil to the post of Deputy Municipal Commissioner could not have been effected in the absence of publication of the extant Rules in the Official Gazette. We

9 (1999) 3 SCC 422 : (1999) 1 SCR 1121
10 (1875) LR 1 Ch D 426
11 (1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253(2)
2 *Anil Shantaram Khoje* v. *Municipal Corpn. of Greater Mumbai*, (2010) 2 Bom CR 123

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note that Shri Anil Shantaram Khoje and Shri B.P. Kolekar have already retired from the post of Deputy Municipal Commissioner while Shri P.J. Patil who was promoted on 5-7-2010 to the post of Deputy Municipal Commissioner, is still holding the post. Being mindful of the fact that their promotion and retiral and other consequential benefits would be adversely impacted by our judgment, we direct that the promotion effected prior to 28-4-2011 and consequential retiral and other benefits should not be altered to their detriment.

16. We, however, uphold the view of the High Court that, keeping the nature of the reliefs in the writ petition in perspective, the roster has to be determined by Mumbai Municipal Corporation in accordance with the extant Rules and all officers concerned would then be entitled to challenge the fixation, if they are aggrieved and if so advised.

17. The appeals are allowed in the above terms, leaving all the parties to bear their respective costs.

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of the Act on the goods which are already cleared. The Port Trust being a body corporate constituted under the Act is entitled to be heard by the court before any order which affects its interests prejudicially is passed. This case serves as an illustration to what is stated above. The Port Trust has been asked to permit the clearance of goods in respect of which demurrage charges of Rs 3,53,514·75 are payable in the event of respondent 1 being held liable in law to pay the full demurrage charges. The orders passed by the High Court in the proceedings to which the Port Trust was not a party which had the effect of prejudicially affecting the interests of the Port Trust would not be binding on it in view of the violation of the principles of natural justice. The High Court erred in not imposing any condition on respondent 1 for protecting the interests of the Port Trust even in the writ petition to which it was a party. The impugned orders are contrary to the public notice issued by the customs authorities as well as the rules of the Port Trust.

13. Having regard to the peculiar circumstances of this case in which the goods have already been cleared, the orders of the High Court of Bombay against which these appeals are filed are, therefore, to be modified appropriately in order to protect the interests of the Port Trust. Accordingly, at the conclusion of the hearing of these appeals we passed an order on December 16, 1986 before reserving the appeals for judgment directing respondent 1 to furnish within eight weeks a bank guarantee of a nationalised bank in favour of the appellant for due payment of Rs 3,04,004·25 to the appellant on demand, without any demur, being the balance of wharfage and demurrage charges in the event of respondent 1 not succeeding ultimately in Writ Petition No. 122 of 1986 and on failure to furnish such bank guarantee within eight weeks to pay in cash Rs 3,04,004·25 to the appellant forthwith. This shall be the final order in these appeals.

14. These appeals are disposed of in the above terms. The customs authorities shall complete the adjudication proceedings as expeditiously as possible and in any event within March 16, 1987.

(1987) 1 Supreme Court Cases 658

(BEFORE O. CHINNAPPA REDDY AND G.L. OZA, JJ.)

B.K. SRINIVASAN AND OTHERS .. Appellants ;

Versus

STATE OF KARNATAKA AND OTHERS .. Respondents.

Civil Appeals Nos. 2780-81 of 1982†,
decided on January 19, 1987

From the Judgment and Order dated June 11, 1982 of the Karnataka High Court in Writ Petition Nos. 3386 and 3387 of 1981

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Town Planning — Karnataka Town and Country Planning Act, 1961 — Sections 13(4), 12, 9, 14 and 76-J — Karnataka Planning Authority Rules, 1965 — Rules 32 and 33 and Form II — Publication of Outline Development Plan and Regulations under Section 13(4) — Publication of a notice in Official Gazette inviting attention of the public to the display and availability for inspection of the Plan and the Regulations would be sufficient compliance with Section 13(4) and Rule 33 — Plan and the Regulation need not be bodily incorporated in the Gazette — Defect in form if any, in such publication would be cured by Section 76-J — Mention of the Plan and non-mention of the Regulations in the notice would not indicate that the Regulations not published — Land Acquisition Act, 1894, Sections 4 and 9

Town Planning — Karnataka Town and Country Planning Act, 1961 — Section 13 — Outline Development Plan and Regulations are not distinct

Held :

Section 13(4) contemplates, besides permanently displaying the plan and the particulars in the offices of Director and Planning Authority and keeping available a copy for the inspection of the public at the office of Planning Authority, publication of a public notice in the Official Gazette that the Plan and Regulations are permanently displayed and are available for inspection by the public with a view to invite comments from the public. What was published in the present case under Section 13(1) was also a notice in Form No. II and not the whole of the Plan and particulars. There was compliance with the requirements of Section 13(4) and Rule 33. **(Para 16)**

