

BEFORE THE NATIONAL GREEN TRIBUNAL,
NEW DELHI
Appeal No. 19 of 2020

IN THE MATTER OF:

M/s Janta Land Promoters Ltd.Appellant
Versus
Punjab Pollution Control Board
(Through Chairman) & Anr. ..Respondents

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LIST OF DATES

- 2003 The State of Punjab issued an Industrial Policy in the year 2003 which was revised/renewed in 2009. Under the said policy super Mega Mixed use integrated industrial park projects were permissible.
- The appellant applied for setting-up of Super Mega Mixed use integrated industrial park project in Sector-66A, 82 & 83 in S.A.S. Nagar, Mohali.
- The project was to be spread in an area of 290 acres in the above sectors with investment of Rs.1219 crores including fixed capital investment of atleast Rs.1000 crores over a period of five years w.e.f. date of signing the agreement with the State Government in terms of the said policy.
- 14.9.2006 The Union of India, Ministry of Environment & Forest issued notification under which prior environmental clearance is required to be taken for project such as Super Mega Project being set up by the appellant.
- 16.3.11 The application of the appellant was considered by the empowered committee for the purpose of Super Mega Mixed Use Integrated Industrial Park and the same was approved.
- 10.5.2011 Letter of intent was issued by the State of Punjab.
- 30.5.2011 An agreement was executed between the State Government and the appellant providing the special package of incentive.
- 16.4.2012 GMADA vide letter dated 16.4.2012 addressed to the appellant whereby it confirmed that it will account for sewage load as per norms fixed by the Government of India.
(Pg. 75 of the Rejoinder Paper-book)
- 4.1.2013 Punjab Pollution Control Board vide letter dated 4.1.2013 issued No Objection/consent to establish to the appellant for the project Super Mega Mixed Use Integrated Industrial Park, Sector 66-A, 82 & 83 of SAS Nagar.
(Pg. 158 of Appeal Paper-book)
- 26.2.2013 Punjab Pollution Control Board vide letter dated 26.2.2013 issued No Objection Certificate to the appellant for the project Falcon Views, 538, Phase-X, Sector 66, SAS Nagar. It was stated in the said letter that Falcon Views shall be part of Super Mega Mixed Use Integrated Industrial Park.
(Pg. 137 of the I.A. No. No.314 of 2020 – application for additional documents paper-book).

- 7.10.2013 The appellant submitted application in Form-I/IA for getting environment clearance for Super Mega Mixed Use Integrated Industrial Park under MoEF notification dated 14.9.2006. In the said application, the appellant mentioned all the parameters for assessing the environment impact of the said project
(Pgs. 102 of the Appeal Paper-Book)
- 22.11.13 The appellant submitted application in Form-I/IA for getting environment clearance for Falcon View, Sector 66A, Mohali under MoEF notification dated 14.9.2006. In the said application, the appellant mentioned all the parameters for assessing the environment impact of the said project. At number of places in the said application it was mentioned that Falcon View is a part of Super Mega Mixed Use Integrated Industrial Park.
(Pgs. 81 to 133 of I.A. No. No.314 of 2020 – application for additional documents paper-book).
- 23.1.2014 The appellant submitted the application for getting environment clearance for I.T. Twin Towers which is also a component of Super Mega Mixed Use Integrated Industrial Park.
- 24.3.2014 The Punjab Pollution Control Board vide letter dated 24.3.2014 extended the consent to establish Falcon View Project for one year upto 25.2.2015.
(Pg. 143 of I.A. No. No.314 of 2020 – application for additional documents paper-book).
- 28.4.2014 The appellant submitted application for getting environment clearance for Sky Garden which is also one of the residential pockets in Super Mega Mixed Use Integrated Industrial Park.
- 4.2.2015 The SEIAA granted Environment Clearance for Sky Garden which is one of the residential pockets in Super Mega Mixed Use Integrated Industrial Park.
- 5.3.2015 SEIAA issued the directions under Section 5 of the Environment (Protection) Act, 1986 to the appellant/project proponent that the project proponent shall not carry out any further construction activity at its project site namely 'Falcon View' at Sector 66-A, Distt. Mohali till it obtains Environmental Clearance under EIA notification dated 14.09.2006.
- 5.3.2015 The appellant filed an application before the Punjab Pollution Control Board for extension of consent to establish of Falcon View.
(Pg. 144 of I.A. No. No.314 of 2020 – application for additional documents paper-book).
- The Punjab Pollution Control Board issued show cause notice to the appellant as to why the consent to establish of Falcon View Project be not refused.
(Pg. 145 of I.A. No. No.314 of 2020 – application for additional documents paper-book).
- 14.4.2015 The appellant submitted application for getting environment clearance for Galaxy Heights which is also one of the residential pockets of Super Mega Mixed Use Integrated Industrial Park.

- 18.6.2015 The appellant replied to the show cause notice issued by the Punjab Pollution Control Board in which it was stated that the consent to establish Falcon Views be not refused.
(Pg. 147 of I.A. No. No.314 of 2020 – application for additional documents paper-book).
- 7.9.2015 The Punjab Pollution Control Board vide letter dated 7.9.2015, refused to extend the consent to establish the Falcon View Project.
(Pg. 148 of I.A. No. No.314 of 2020 – application for additional documents paper-book).
- 16.12.15 SEIAA granted environment clearance for Galaxy Heights which is also one of the residential pockets of Super Mega Mixed Use Integrated Industrial Park.
- 16.12.15 SEIAA vide letter dated 16.12.2015, after examining and assessing all the parameters of environmental impact, also granted environment clearance for Super Mega Mixed Use Integrated Industrial Park.
(Pg. 267 of Appeal Paper-book).
- 4.2.2016 SEIAA granted environmental clearance for the project IT Twin tower which is also a component of Super Mega Mixed Use Integrated Industrial Park.
- 12.3.2016 As the Falcon View is a part of Super Mega Mixed Use Integrated Industrial Park and the SEIAA granted environmental clearance to the said Super Mega Mixed Use Integrated Industrial Park, the appellant submitted application to State Appraisal Committed for withdrawal of the application for environmental clearance for the project Falcon View which was submitted on 22.11.2013.
(Pg. 276 of the Appeal paper-book).
- 28.8.2016 SEAC rejected the said application and referred the matter to SEIAA.
(Pg. 279 to 292 of the Appeal paper-book).
- 23.9.2016 The SEIAA accepted the recommendations of the SEAC.
(Pg. 293-305 of the Appeal paper-book).
- 27.9.2016 SEIAA issued directions under Section 5 of the Environment (Protection) Act, 1986.
- 4.10.2016 The appellant filed C.W.P. No.21351 of 2016 in the High Court of Punjab and Haryana at Chandigarh challenging the proceedings of the SEAC and SEIAA dated 28.8.2016 and 23.9.2016. The appellant also sought the declaration that no separate permission is required for the Falcon Views.
(Pg. 10 of the I.A. No.314 of 2020 – application for additional documents paper-book).
- 7.10.2016 The aforesaid writ petition came up for hearing before the High Court when the High Court after recording the submission of the appellant issued notice of motion and also issued notice on stay application.
(Pg. 306 of Appeal paper-book).