Shalagram Jhajharia v. National Co. Ltd., (1965) 35 Com Cas 706 (Cal); Firestone Tyre & Rubber Co. v. Synthetics & Chemicals Ltd., (1971) 41 Com Cas 377 (Bom); Municipal Board, Pushkar v. State Transport Authority, Rajasthan, 1963 Supp 2 SCR 373 : AIR 1965 SC 458 and Joint Chief Controller of Imports & Exports, Madras v. Aminchand Mutha, (1966) 1 SCR 262 : AIR 1966 SC 478, distinguished

The defect in regard to the publication of the Plan in this case, if any, was cured by Section 76-J. A defective publication which has otherwise served its purpose is not sufficient to render illegal what is published. Such defect is cured by Section 76-J. The object of Section 76-J is to put beyond challenge defects of constitution of statutory bodies and defects of procedure which have not led to any substantial prejudice. **(Para 18)**

Bangalore Woollen, Cotton & Silk Mills Co. Ltd. v. Corpn. of the City of Bangalore, (1961) 3 SCR 707 : AIR 1962 SC 562 and Municipal Board, Sitapur v. Prayag Narain Saigal & Firm Moosaram Bhagwandas, (1969) 3 SCR 387 : (1969) 1 SCC 399, relied on

The mere fact that in the notice under Section 13(4) the Planning Authority only mentioned that the Plan was available for inspection at the office of the Planning Authority but made no reference to the Regulations is not suggestive of the fact that the Regulations were not made available for inspection and were never published. The Outline Development Plan and the Regulations are not distinct from each other. The reference in the four clauses of Section 13, whenever the word 'Plan' or the 'Outline Development Plan' is used, is to the core plan, without the particulars and the Regulations and not the whole of the Outline Development Plan which must include the Regulations. The different phraseology in those clauses emphasises the different

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parts of the Plan which have to be forwarded to the Government, considered by the Government, made available for inspection by the public, as the case may be and to the extent necessary. Merely because the words "and Regulations" are added to the word "Plan', the Regulations are not to be treated as not constituting part of the Plan even as when a building is sold along with the fixtures, it does not mean that the fixtures are not treated as part of the building. (Para 19)

It may be that notwithstanding the Regulations some building licences were granted in contravention of the Regulations but that only exposes the deplorable laxity of the concerned authorities and emphasises the need for greater public vigilance, but that does not show that the Plan and Regulations were non-existent. (Para 20)

Administrative Law — Subordinate legislation — Notification — Necessity of — How and when becomes effective — Publication or promulgation of notification — Mode of — Land Acquisition Act, 1894, Sections 4 and 9

Where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. (Para 15)

It is necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the 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 it 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. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient. (Para 15)

Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77, relied on

Administrative Law — Subordinate legislation — Notification — Defect in publication — If notification otherwise serves its purpose, mere procedural irregularity in publication would not render the notification illegal (Para 18)

Statute Law — Mandatory or directory — Effect of non-compliance with statutory requirement — Does not depend upon whether the statutory provision is mandatory or directory

The effect of the non-performance of a duty imposed by a statute in the manner prescribed by the statute is not discovered by a simple answer to the question whether the statute is mandatory or directory. The question whether a statutory requirement is mandatory or directory cannot itself be answered easily. (Para 17)

Liverpool Borough v. Turner, (1861) 30 LJ Ch 379, relied on

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Interpretation of Statutes — Interpretation which departs from common understanding of statute should be avoided **(Para 16)**

Appeals dismissed

R-M/7722/C

Advocates who appeared in this case :

K.S. Cooper and Dr Y.S. Chitale, Senior Advocates (Mrs P.S. Shroff, S.S. Shroff and Mrs Kiran Chaudhary, Advocates, with them), for the Appellants ;

M. Veerappa, A.K. Sharma, K.N. Singh, S.S. Javali, G.P. Shivaprakash and B.P. Singh, Advocates, for the Respondents.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J.—Bangalore was a beautiful city — once. It was a city with magic and charm, with elegant avenues, gorgeous flowers, lovely gardens and plentiful spaces. Not now. That was before the invasion of concrete and steel, of soot and smoke, of high-rise and the fast buck. Gone are the flowers, gone are the trees, gone are the avenues, gone are the spaces. We are now greeted with tall puffing chimneys and monstrous high-rise buildings, both designed to hurt the eye, the environment and the man. But they are thought by many as symbols of progress and modernity. They have come to stay. Perhaps they are necessary. Nostalgic sentiments, we suppose, must yield to modern societal requirements. Smoking chimneys produce much needed goods. High-rise buildings save much-scarce space. They have a place in the scheme of things. But where, how, to what extent, at what cost, are the questions raised by some aggrieved citizens of Bangalore. They want congestion to be prevented, population density to be controlled, lung spaces to be provided where people can breathe, existing recreational facilities to be preserved and improved, pollution and health hazards to be removed, civic and social amenities to be provided etc. All these require a balanced use of available land. It is with that object that the Mysore Town and Country Planning Act was enacted in 1961 and it is with the interpretation of some of the provisions of that Act that we are concerned in these appeals.

2. The problem and the pain have been well brought out by the Chairman of the Bangalore Urban Arts Commission (respondent 4 before the High Court) in the Chairman's response to an editorial in a local newspaper. It is extracted in the additional statement filed in the High Court by the writ petitioners. He says :

> When we speak of saving Bangalore's skyline and its cherished character, we are apt to be misunderstood even by some well-meaning citizens. Vested interests and busybodies with an easy conscience would in any case rubber-wall any consideration of argument because the present time, with the skyrocketing

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property value, is a great opportunity for them to "make hay". They would rather sell the city than dwell on its future.

We are not speaking only of the central areas of the city — even when we regard them, understandably enough as more precious than the rest of the city. Nor are we trying to guard the city's supposed "colonial solitude" which, we know, vanished many decades ago. We are not afflicted with irrational nostalgia and have no fetish about bungalows and court-yards. We are aware of the dynamics of a modern city. All that we want — and it was ably summed up in your editorial — is that we must prevent any more ugliness and haphazardness, of which we have had more than what Bangalore can take if it is to stay as the City Beautiful, with its planned spaciousness and (still) largely unclustered skyline. We also want, without any further delay, a vigilant, clearly spelt out and scrupulously honest system to ensure an orderly growth of the city, in keeping with the capacity of its services, like water supply, drainage and roads.

I entirely agree that for new areas we must provide for more density of population if we are to get adequate mileage from per capita expenditure, and if we are to release sufficient lung-spaces for recreational and community activities. In fact, we have long back suggested to City Planners to plan for self-contained and self-sufficient clusters of multiple-storey blocks, with their own plazas, shopping and recreational centres, in carefully selected locations and in keeping with the available services.

Again, there is no doubt that coverage per plot must be systematically reduced through imaginatively formulated bye-laws, if we are to continue the garden-city character of the city's new areas. It is utterly mystifying however, that such obviously valid thoughts and suggestions should end with the plea for "concentrated growth" — presumably in the central area of the city and preferably with high-rise buildings. Such growth which is bound to obliterate what we have still left of this beautiful city and put further strains on its traffic, water supply and drainage, is certainly not going to help the proletarian office-goers or house-seeker. It will serve only the big-time builder, the high-spending rich and — last but not least — the fast-buck chasing wheeler-dealers and busybodies mentioned above.

Now that the State Government has announced a clear policy in this behalf, there is no reason why we should not expect the best. This Commission has made its own contribution to the formulation of a new set of building bye-laws which aim at the much needed regulation — on fully modern lines — of this city's future

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growth, and which leave minimum scope for corruption. We hope that these will be adopted soon. We look forward to a new approach and a new era — free from the stench of corruption, innuendoes and loose talk of "motives", and characterised by future-thinking. After all, we have the City Beautiful because of the future thinking and hard work of the planners and administrators.

3. Raj Mahal Vilas Extension is a sparsely developed area of the city of Bangalore which the Bangalore Improvement Trust Board desired to develop under the provisions of the City of Bangalore Improvement Act, 1945. Land was acquired and plots were allotted to several people. A lay-out was prepared and conditions were imposed for construction of houses on the sites. The present appellants as well as the petitioners before the High Court were all of them allottees from the Improvement Trust Board. One of the conditions of allotment was that the sites were not to be sub-divided and not more than one dwelling house was to be constructed on each of the sites. Apparently multistoreyed, high-rise buildings were not within the contemplation of either the Improvement Trust Board or the allottees at the time of allotment. However, the petitioners before the High Court were dismayed to find such high-rise buildings coming up in the Raj Mahal Vilas Extension. Apprehending that there was going to be an invasion of the privacy of the residents of the locality, a disturbance of the peace and tranquillity of the residential area, an interference with basic civic amenities consequent on haphazard rise of high-rise buildings, an exposing of the residents to all manner of health hazards and interference with their way of living, a number of residents of the locality submitted a memorandum to the Governor and the Chief Minister of the State to take appropriate action to prevent the construction of high-rise buildings in a residential area such as the Raj Mahal Vilas Extension. There was no response from the authorities. In desperation, some of the persons who submitted the memorandum resorted to 'Public Interest Litigation' and filed the writ petitions out of which the present appeals arise. Their principal complaint was that the Outline Development Plan for Bangalore which had been published in the prescribed manner had been ignored by the authorities in granting permission to the appellants to construct the high-rise buildings. The first of the grounds mentioned in the writ petitions was that permits had been granted to construct eight-floor residential buildings going to a height of 80 feet whereas under the regulations the maximum permissible height of a building was only 55 feet. The inconveniences, discomforts and the hazards to which such a high-rise building in a residential locality would expose the other residents of the locality were explained in the writ petition