- 16.12.16 SEAC and SEIAA who were respondent nos.4 and 5, filed reply to the CWP No.21351 of 2016 in the High Court. Relevant paras 4, 10, 11 and 12.
(Pg. 45 of the I.A. No.314 of 2020 – application for additional documents paper-book).
- 3.1.2017 MoEF who was respondent No.1 in the said writ petition, filed reply to the CWP No.21351 of 2016 in the High Court. Relevant para 7.
(Pg.33 of the I.A. No.314 of 2020 – application for additional documents paper-book).
- 1.2.2017 The State of Punjab and Punjab Pollution Control Board who were respondent nos.2 and 3 in the said writ petition, filed common reply to CWP No.21351 of 2016 in the High Court. Relevant para 3.
(Pg. 43 of the I.A. No.314 of 2020 – application for additional documents paper-book).
- 25.4.2017 The High Court recorded the concession of the counsel for SEAC and SEIAA and who also happened to be the counsel of State of Punjab and Punjab Pollution Control Board. It was admitted by the counsel that no separate permission is required.
(Pg. 308 of Appeal paper-book).
- 30.12.19 The Monitoring Committee appointed by this Hon'ble Tribunal (NGT) made a surprise visit to the project i.e. Falcon View. The Monitoring Committee submitted its report in which certain deficiencies were pointed out.
- The Monitoring Committee further recommended to the Chairman, Punjab Pollution Control Board to initiate action under the provisions of Water Act, 1974 and imposed fine of Rs.50 lakhs as deterrent compensation.
- 19.3.2020 On the basis of the aforesaid report submitted by the Monitoring Committee, the Punjab Pollution Control Board issued notice to the appellant under Section 33 of the Water (Prevention & Control of Pollution) Act, 1974.
(Pg. 316 of appeal paper-book)
- 25.3.2020 Lockdown is declared due to pandemic Covid-19.
- 29.5.2020 The Punjab Pollution Control Board issued/reiterated the same notice dated 19.3.2020 issued to the appellant under Section 33 of the Water (Prevention & Control of Pollution) Act, 1974 as amended in 1988.
(Pg. 319 of appeal paper-book)
- 18.6.2020 The appellant submitted reply to the aforesaid notice dated 29.5.2020.
(Pg. 323 of appeal paper-book)
- 20.7.2020 The Punjab Pollution Control Board passed the Impugned Order.

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(1975) 1 Supreme Court Cases 421

(Before A. N. Ray, C.J. and K. K. Mathew, Y. V. Chandrachud,
A. Alagiriswami and A. C. Gupta, JJ.)

Civil Appeal No. 2137 of 1972

SUKHDEV SINGH AND OTHERS Appellants ;

Versus

BHAGATRAM SARDAR SINGH RAGHUVANSHI
AND ANOTHER Respondents.

Civil Appeal No. 1655 of 1973

THE OIL & NATURAL GAS COMMISSION Appellant ;

Versus

THE ASSOCIATION OF CLASS II OFFICERS
O. N. G. C. AND OTHERS Respondents.

Civil Appeal No. 1879 of 1972

THE L. I. C. LTD. AND ANOTHER Appellants ;

Versus

SHYAM LAL SHARMA Respondent.

And

Civil Appeal No. 115 of 1974

THE INDUSTRIAL FINANCE CORPN. EMPLOYEES'
ASSOCIATION Appellant ;

Versus

THE INDUSTRIAL FINANCE CORPN.
AND OTHERS Respondents.

Civil Appeals Nos. 2137 of 1972*, 1655 of 1973†, 1879 of 1972 and
115 of 1974§, decided on February 21, 1975

Constitution of India — Articles 12 and 298 — “State” — Statutory corporations carrying on business of public importance, held, are authorities within the meaning of Article 12 despite the fact that they have no power to issue binding directions entailing penal consequences — Widening concept of “State” — The employees of statutory corporations can claim protection of Articles 16 and 14 against the corporations — Status of regulations framed under the Oil and Natural Gas Commission Act, 1959, the Life Insurance Corporation Act, 1956, and the Industrial Finance Corporation Act, 1948 — Held, have force of law — Order of removal from service to employees of these corporations in contravention of regulations framed under the respective Acts, held, would enable an employee to a declaration against the corporations for continuance in service and not relegate him to a claim of damages alone — However, protection of Article 311 not available — Distinction between regulations of companies incorporated under the Companies Act and statutory corporations — Whether the fact that statutory corporations

*From the Judgment and Order, dated July 14, 1972, of the Gujarat High Court in Special Civil Appeal No. 1470 of 1968.

†Appeal by Special Leave from the Judgment and Order, dated October 15, 1973, of the Gujarat High Court in L. P. A. No. 95 of 1973.

§Appeal by Special Leave from the Judgment, dated January 29, 1973, of the Delhi High Court in L. P. A. No. 155 of 1972.

are subject to taxation makes any difference — Constitution of India, Article 289 — Protection of punitive action taken by statutory corporations under their respective Acts — Government servants

Section 31 of the Oil and Natural Gas Commission Act, 1959, gave rule-making power to the Central Government for the purpose of giving effect to the provisions of the Act. Section 32 on the other hand empowered the Commission, with the previous approval of the Central Government to make regulations not inconsistent with the Act and the Rules. The regulations provide *inter alia* for the terms and conditions of appointment and service and the scales of pay for employees of the Commission, and for matters connected with the discharge of functions by the Commission under the Act. The Central Government may amend, vary or rescind any regulation which it has approved, and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Commission under sub-section (1) of Section 32.

Similar powers for making of Rules by the Central Government and Regulations by the Corporation itself exist under the Life Insurance Corporation Act, 1956 and the Industrial Corporation Act, 1948.

Held :

Per Ray, C.J., Chandrachud and Gupta, JJ.

The regulations partake the characteristics of law in manner, procedure and content. The authority making rules and regulations must specify the source of the rule and regulation making authority. The *vires* of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations. And law is a rule of general conduct while administrative instruction relates to particular person. The Regulations framed by the different corporations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory. The corporations have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. There is a legal compulsion to comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. (Paras 21, 22 and 23)

The regulations of statutory corporations are not similar to regulations framed by a company incorporated under the Companies Act. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the statutes creating such bodies. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute. (Para 25)

The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations *inter alia* for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. (Para 33)

The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies there

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is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void.
(Para 33)

And whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.
(Para 33)

On the question of the statutory corporations being included with Article 12 the State undertakes commercial functions in combination with governmental functions in a welfare State. Governmental function must be authoritative. It must be able to impose decision by or under law with authority. The element of authority is of a binding character. The rules and regulations are authoritative because these rules and regulations direct and control not only the exercise of powers by the Corporations but also all persons who deal with these corporations.
(Para 35)

The liability to taxation will not detract from the Corporation being an authority within the meaning of Article 12. Article 289 empowers Union to impose tax in respect of trade or business carried on by or on behalf of a State. (Para 63)

Rajasthan State Electricity Board, Jaipur v. Mohan Lal, (1967) 3 SCR 377; AIR 1967 SC 1857; (1968) 1 Lab LJ 257, followed.

B. B. C. v. Johns (Inspector of Taxes), (1965) 1 Ch 32, referred to.

A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit.
(Para 39)

The various provisions of the Oil and Natural Gas Commission Act, 1959 show that the creation, composition of membership, the functions and powers, the financial powers, the audit of accounts, the returns, the capital, the borrowing powers, the dissolution of the Commission and acquisition of land for the purpose of the company and the powers of entry are all authority and agency of the Central Government.
(Paras 44 and 60)

Similarly the structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Government carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the hands are also of the Central Government.
(Paras 50 and 61)

Again the provisions of the Industrial Finance Corporation Act show that the Corporation is in effect managed and controlled by the Central Government.
(Paras 59 and 62)

Moreover, statutory corporations enjoy protection of punitive action taken under the Acts, a privilege not given to companies incorporated under the Companies Act.
(Para 66)

Hence the rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. These statutory bodies are "authorities" within the meaning of Article 12 of the Constitution. (Para 67)

But their employees are not servants of the Union or the State. (Para 67)

Per Mathew, J. (concurring)

A State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange

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in the notion of the State acting through a corporation and making it an agency or instrumentality of the State. (Para 82)

A public corporation is not generally a multi-purpose authority but a functional organisation created for a specific purpose. In so far as they fulfil public tasks on behalf of government, they are public authorities and as such subject to control by government. (Para 87)

The need to subject the power centres to the control of Constitution requires an expansion of the concept of State action. A public corporation being a creation of the State is subject to the constitutional limitation as the State itself. The pre-conditions of this are two, namely, that the corporation is created by State, and, the existence of power in the corporation to invade the constitutional right of individual. (Paras 90 and 93)

Can the concept of State action be extended to private enterprise? By and large, unless an act is sanctioned in some way by the State, the action would not be State action. In other words, until some law is passed or some action is taken through officers or agents of the State, there is no action by the State. (Para 95)

McCullough v. Maryland, 4 Wheat 315 (US 1819) and *Rajasthan State Electricity Board v. Mohan Lal*, (1967) 3 SCR 377, referred to.

State financial aid alone does not render the institution receiving such aid a State agency. A finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action. (Para 96)

Again, the combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion. (Para 97)

But no opinion is expressed whether private corporations or other like organisations, though they exercise power over their employees which might violate their fundamental rights, would be 'State' within the meaning of Article 12. (Para 112)

Marsh v. Alabama, 326 US 501 (1946); *Civil Rights Cases*, 109 US 3; *Kerr v. Enoch Pratt Free Library*, 149 F 2d 112 (4th cir.) cert. denied 326 US 721 (1945); *Dorsey v. Stuyvesant Town Corpn.* 299 NY 512; *Steele v. Louisville & Nashville R. R.*, 323 US 192, 198; *Terry v. Adams*, 273 US 536; *Nixon v. Condon*, 286 US 73; *Tyson & Bro. v. Banton*, 273 US 418, 447; *New York v. United States*, 326 US 572; *Ohio v. Helvering*, 292 US 360, 366; *Helvering v. Powers*, 292 US 214, 227; *Helvering v. Gerhardt*, 304 US 405, 426, 427 and *Pfizer v. Ministry of Health*, (1964) 1 Ch 614, 641 (affirmed 1965 AC 512), referred to.

From the provisions of the Life Insurance Corporation Act it is clear that the Central Government has contributed the original capital of the Corporation, that part of the profit of the Corporation goes to the Government, that the Central Government exercises control over the policy of the Corporation, that the Corporation carries on a business having great public importance and that it enjoys a monopoly in the business. Similar conclusion follows from the other two Acts. (Para 109)

Hence the statutory corporations under question are agencies or instrumentalities of the "State" and are, therefore, 'State' within the meaning of Article 12. The fact that these Corporations have independent personalities in the eye of law does not mean that they are not subject to the control of government or that they are not instrumentalities of the government. These corporations are instrumentalities or agencies of the State for carrying on business which otherwise would have been run by the State departmentally. If the State had chosen to carry on these businesses through the medium of government departments, there would have been no question that actions of these departments would be 'State action'. (Para 109)

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The crux of the matter is that public corporation is a new type of institution which has sprung from the new social and economic functions of government and that it therefore does not neatly fit into old legal categories. Instead of forcing it into them, the latter should be adapted to the needs of changing times and conditions. (Para 111)

Employment under public corporations of the nature under consideration here is public employment and therefore the employee should have the protection which appertains to public employment. In public employment where there is an appointment to a permanent post, there should be presumption that the employee cannot be given notice and the servant can only be dismissed for misconduct or specified reasons. (Paras 119 & 120)

McAuliffe v. New Bedford, 155 Mass 216; *Malloch v. Aberdeen Corpn.*, (1971) 1 WLR 1578; *McClelland v. Northern Ireland Health Board*, (1957) 2 All ER 129; *Sadler v. Sheffield Corpn.*, (1924) 1 Ch 483; *Martin v. Eccles Corpn.*, (1919) 1 Ch 387; *Hanson v. Radcliffe U. D. C.*, (1922) 2 Ch 490; *Vitarelli v. Seaton*, 359 US 535, 546-547, referred to.