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and writs were sought to quash the permits granted for construction and to restrain the present appellants from constructing the eight-floor buildings and to direct them to demolish the structures already put up. There was also a prayer to require the Bangalore Urban Arts Commission to recommend to the State of Karnataka against the construction of high-rise buildings in any of the existing extensions of Bangalore. Writ Petition No. 3386 of 1981 out of which arises Civil Appeal No. 2780 of 1982 and Writ Petition No. 3387 of 1981 out of which arises Civil Appeal No. 2781 of 1982 were filed on February 25, 1981. In Writ Petition No. 3386 of 1981 an interim order was initially refused by a learned Single Judge but on appeal a Division Bench of the High Court granted an interim order restraining the appellants in Civil Appeal No. 2780 of 1982 from raising further construction. However, in the special leave petition filed by the appellants the order of the learned Single Judge was restored subject to an undertaking given by the appellants that in the event of the original writ petition being allowed and the construction being required to be pulled down, the appellants will not raise any objection and will not plead the construction during the pendency of the writ petition as a defence to the pulling down of the construction. The order of the Supreme Court was made on June 2, 1981. In W.P. No. 3387 of 1981 the High Court made an interim order on July 24, 1981 permitting the appellants in Civil Appeal No. 2781 of 1982 to proceed with the construction subject to the appellants giving an undertaking similar to the undertaking given by the appellants in the other connected appeal. We find from the judgment of the High Court that in W.P. No. 3386 of 1981 only excavation work had been done by the time of the filing of the petition and that the work was completed only after the undertaking was given to the Supreme Court. In the other case the ground floor had been constructed and pillars had been put up for the next floor when the writ petition was filed. The work was completed after the undertaking was given to the Division Bench of the High Court. We may add that again in this Court when the appellants sought interim orders to enable them to complete the construction during the pendency of the present appeals they gave an undertaking that they would complete the construction work of the fourth, fifth, sixth, seventh and eighth floors at their own risk and cost and that they will raise no objection whatever to this Court passing an order for demolition of the said floors if the court was ultimately inclined to pass such an order and that they would claim no compensation for demolition, if ordered.

4. The present appellants contested the writ petitions. The writ petitions appeared to have been argued in the first instance before a learned Single Judge who after hearing the petitions for some con-

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siderable time referred them for hearing by a Division Bench. The Division Bench commenced hearing the writ petitions on March 16, 1982 and on March 22, 1982 a further contention was raised by the appellants that the Outline Development Plan and the Regulations were never published, consequently they have never become effective and, therefore, there was no need for any compliance with the requirements of the plan and the regulations. As it turns out this is the only contention which was finally argued before the High Court and before us. The High Court overruled the contention and declared the licences granted for construction illegal and directed the Commissioner, Corporation of the City of Bangalore to modify the licences so as to bring them in conformity with the Outline Development Plan and the Zonal Regulations appended thereto promulgated under Section 13(4) of the Karnataka Town and Country Planning Act and take all consequential action in accordance with law.

5. Shri Cooper, learned counsel for the appellants urged that publication of the Outline Development Plan and the Regulations in the prescribed manner, that is, in the official gazette was mandatory under Section 13(4) and that failure to so publish the Outline Development Plan and the Regulations rendered them ineffective. The licences already granted to the appellants could not be cancelled or directed to be modified so as to be in accord with the Outline Development Plan and the Regulations. It was further urged that the Regulations were distinct from the Outline Development Plan and that in the case of the Regulations, there was no attempt whatever at publication. It was submitted that the High Court was in error in holding that Section 76-J cured whatever defect there was in regard to the publication of the Plan and the Regulations. It was said that the High Court was also in error in holding that the Outline Development Plan and the Regulations became effective as soon as they were approved by the government under Section 13(3) of the Act irrespective of the date of publication under Section 13(4). On the other hand, it was submitted by Shri Javali, learned counsel for the writ petitioners in the High Court that there was sufficient publication of the Plan and the Regulations, that the Plan and the Regulations were always kept available for inspection at the office of the concerned authorities and that it was not the case of the appellants originally that there was no publication and that they had no knowledge of the Plan and the Regulations. It was only an afterthought, put forward in the course of the arguments at the final stage of the hearing of the writ petitions. It was submitted that such defect as there was in the publication of the Plan and the Regulations was effectively cured by Section 76-J and the passage of time. It was also pointed out that the Regulations were an integral part of the Outline Development Plan.

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6. In order to appreciate the rival contentions of the parties, it is necessary to refer to the relevant statutory provisions.

7. In 1961 the Bangalore Metropolitan Planning Board was formed. The Board prepared an Outline Development Plan (for short, ODP). In February 1963 the Mysore Town and Country Planning Act, 1961 came into force with effect from January 15, 1965. Section 81-A(*a*) of the Act provides that the Outline Development Plan for the Bangalore Metropolitan Area prepared by the Bangalore Metropolitan Planning Board shall be deemed to be the Outline Development Plan of the Planning Area comprising the City of Bangalore, prepared under the Act, by the Planning Authority of the Area. Section 81-A(*a*) further provides that the said plan along with the particulars specified in clauses (ii), (iii), (iv) and (v) of Section 12(2) shall be published and submitted to the State Government for provisional approval. Section 81-A(*b*) provides that on receipt of the plan and particulars, the State Government shall after making such modifications as it deems fit, return the plan and the particulars to the Planning Authority, which shall thereupon take further action in accordance with the provisions of Section 13.