Per Alagiriswami, J. (dissenting)

A perusal of several other Indian statutes confirms the view that under the Indian legislative practice rules are what the Central Government or the State Governments make and the regulations are made by any institution or organisation established by a statute and where it is intended that the regulation should have effect as law the statute itself says so. All the power to make regulations found in the various statutes merely show that the power to make regulations may be of different kinds. (Paras 161 and 162)

Administrative instructions are not necessarily in relation to a particular person, they may relate to a whole class of persons even as rules and regulations may. To say that because the regulations contained the terms and conditions of appointment they are statutory is to beg the question. (Para 162)

The mere fact that regulations are made in respect of the conditions of service of the employees of a certain institution or organisation does not mean that those conditions are statutory. No doubt these are the conditions of service applying to their employees. But if there is breach of those conditions it cannot be said that there is a breach of any statutory provision. (Para 162)

Service or employment is basically a contract which is deeply rooted in private law. A mere standardisation or enumeration of the terms of a service contract is not, therefore, ordinarily sufficient to convert it into a statutory status. The matter is thus one between the employee and the employer which is precisely the case of a service contract. A breach of such conditions is therefore a breach of the service contract remediable by damage rather than an ultra vires action to be set aside by a declaration or mandamus. (Para 163)

R. Venkata Rao v. Secy. of State, AIR 1937 PC 31; 166 IC 516; 64 IA 55 and *R. T. Rangachari v. Secy. of State*, AIR 1937 PC 27; 166 IC 513; 64 IA 40, relied on.

It does not seem correct to say that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. Also while regulations made by one body which another body is bound to observe can be said to have the effect of law, the regulations which a body makes and can change and which it need not even make cannot be said to have the effect of law in relation to that body. (Para 165)

There is no distinction between the nature of rules and regulations of an ordinary company and a statutory corporation.

A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body makes regulations under the powers conferred by the statute creating that body. Both stand on the same footing as both derive their authority one from the Companies Act and the other from the Act which creates that body. Merely because a body happens to be a statutory

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body it does not become any the less entitled to frame regulations which would be of the same kind as the regulations made by a company. Whether a corporation or a company is created by a statute or under a statute does not make any difference to this principle. (Para 166)

In principle it should make no difference whether the employee is of a statutory corporation or a government owned company incorporated under the Companies Act, 1956. (Para 167)

Praga Tools Corpn. v. Imanual, (1969) 1 SCC 585; *Heavy Engg. v. Mazdoor Union*, (1969) 1 SCC 765; *S. L. Agarwal v. Hindustan Steel*, (1970) 1 SCC 177, *relied on*.

Ultimately unless it should be held that the institution or organisation in question is an "authority" within the meaning of the term in Article 12 of the Constitution there can be no question of the regulations framed by those organisations being deemed to be law. (Para 167)

In order that an institution must be an "authority" it should exercise part of the sovereign power or authority of the State. (Para 168)

The whole purpose of the provisions of Part III of the Constitution is to confer fundamental rights on the citizen as against the power of the State or those exercising the power of the State. None of these corporations do so and so they cannot be the 'State' or 'authority'. (Para 168)

B. B. C. v. Johns, (1965) 1 Ch 32, *relied on*.

New York v. United States, 90 L Ed 326; *Ohio v. Helvering*, 292 US 369; 78 L Ed 1310: 54 S Ct 725 and *Anderson v. Dunn*, 6 Wheat (US) 234, 226: 5 L Ed 242, 247, *relied on*.

Article 298 of the Constitution cannot be resorted to for supporting the proposition that when the State enters into non-governmental activities that should also be considered to be a governmental function. (Para 170)

Ranjit Kumar Chatterjee v. Union of India, AIR 1969 Cal 95, *referred to*.

Tamlin v. Hannaford, (1950) 1 KB 18, *relied on*.

The regulations under question apply only to the employees of the corporation. They do not affect the public or any portion of the public, they do not order something to be done or not to be done accompanied by some sanction or penalty for its non-observance. (Para 174)

None of the functions with which the three corporations under consideration are concerned, are governmental or quasi-governmental functions. (Para 183)

Rajasthan State Electricity Board v. Mohan Lal, (1967) 3 SCR 77, *relied on*.

Co-op. Bank v. Industrial Tribunal, (1969) 2 SCC 43; *U. P. Warehousing Corpn. v. Tyagi*, (1970) 2 SCR 250; (1969) 2 SCC 838, *referred to*.

Administrative Law — Subordinate legislation — Rules and regulations — Nature and effect of — Contrasted with executive orders and administrative instructions — Position in England — Validity of subordinate legislation tested by doctrine of ultra vires

Held:

Per Ray, C.J., Chandrachud and Gupta, JJ.

The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. (Para 18)

In England regulation is the term most popularly understood and the one favoured by the Committee on Ministers' Powers, who suggested that regulations should be used for substantive law and rules for procedural law, while orders should be reserved to describe the exercise of executive power or the taking of a judicial or quasi-judicial decision. The validity of statutory instruments is gene-

rally a question of vires, i.e., whether or not the enabling power has been exceeded or otherwise wrongfully exercised. (Para 13)

The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party. (Para 15)

Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. So if subordinate legislation authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. (Para 17)

Re. Langlois and Biden, (1891) 1 QB 349 and *Kruse v. Johnson*, (1898) 2 QB 91, referred to.

Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power. Second, the executive power of a State is not authorised to frame rules under Article 162. (Para 24)

G. J. Fernandez v. State of Mysore, (1967) 3 SCR 636 : AIR 1967 SC 1753, relied on.

A regulation is not an agreement of contract but a law binding the Corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent Legislature. Terms of the regulations are not terms of contract. (Paras 30 & 31)

Mafatlal Naraindas Barot v. Divisional Controller S. T. C., (1966) 3 SCR 40 : AIR 1966 SC 1364 : (1966) 1 Lab LJ 437 ; *S. R. Tewari v. Distt. Board*, (1964) 3 SCR 55 : AIR 1964 SC 1680 : (1964) 1 Lab LJ 1 ; *L. I. G. v. Sunil Kumar Mukherjee*, (1964) 5 SCR 528 : AIR 1964 SC 847 : (1964) 1 Lab LJ 442 and *Sirsi Municipality v. Cecilia Kom Francis*, (1973) 1 SCC 409 : 1973 SCC (L & S) 207, relied on.

U. P. Warehousing Corpn. v. C. K. Tyagi, (1970) 2 SCR 250 : (1969) 2 SCC 838 and *I. A. v. Sukhdeo Rai*, (1971) 2 SCC 192 : 1971 Supp SCR 510, explained.

Kruse v. Johnson, (1898) 2 QB 91, explained and relied on.

There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to everyone or to all members of some group or class. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. (Para 33)

Per Alagiriswami, J. (dissenting)

The compendious term "Subordinate Legislation" refers to notifications, orders, schemes, rules and bye-laws referred to in Sections 20 and 21 of the General Clauses Act. It would be noticed that the word "order" used in the General Clauses Act is not used in the same sense that word is used in England where orders are excluded from the statutory definition of statutory rules as being administrative. The Indian legislative practice is completely different from the English practice. It would therefore be misleading to refer to that law in connection with subordinate legislation in our country. We have to refer only to the General Clauses Act and the Indian legislative practice. (Para 135)

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The regulations framed under the regulation-making power conferred by the three Acts in question are not the regulations as defined in the General Clauses Act. Though "rule" is defined as including a regulation made as a rule, it cannot be said that regulation-making power conferred on the three organisations in question is a rule-making power. Under the legislative practice in India the rule-making power is conferred on the State and the power to make regulations is conferred on bodies or organisations created by the statute. (Para 136)

Praga Tools Corpn. v. Imanuel, (1969) 3 SCR 773 : (1969) 1 SCC 585; *Heavy Engg. v. Mazdoor Union*, (1969) 3 SCR 995 : (1969) 1 SCC 765; *S. L. Agarwal v. Hindustan Steel*, (1970) 3 SCR 363 : (1970) 1 SCC 177; *Hindustan Antibiotics v., Workmen*, (1967) 1 SCR 652 : AIR 1967 SC 948 : (1967) 1 LLJ 114; *Gurushantappa v. Abdul Khaddus*, (1969) 3 SCR 425 : (1969) 1 SCC 466; *Kasturilal v. State*, (1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583 and *Co-op. Bank v. Indust. Tribunal*, (1970) 1 SCR 205 : (1969) 2 SCC 43, *relied on*.

K. S. Ramamurthi v. Chief Commr., (1964) 1 SCR 656 : AIR 1963 SC 1464, *distinguished*.

Administrative Law — Delegated legislation — Nature — Need for

Held :

Per Ray, C.J., Chandrachud and Gupta, JJ.

The justification for delegated legislation is threefold. First, there is pressure on parliamentary time. Second, the technicality of subject-matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs. (Para 20)

Civil Appeal No. 2137 of 1972 dismissed

Civil Appeal No. 1655 of 1973 dismissed

Civil Appeal No. 1879 of 1972 partly allowed

Civil Appeal No. 115 of 1974 allowed

Parties to bear costs in all appeals

M/2377/CL

[Ed : This case must be read alongwith *Sabhajit Tewari v. Union of India*¹ wherein the same court has unanimously followed the three decisions in *Praga Tools Corpn. v. C. A. Imanuel*², *Heavy Engineering Mazdoor Union v. State of Bihar*³ and *S. L. Agarwal v. Hindustan Steel Ltd.*⁴ to hold that a governmental institution such as the Council of Scientific and Industrial Research being a society registered under the Societies Registration Act does not fall within Article 12.

In the present case though the majority rejected the contention seeking similarity between regulations framed by companies incorporated under the Companies Act and statutory corporations it did not refer to any of the above three decisions. The dissenting Judge, Alagiriswami, J. is greatly at unease and has prefaced his dissent by referring to the above three decisions and two other similar ones which do not find mention in the majority opinion. Reference to the above three decisions was further called for because the majority has left unsubstantiated its reasoning for not extending the protection of Article 311 to the employees of the statutory corporations having held the employing corporations to be "State" — a result similar to that arrived in the above decisions in respect of applicability of Article 311.

The one aspect that, however, follows from the present decision is that statutory corporations have become amenable to the writ jurisdiction under Articles 32 and 226 in respect of violation of rights under Part III, especially those of the citizen under Article 19.]

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| 1. (1975) 1 SCC 485 : 1975 SCC (L & S) 99. | 3. (1969) 1 SCC 765. |
| 2. (1969) 1 SCC 585. | 4. (1970) 1 SCC 177. |

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Advocates who appeared in this case :

F. S. Nariman, Addl. Sol. Gen. (in C.A. No. 2137/72), *A. K. Sen*, Senior Advocate (in C. A. No. 1655/73), (*B. Dutta*, Advocate, with him), for the Appellants (in C. As. Nos. 2137/72 and 1655/73);

Pramod Swarup, Advocate for the Appellant (in C. A. No. 1879/72);

M. K. Ramamurthy, Senior Advocate (*Janardan Sharma* and *Jitendra Sharma*, Advocates with him), for the Appellant (in C. A. No. 115/74);

R. K. Garg, *S. C. Agarwala*, *S. S. Bhatnagar* and *V. J. Francis*, Advocates of *M/s. Ramamurthy & Co.*, for the Respondent No. 1 (in C. A. No. 2137/72).