8. Section 2(3) defines 'land-use' to mean the major use to which a plot of land is being used on any specified date. Section 2(4) defines 'notification' to mean a notification published in the official gazette. 'Planning area' is defined by Section 2(6) to mean the area declared to be a local planning area under the Act in the case of the local planning area comprising the city of Bangalore. 'Planning Authority' is defined to mean the Planning Authority constituted under the Act. Section 2(9) defines 'prescribed' to mean prescribed by rules made under the Act. Section 2(11) defines 'regulations' to mean the Zonal Regulations governing land-use made under the Act.

9. Chapter III of the Act deals with Outline Development Plan (ODP). Section 9(1) empowers the Planning Authority to prepare and publish in the prescribed manner an outline development plan for the area within its jurisdiction and submit it to the State Government for provisional approval. Section 9(4) prescribes that a copy of the ODP sent to the State Government under sub-section (1) shall be kept open for inspection by the public at the head office of the Planning Authority before carrying out a survey for the purpose of preparing an ODP for such an area. A Planning Authority is required by Section 10 to make a declaration of its intention to prepare such plan and to despatch a copy of the same to the State Government for publication in the official gazette and is also required to publish in the prescribed manner an invitation to the public to make suggestions. All suggestions made in response to the invitation within the prescribed

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period are required to be considered by the Planning Authority before submitting the plan to the State Government. Section 12 deals with the contents of Outline Development Plan and we think it necessary to extract here the whole of the section. Section 13 deals with approval of the Outline Development Plan and we think that it is necessary to extract Section 13 also. Sections 12 and 13 are as follows :

> 12. *Contents of Outline Development Plan.*—(1) An Outline Development Plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. In particular it shall include,—
>
> (*a*) a general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes ;
>
> (*b*) proposals for roads and highways ;
>
> (*c*) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India ;
>
> (*d*) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed ;
>
> (*e*) such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.
>
> *Explanation.*—'Building line' means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme.
>
> (2) The following particulars shall be published and sent to the State Government through the Director along with the Outline Development Plan, namely :
>
> (i) a report of the surveys carried out by the Planning Authority before the preparation of such plan ;
>
> (ii) a report explaining the provisions of such Plan ;
>
> (iii) regulations in respect of each land-use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority ;
>
> (iv) a report of the stages by which it is proposed to meet

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the obligations imposed on the Planning Authority by such plan ;

(v) an approximate estimate of the cost involved in the acquisition of lands reserved for public purposes.

13. *Approval of the Outline Development Plan.*—(1) On receipt of the Outline Development Plan with the particulars referred to in Section 12 from the Planning Authority under sub-section (1) of Section 9, or after such plan and particulars are prepared and published under sub-section (2) of Section 9, the State Government after making such modifications as it deems fit or as may be advised by the Director, shall return through the Director, the plan and the particulars to the Planning Authority, which shall thereupon publish, by notification, the plan and the particulars inviting public comments within one month of such publication.

(2) If within one month of the publication under sub-section (1) any member of the public communicates in writing to the Planning Authority any comments on the plan and the regulations, the Planning Authority shall consider such comments and resubmit the plan and the regulations to the State Government, through the Director with recommendations for such modifications in the plan and regulations as it considers necessary in the light of the public comments made on the plan and regulations.

(3) The State Government, after receiving the plan and the regulations and the recommendation for modifications from the Planning Authority, shall, in consultation with the Director, give its final approval to the plan and the regulations with such modifications as the Director may advice in the light of the comments and the recommendations of the Planning Authority or otherwise.

(4) The Planning Authority, shall then publish in the prescribed manner the Outline Development Plan and the Regulations as approved by the Government. The plan and the particulars shall be permanently displayed in the offices of the Director and the Planning Authority and a copy shall be kept available for inspection of the public at the office of the Planning Authority.

10. Section 14 speaks of 'Enforcement of the Outline Development Plan and the Regulations'. Section 14(1) prescribes that on and from the date on which a declaration of intention to prepare an outline is published under sub-section (1) of Section 10, every land-use, every change in land-use and every development in the area shall conform to the provisions of the Act, the Outline Development Plan

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and the Regulations as finally approved by the State Government under sub-section (3) of Section 13.

11. The only other provision of the Act to which reference is necessary is, what we may call, the "Ganga" clause*, Section 76-J which provides for 'Validation of acts and proceedings'. It is as follows :

> 76-J. *Validation of acts and proceedings.*—No act done or proceeding taken under this Act shall be questioned on the ground merely of,
>
> (*a*) the existence of any vacancy in, or any defect in the constitution of the Board or any Planning Authority ;
>
> (*b*) any person having ceased to be a member ;
>
> (*c*) any person associated with the Board or any Planning Authority under Section 4-F having voted in contravention of the said section ; or
>
> (*d*) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure ; or
>
> (*e*) any omission, defect or irregularity not affecting the merits of the case.

12. We may also refer here to the rules relating to publication. Rule 32 provides for "Publication of Outline Development Plan under sub-section (1) and sub-section (2) of Section 9". It prescribes that the publication shall be made by making a copy of the Plan available for inspection and displaying a notice in Form II. (*a*) at the office of the Planning Authority and (*b*) at such other places as may be specified by the Planning Authority. The Planning Authority is also required to publish a notice in Form II in the official gazette and in one or more newspapers. The publication under Section 9(2) is also required to be made in the same manner except that reference to Planning Authority is to be construed as a reference to the Director. Rule 33 provides for 'Publication of Outline Development Plan and Regulations under Section 13(4)' and stipulates that the Outline Development Plan and the Regulations as approved by the State Government under sub-section (3) of Section 13 shall be published in the official gazette.