M. K. Ramamurthy, Senior Advocate (*J. Ramamurthy*, Advocate, with him), for the Respondents (in C. As. Nos. 1655/73 and 1879/72) and for Intervener (in C. A. No. 1655/73).

F. S. Nariman, Sol. Gen. of India (*I. N. Shreff*, Advocate, with him), for the Respondent No. 1 (in C. A. No. 115/74).

P. K. Pillai, Advocate for Intervener (in C. A. No. 2137/72).

F. S. Nariman, Addl. Sol. Gen. of India (*V. J. Taraporewala*, *O. G. Mathur*, *Mohan Prasad Jha* and *K. J. John*, Advocates, with him), for the Appellant/Intervener (Air India).

The Judgments of the Court were delivered by

RAY, C.J. (*for himself, Chandrachud and Gupta, JJ.*)—There are two questions for consideration in these appeals. First, whether an order for removal from service contrary to regulations framed under the Oil and Natural Gas Commission Act, 1959; the Industrial Finance Corporation Act, 1948; and the Life Insurance Corporation Act, 1956 would enable the employees to a declaration against the statutory corporation of continuance in service or would only give rise to a claim for damages. Second, whether an employee of a statutory corporation is entitled to claim protection of Articles 14 and 16 against the Corporation. In short the question is whether these statutory corporations are authorities within the meaning of Article 12.

2. The statutes for consideration are the Oil and Natural Gas Commission Act, 1959; the Industrial Finance Corporation Act, 1948; and the Life Insurance Corporation Act, 1956. The question which really falls for decision is whether regulations framed under these statutes have the force of law.

3. The Oil and Natural Gas Commission Act, 1959 hereinafter referred to as the 1959 Act established the Commission as a body corporate having perpetual succession and a common seal. The composition of the Commission is the Chairman, and not less than two, and not more than eight, other members appointed by the Central Government. One of the members shall be a whole-time Finance Member in charge of the financial matters relating to the Commission. The Central Government may, if it thinks fit, appoint one of the members as Vice-Chairman of the Commission. Under Section 12 of the 1959 Act the Commission may, for the purpose of performing its functions or exercising its powers, appoint such number of employees as it may consider necessary. The functions and the terms and conditions of service of such employees shall be such as may be provided by regulations made under the 1959 Act. There was an existing organisation set up in pursuance of a resolution of the Government of India No. 22/29/55-O & G dated August 14, 1956. Every

person employed by the said existing organisation before the establishment of the Commission became an employee of the Corporation in accordance with the provisions contained in Section 13 of the 1959 Act.

4. Sections 31 and 32 of the 1959 Act are important. Section 31 states that the Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of the Act. The rules provide inter alia for the term of office of, and the manner of filling casual vacancies among the members, and their conditions of service; the disqualifications for membership of the Commission and the procedure to be followed in removing a member who is or becomes subject to any disqualification; the procedure to be followed in the discharge of functions by members; the conditions subject to which and the mode in which contracts may be entered into by or on behalf of the Commission and some other matters. Every rule made under Section 31 of the 1959 Act shall be laid as soon as may be before each House of Parliament as mentioned in the section. Both Houses may agree to or annul the rule or modify it.

5. Under Section 32 of the 1959 Act the Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the Act and the rules made thereunder, for enabling it to discharge its functions under the Act. The regulations provide inter alia for the terms and conditions of appointment and service and the scales of pay of employees of the Commission; the time and place of meetings of the Commission, the procedure to be followed in regard to the transaction of business at such meetings; the maintenance of minutes of meetings of the Commission and the transmission of copies thereof to the Central Government; the persons by whom, and the manner in which payments, deposits and investments may be made on behalf of the Commission; the custody of moneys required and the maintenance of accounts. The Central Government may amend, vary or rescind any regulation which it has approved, and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Commission under sub-section (1) of Section 32.

6. The Life Insurance Corporation Act, 1956, hereinafter referred to as the 1956 Act, established the Corporation under Section 3 of the Act. Under Section 11 of the 1956 Act existing employees of an insurer whose controlled business was transferred to and vested in the Corporation and who were employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day became on and from the appointed day an employee of the Corporation. Section 11 of the 1956 Act further states that the employees of the Corporation would hold office upon the same terms and with the same rights and duties as they would have held on the appointed day. These employees were further to continue under the 1956 Act unless and until their employment was terminated or until the remuneration, terms and conditions were duly altered by the Corporation.

7. The two important sections of 1956 Act are Sections 48 and 49.

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Section 48 states that the Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. The rules inter alia provide for the term of office and the conditions of service of members; the jurisdiction of the Tribunals constituted under Section 17 of the Act, the manner in which and the persons to whom any compensation under this Act may be paid; the conditions subject to which the Corporation may appoint employees. All rules made shall be laid as stated in the section before both Houses of Parliament and shall be subject to such modification as Parliament may make.

8. Section 49 of the 1956 Act states that the Corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act. The regulations may provide inter alia for the powers and functions of the Corporation which may be delegated to the Zonal Managers; the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents; the terms and conditions of service of persons who have become employees of the Corporation under Section 11 of the Act; the number, term of office and conditions of service of members of Boards constituted under Section 22 of the Act; the manner in which the Fund of the Corporation shall be maintained; the form and manner in which policies may be issued and contracts binding on the Corporation may be executed.

9. The Industrial Finance Corporation Act, 1948 hereinafter referred to as the 1948 Act establishes the Corporation under Section 3 of the Act. The superintendence of the business of the Corporation shall be entrusted to a Board of Directors. Section 42 of the 1948 Act enacts that the Central Government may make rules in consultation with the Development Bank not inconsistent with the provisions of this Act and to give effect to the provisions of the Act and where there is any inconsistency with rules and regulations the rules shall prevail. The rules under the Act are to be laid before each House of Parliament in the same manner as in the Oil and Natural Gas Commission Act. Section 43 of the 1948 Act enacts that the Board may with the previous approval of the Development Bank make regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act. The Development Bank means the Industrial Development Bank established under the Industrial Development Act, 1964. The shares of the Central Government in the Corporation shall stand transferred to the Development Bank when the Central Government shall so notify. The regulations provide inter alia for the holding and conduct of elections under this Act including the final decision of doubts or disputes regarding the validity of the election; the manner in which and the conditions subject to which the shares of the Corporation may be held and transferred; the manner in which general meetings shall be convened, the procedure to be followed thereat; the duties and conduct,

salaries, allowances and conditions of service of officers and other employees and of advisers and agents of the Corporation.