13. Form II referred to in Rule 32 is as follows :

FORM NO. II

(Rule 32)

Notice of Publication of Outline Development Plan

*According to Hindu tradition the waters of the Ganga purify, cleanse the sins and remedy all insufficiencies

AA

Notice is hereby given that an Outline Development Plan of.....area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963) and a copy thereof is available for inspection at the office of the Planning Authority during office hours.

If there be any objection or suggestion in respect of the Outline Development Plan, it should be lodged on or before the.....

Every such objection or suggestion should either be presented in the office of the Planning Authority or sent by registered post to the Planning Authority.

14. We said earlier that the Outline Development Plan for the Bangalore Metropolitan Area was prepared by the Bangalore Metropolitan Planning Board and that under Section 81-J of the Mysore Town and Country Planning Act, it was deemed to be the Outline Development Plan of the planning area comprising the city of Bangalore, prepared under the Act, by the Planning Authority of such area. A 'Notice of publication of Outline Development Plan' was published in the Mysore Gazette on December 21, 1967 in Form II. It was as follows :

Office of the Planning Authority Bangalore City,
Planning Area, Bangalore-9

Notice of publication of Outline Development Plan

Notice is hereby given that an Outline Development Plan of Bangalore City Planning Area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963) and a copy thereof is available for inspection at the office of the Planning Authority in Seshadri Road, Bangalore City during office hours.

If there be any objection or suggestion in respect of the Outline Development Plan, it should be lodged on or before the 15th day of February, 1968.

Every such objection or suggestion should either be presented in the office of the Planning Authority or sent by registered post to the Planning Authority.

K. Balasubramanyam
Chairman

After the State Government provisionally approved the Plan 'Notice of publication of Outline Development Plan' was published in the

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Mysore Gazette dated October 10, 1968 again in Form II. The notification was in the following terms :

Office of the Chairman, Planning Authority
Bangalore City Planning Area, Bangalore-9

Notice of Publication of Outline Development Plan

Notice is hereby given that an Outline Development Plan of Bangalore City Planning Area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963). The said Plan has been provisionally approved by the Government of Mysore as per Section 13(1) of the above Act. A copy of the above approved plan and the report are available for inspection at the office of the Planning Authority in Seshadri Road, Bangalore City during office hours.

If there be any objection or suggestion in respect of the Outline Development Plan it should be lodged within 30 days from the date of publication of this notice in the gazette.

Every such objection or suggestion should either be presented in the office of the Planning Authority or sent by registered post to the Planning Authority.

Chairman
Planning Authority

It appears that in response to the invitation to file objections, as many as 600 representations and objections were received from individuals, institutions, associations, chambers of commerce etc. The Outline Development Plan was finally approved by the government and a notification to that effect was published in the Mysore Gazette dated July 13, 1972 in the following terms :

Office of the Chairman, Planning Authority
Bangalore City Planning Area, Bangalore-9

Dated June 27, 1972.

Notice of Publication of Outline Development Plan

In pursuance of Rule 33 of the Mysore Planning Authority Rules 1965 notice is hereby given that an Outline Development Plan of Bangalore City Planning Area has been prepared under the Mysore Town and Country Planning Act, 1961 (Mysore Act 11 of 1963). The said plan has been finally approved by the Government of Mysore as per Section 13(3) of the above Act. A copy of the above approved plan and the report are

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available for inspection at the office of the Planning Authority in Seshadri Road, Bangalore City, during office hours.

M.S. Ramchandra
Chairman
Planning Authority

It is seen that at every stage the public were informed by notices published in the official gazette that the Outline Development Plan was available for inspection at the office of the Planning Authority, though it is not disputed that the Plan and the Regulations themselves were never published as such in the gazette. The question for consideration is whether the intimation to the public through the official gazette that the Outline Development Plan was available for inspection at the office of the Planning Authority is a sufficient compliance with the requirement of Section 13(4) regulating the publication of the approved Plan and Regulations ?

15. There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'Unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively 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 effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the 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

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mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient[1].