10. The contentions on behalf of the State are these. Regulations are framed under powers given by the statute affecting matters of internal management. Regulations do not have a statutory binding character. Terms and conditions of employees as laid down in the regulations are not a matter of statutory obligations. Regulations are binding not as law but as contract. Regulations have no force of law. Regulations provide the terms and conditions of employment and thereafter the employment of each person is contractual.

11. The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self-binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the regulations.

12. Rules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.

13. In England the Statutory Instruments (Confirmatory Powers) Order, 1947, contemplates orders in Council or other instruments which are described as orders. The Rules Publication Act, 1893 in England defines "rule making authority" to include every authority authorised to make any statutory rules. Statutory rules are defined there as rules, regulations or bye-laws made under any Act of Parliament, in England. Orders are excluded from the statutory definition of statutory rules as being administrative. In England regulation is the term most popularly understood and the one favoured by the Committee on Ministers' Powers, who suggested that regulations should be used for substantive law and rules for procedural law, while orders should be reserved to describe the exercise of executive power or the taking of a judicial or quasi-judicial decision (See *Craies on Statute Law*, 7th Ed. at p. 303). The validity of statutory instruments is generally a question of vires, i.e. whether or not the enabling power has been exceeded or otherwise wrongfully exercised.

14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. By-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rules.

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15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

16. In England subordinate legislation has, if validly made, the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the Courts.

17. Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of a breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. *Re. Langlois and Biden*¹; and *Kruse v. Johnson*².

18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.

1. (1891) 1 QB 349.

2. (1898) 2 QB 91.

19. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament and can be taken away by Parliament. The legislative function is the making of rules. Some Acts of Parliament decide particular issues and do not lay down general rules.

20. The justification for delegated legislation is three-fold. First, there is pressure on parliamentary time. Second, the technicality of subject-matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs.

21. The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.

22. Another characteristic of law is its content. Law is a rule of general conduct while administrative instruction relates to particular person. This may be illustrated with reference to regulations under the Acts forming the subject-matter of these appeals. The Life Insurance Corporation Act as well as the Industrial Finance Corporation Act confers power on the Corporation to make regulations as to the method of recruitment of employees and the terms and conditions of service of such employees or agents. The Oil and Natural Gas Commission Act under Section 12 states that the functions and terms and conditions of service of employees shall be such as may be provided by regulations under the Act. Regulations under the 1959 Act provide inter alia the terms and conditions of appointment and scales of pay of the employees of the Commission. The regulations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory.

23. The noticeable feature is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. The statutory bodies are not free to make such terms as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees. These regulations in the statutes are described as "status fetters on freedom of contract". The Oil and Natural Gas Commission Act in Section 12 specifically enacts that the terms and conditions of the employees may

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be such as may be provided by regulations. There is a legal compulsion on the Commission to comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. In other statutes under consideration, viz., the Life Insurance Corporation Act and the Industrial Finance Corporation Act though there is no specific provision comparable to Section 12 of the 1959 Act the terms and conditions of employment and conditions of service are provided for by regulations. These regulations are not only binding on the authorities but also on the public.

24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power. Second, the executive power of a State is not authorised to frame rules under Article 162. This Court held that the Public Works Department Code was not a subordinate legislation (See *G. J. Fernandez v. State of Mysore*³). The rules under Article 309 on the other hand constitute not only the constitutional rights of relationship between the State and the government servants but also establish that there must be specific power to frame rules and regulations.

25. The Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act. The fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the statutes creating such bodies. Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement. A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise powers unless the company follows the statutory provisions. The provision in the Registration Act requires registration of instruments. The provisions in the Stamp Act contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. The source of the power for making rules and regulations in the case of corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

26. The character of regulations has been decided by this Court in several decisions. One group of decisions consists of *S. R. Tiwari v. District Board, Agra*⁴; *Life Insurance Corporation of India v. Sunil Kumar*

3. (1967) 3 SCR 636 : AIR 1967 SC 1753.

4. (1964) 3 SCR 55 : AIR 1964 SC 1680 : (1964) 1 Lab LJ 1.

*Mukherjee*⁵; *Calcutta Dock Labour Board v. Jaffar Imam*⁶; *Mafatlal Naraindas Barot v. Divisional Controller S. T. C.*⁷; *The Sirsi Municipality v. Cecelia Kom Francis*⁸; *U. P. State Warehousing Corporation v. C. K. Tyagi*⁹ and *Indian Airlines Corporation v. Sukhdeo Rai*¹⁰.

27. In *Naraindas Barot's case* (supra) this Court held that the termination of services by Corporation created by a statute without complying with the requirements of the regulations framed by the Corporation under the State governing conditions of the employees of the Corporation was bad. The reason is that the termination contravened the provisions contained in the regulations.

28. In *Tewari's case* (supra) the termination of the employment of Tewari was challenged on the ground that the resolution of the District Board terminating the services was invalid. The High Court dismissed Tewari's application under Article 226 in limine. This Court held that the courts are invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of the mandatory obligation imposed by statute. The District Boards Act conferred power upon the State Government by Section 172 to make rules under the Act. The District Board relied on a notification headed "Regulation regarding dismissal, removal or reduction of officers and servants of District Boards". It was treated as a rule inasmuch as Section 173(2) of the District Boards Act which conferred power to frame regulations did not confer any power to frame powers regulating the exercise of the power of dismissal of officers or servants of the Board. This Court held that under the rules dismissal, removal or reduction of an officer or servant might be effected only after affording him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. In *Tewari's case* this Court also said that the order of dismissal involving punishment must be exercised consistently with the rules or regulations framed under the statute.