16. In the present case Section 13(4) has prescribed the mode of publication of the Outline Development Plan and the Regulations. It requires the Outline Development Plan and the Regulations to be published in the prescribed manner and the Plan and particulars to be permanently displayed in the offices of the Director and the Planning Authority and a copy to be kept available for the inspection of the public at the office of the Planning Authority. The particulars referred to, we presume, are the particulars mentioned in Section 12(2) of the Act consisting of various reports, including the Regulations. 'The prescribed manner' is what is prescribed by Rule 33, that is, publication in the official gazette. If we now turn to Section 9(1) and 9(2), we find that there too the Outline Development Plan is required to be published in 'the prescribed manner'. The prescribed manner for the purposes of sub-sections (1) and (2) of Section 9 is that prescribed by Rule 32. Rule 32 we have seen prescribes making a copy of the Plan available for inspection, publishing a notice in Form No. II in the official gazette and in one or more newspapers and displaying a notice in Form No. II at the office of Planning Authority and at other specified places. It is true that Rule 33 speaks of publication of approved Outline Development Plan and Regulations in the official gazette, suggestive of a requirement that the Outline Development Plan and Regulations should bodily be incorporated in the official gazette. But if the entire scheme of the Act and the rules is considered as an integral whole it becomes obvious that what Section 13(4) contemplates besides permanently displaying the Plan and the particulars in the offices of Director and Planning Authority and keeping available a copy for the inspection of the public at the office of Planning Authority is a public notice to the general public that the Plan and Regulations are permanently displayed and are available for inspection by the public. Such public notice is required to be given by a publication in the official gazette. This is how it was understood by the authorities and everyone else concerned and this is how it was done in the present case. This appears to be a reasonable and a rational interpretation on Section 13(4) and Rule 33 in the setting and the scheme. We are of the view that there was compliance with the requirements of Section 13(4) and Rule 33. We have earlier mentioned that Section 13(1) requires the provisional Outline Development Plan and particulars to be published by notification in the official gazette with a view to invite comments from the

1 Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77

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public. What was published in the present case under Section 13(1) was also a notice in Form No. II and not the whole of the Plan and particulars. Such publication evoked considerable public response. As many as 600 representations from individuals and institutions were received. That is why we said that everyone concerned, that is, the government, the Director, the Planning Authority and the public, individual and institution alike, thought that publication of a notice in the gazette inviting the attention of the public to the display and the availability for inspection of the Plan and particulars was all that was contemplated by the provisions providing for publication. We do not think that there is any reason or justification for us to adopt an interpretation which departs from common understanding of the Act and the Rules.

17. Shri Cooper invited our attention to *Shalagram Jhajharia* v. *National Co. Ltd.*[2] and *Firestone Tyre & Rubber Co.* v. *Synthetics and Chemicals Ltd.*[3], to urge that offer of inspection cannot be a substitute for publication. We do not think that these two cases are of assistance to Shri Cooper. What was laid down in those cases was the mandatory requirement of a full and frank disclosure of the relevant facts. in the explanatory note attached to the notice convening a general meeting of the company cannot be circumvented by an offer of inspection. Another case to which Shri Cooper drew our attention was *Municipal Board, Pushkar* v. *State Transport Authority, Rajasthan*[4]. In that case the question arose as to what was to be treated as the date of the order of the Regional Transport Authority. Was it the date of the resolution of the Regional Transport Authority or was it the date on which the resolution was brought into effect by publication of the notification ? The answer was that it was the date of the publication of the notification. In *Joint Chief Controller of Imports & Exports, Madras* v. *Aminchand Mutha*[5], another case on which Shri Cooper relied. the court held that there was no order prohibiting the import of fountain pens. since in fact no such order had been published and no such order was brought to the notice of the court. All that was available was an entry 'nil' against fountain pens in the declaration of policy as to import. We are unable to see how these two cases can be of any help to Shri Cooper. Shri Cooper also invited our attention to cases drawing a distinction between mandatory and directory statutory requirements but those cases again are of no avail to him in the view that we have taken. We also desire to state that the effect of the non-performance of a duty imposed

2. (1965) 35 Com Cas 706 (Cal)
3. (1971) 41 Com Cas 377 (Bom)
4. 1963 Supp 2 SCR 373 : AIR 1965 SC 458
5. (1966) 1 SCR 262 : AIR 1966 SC 478

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by a statute in the manner prescribed by the statute is not discovered by a simple answer to the question whether the statute is mandatory or directory. These are not simple chemical reactions. The question whether a statutory requirement is mandatory or directory cannot itself be answered easily as was pointed out more than a century ago in *Liverpool Borough* v. *Turner*[6]. Many considerations must prevail and the object and the context are the most important.

18. The High Court was of the view that such defect as there was in regard to publication of the Plan was cured by Section 76-J, the Omnibus Curative clause to which we earlier made a reference as the 'Ganga' clause. Provisions similar to Section 76-J are found in several modern Acts and their object is to put beyond challenge defects of constitution of statutory bodies and defects of procedure which have not led to any substantial prejudice. We are inclined to agree with the High Court that a defective publication which has otherwise served its purpose is not sufficient to render illegal what is published and that such defect is cured by Section 76-J. The High Court relied on the two decisions of this Court *Bangalore Woollen, Cotton & Silk Mills Co. Ltd.* v. *Corporation of the City of Bangalore*[7] and *Municipal Board, Sitapur* v. *Prayag Narain Saigal & Firm Moosaram Bhagwandas*[8]. In the first case objection was raised to the imposition of octroi duty on the ground that there was failure to notify the final resolution of the imposition of the tax in the government gazette as required by Section 98(2) of the City of Bangalore Municipal Corporation Act. A Constitution Bench of the court held that the failure to publish the final resolution in the official gazette was cured by Section 38(1)(*b*) of the Act which provided that no act done or proceeding taken under the Act shall be questioned merely on the ground of any defect or irregularity in such act or proceeding, not affecting the merits of the case. The court said that the resolution had been published in the newspapers and was communicated to those affected and failure to publish the resolution did not affect the merits of its imposition and failure to notify the resolution in the gazette was not fatal to the legality of the imposition. In the second case it was held that the non-publication of a special resolution imposing a tax was a mere irregularity, since the inhabitants had no right to object to special resolutions and had otherwise clear notice of the imposition of the tax. It is true that both these cases relate to non-publication of a resolution regarding imposition of a tax where the imposition of a tax was otherwise well known to the public. In the present case the situation may not be the same but there certainly

6. (1861) 30 LJ Ch 379
7. (1961) 3 SCR 707 : AIR 1962 SC 562
8. (1969) 3 SCR 387 : (1969) 1 SCC 399

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was an effort to bring the Plan and Regulations to the notice of the public by giving notice of the Plan in the official gazette. Non-publication of the Plan in the official gazette was therefore a curable defect capable of being cured by Section 76-J. It is here that the failure of the appellants to plead want of publication or want of knowledge in the first instance assumes importance. In the answer to the writ petitions, the appellants took up the substantial plea that they had complied with the requirements of the Outline Development Plan and the Regulations but not that they had no knowledge of any such requirement. It can safely be said that the defect or irregularity did not affect the merits of the case.

19. Finally, one last submission of Shri Cooper requires to be examined. Shri Cooper submitted that Section 13(1) used the words "the Plan and the particulars", Section 13(2) used the words "the Plan and the Regulations", Section 13(3) used the words "the Plan and the Regulations" and Section 13(4) used the words "the Outline Development Plan and the Regulations" as well as the words, "the Plan and the Regulations". This, according to Shri Cooper, signified that the particulars and the Regulations are not to be treated as part of the Plan but as creations distinct from the Plan. We do not think that we are entitled to split the unity and identity of the plan as suggested by the learned counsel. The Outline Development Plan and the Regulations are not distinct from each other. The Regulations are born out of the Plan and the Plan thrives on the Regulations. The Plan is the basis for the Regulations and the Regulations are what make the plan effective. Without the Regulations, the plan virtually becomes a dead letter. The reference in the four clauses of Section 13, whenever the word 'Plan' or the 'Outline Development Plan' is used, is to the core plan, without the particulars and the Regulations and not the whole of the Outline Development Plan which must include the Regulations. What the different phraseology is meant to convey is to emphasise the different parts of the Plan which have to be forwarded to the government, considered by the government, made available for inspection by the public, as the case may be and to the extent necessary. Merely because the words "and Regulations" are added to the word 'Plan', the Regulations are not to be treated as not constituting part of the Plan even as when a building is sold along with the fixtures, it does not mean that the fixtures are not treated as part of the building. Shri Cooper drew the distinction between the Plan and the Regulations to suggest that in the notice published on June 27, 1972, the Planning Authority mentioned that the Plan was available for inspection at the office of the Planning Authority but made no reference to the Regulations and, therefore, it must be considered that the Regulations were not made available

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for inspection and so never published. We do not think that it is possible to reach the conclusion suggested by Shri Cooper from the absence of the reference to the Regulations in the notice. The authorities justifiably always treated the Plan as including the Regulations and we are satisfied that what was kept for inspection was the Plan along with the Regulations.

20. Shri Cooper argued that neither the Municipal Corporation nor any other civic authority appeared to be aware of the Outline Development Plan and the Regulations as was evident from the circumstance that in the years that passed since the approval of the Plan by the government and before the writ petitions were filed, as many as 57 building licences had admittedly been issued in contravention of the Regulations. It may be that notwithstanding the Regulations some building licences were granted in contravention of the Regulations but that only exposes the deplorable laxity of the concerned authorities and emphasises the need for greater public vigilance. The present writ petitions, we hope, are forerunners of such vigilance.

21. In the result we find no merit in the appeals which are accordingly dismissed with costs. The judgment of the High Court will now be given effect by the authorities, taking note of the several undertakings given to the High Court and this Court at various stages.

(1987) 1 Supreme Court Cases 677

(BEFORE O. CHINNAPPA REDDY AND S. NATARAJAN, JJ.)

DAKSHIN RAILWAY EMPLOYEES UNION, TRIVANDRUM DIVISION .. Petitioner :

Versus

GENERAL MANAGER, SOUTHERN RAILWAY AND OTHERS .. Respondents

Writ Petition (Civil) No. 332 of 1986,
decided on February 23, 1987

Industrial Disputes Act, 1947 — Sections 25-F and 25-G — Casual labour employed on Railway projects — Absorption of as temporary workman in keeping with directions of Supreme Court in (1985) 2 SCC 648 — Railway Board circular issued thereupon — Interpretation of — Held, benefit to extend to workmen retrenched prior to January 1, 1981 — But they must submit their claims before March 31, 1987 — Railway Administration will then consider genuineness of their claims and process them

Inder Pal Yadav v. Union of India, (1985) 2 SCC 648 : 1985 SCC (L&S) 526. extended

Writ petition allowed M/7815/CL