29. In the *Life Insurance Corporation case* (supra), there were regulations framed under the Act. Clause 4(3) of the Regulations prescribed that in judging a Field Officer's work, the Corporation shall observe the principles contained in the circular issued by the Managing Director on December 2, 1957. Paragraph 4(h) of the circular which became an integral part of the regulations inter alia stated that where the Committee of its own decided that the poor performance of a Field Officer was not due to circumstances beyond his control or that he had made no efforts and not shown inclination or willingness to work, the services of such Field Officer would be terminated. There was also in existence a Field Officer's order which was issued in exercise of the powers conferred on the Central Government by Section 11(2) of the Act. Clause 10 of the order provided for penalties and termination of service. The

5. (1964) 5 SCR 528; AIR 1964 SC 847;
(1964) 1 Lab LJ 442.
6. (1965) 3 SCR 453; AIR 1966 SC 282;
(1965) 2 Lab LJ 112.
7. (1966) 3 SCR 40; AIR 1966 SC 1364;
(1966) 1 Lab LJ 437.

8. (1973) 1 SCC 409; 1973 SCC (L & S)
207.
9. (1970) 2 SCR 250; (1969) 2 SCC 838.
10. (1971) 2 SCC 192; 1971 Supp SCR
510.

contention of the employee was that the termination of service could be brought about only under Clause 10 of the Order. This Court held that the regulations to be framed by the Corporation were not to be inconsistent either with the Act or with orders made under Section 11(2) of the Act. The circular which was a part of the regulations under Clause 4(3) thereof and Clause 10 of the order were reconciled by this Court by stating that paragraph 4(h) of the circular could be availed of to terminate the services of the officers but such termination was to be effected in the manner prescribed by Clause 10. The termination was not in accordance with either Clause 10(a) or (b) of the Order. Therefore, the termination was invalid. The *Life Insurance case* recognised regulations framed under the Act to have the force of law.

30. In the *Indian Airlines Corporation case* (supra) this Court said that there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the employment could be exercised the employee could not contend that he was entitled to a declaration that the termination of his employment was null and void. In the *Indian Airlines Corporation case* reliance was placed upon the decision of *Kruse v. Johnson* (supra) for the view that not all by-laws have the force of law. This Court regarded regulations as the same thing as by-laws. In *Kruse v. Johnson* the Court was simply describing the effect that the county by-laws have on the public. The observations of the Court in *Kruse v. Johnson* that the by-law "has the force of law within the sphere of its legitimate operation" are not qualified by the words that it is so only when affecting the public or some section of the public ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance.

In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent Legislature.

31. In *U. P. Warehousing Corporation* (supra) and *Indian Airlines Corporation* (supra) cases the terms of the regulations were treated as terms and conditions of relationship between the Corporation and its employees. That does not lead to the conclusion that they are of the same nature and quality as the terms and conditions laid down in the contract of employment. Those terms and conditions not being contractual are imposed by one kind of subordinate legislation, viz., regulations made in exercise of the power conferred by the statute which constituted that Corporation. Terms of the regulations are not terms of contract. In the *Indian Airlines Corporation case* under Section 45 of the Air Corporations Act, 1953, the Corporation had the power to make regulations not inconsistent with the Act and the rules made by the Central Government thereunder. The Corporation had no power to alter or modify or

rescind the provisions of these regulations at its discretion, which it could do in respect of the terms of contract that it may wish to enter with its employees independent of these regulations. So far as the terms of the regulations are concerned, the actions of the Corporation are controlled by the Central Government. The decisions of this Court in *U. P. Warehousing Corporation* and *Indian Airlines Corporation* are in direct conflict with the decision of this Court in *Naraindas Barot's case* (supra) which was decided by the Constitution Bench.

32. In *Sirsi Municipality v. Cecelia Kom Francis Tellis* (supra) the dismissal was held to be contrary to Rule 143 framed under Section 46 of the Bombay District Municipalities Act. This Court held that in regard to the master-servant cases in the employment of the State or of other public or local authorities or bodies created under statute, the courts have decided in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. The ratio is that the rules or the regulations are binding on the authority.

33. There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty

to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

34. On behalf of the State it is contended that these corporations cannot be said to be "other authority" contemplated in Article 12 for two principal reasons. First, one of the attributes of a State is making laws. The State exercises governmental functions and the executive power of the State is co-extensive with the legislative power of the State. Second, authority as contemplated in Article 12 means a body of persons established by statute who are entitled as such body to command obedience and enforce directions issued by them on pain of penalty for violation. On these grounds it was said that these corporations cannot make laws like a State and cannot enforce directions.

35. The State undertakes commercial functions in combination with governmental functions in a welfare State. Governmental function must be authoritative. It must be able to impose decision by or under law with authority. The element of authority is of a binding character. The rules and regulations are authoritative because these rules and regulations direct and control not only the exercise of powers by the Corporations but also all persons who deal with these corporations.

36. This Court in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal*¹¹ said that an "authority" is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. The expression "other authorities" in Article 12 has been held by this Court in the *Rajasthan Electricity Board case* to be wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India. This Court further said referring to earlier decisions that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. The State itself is envisaged under Article 298 as having the right to carry on trade and business. The State as defined in Article 12 is comprehended to include bodies created for the purpose of promoting economic interests of the people. The circumstance that the statutory body is required to carry on some activities of the nature of trade or commerce does not indicate that the Board must be excluded from the scope of the word "State". The Electricity Supply Act showed that the Board had power to give directions, the disobedience of which is punishable as a criminal offence. The power to issue directions and to enforce compliance is an important aspect.

37. The concurring judgment in the *Rajasthan Electricity Board case* (supra) said that the Board was invested by statute with extensive powers of control over electricity undertakings. The power of the Board to make rules and regulations and to administer the Act was said to be in substance the sovereign power of the State delegated to the Board.

38. In the *British Broadcasting Corporation v. Johns (Inspector of*

11. (1967) 3 SCR 377; AIR 1967 SC 1857; (1968) 1 Lab LJ 257.

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submission, learned counsel has placed reliance upon *State of M.P. v. Surpa*¹. In our view the submission has been made only to be rejected for two reasons; firstly, the ballistic expert, CW 1 has nowhere stated in unequivocal terms that bullet recovered from the body of the deceased was of .303 bore; secondly, in the very examination-in-chief CW 1 stated that the cartridge of .303 bore could be also fired from the country-made gun Ext. 14, which according to prosecution case was used in the present occurrence. Thus, we are of the view that on the basis of the evidence of the ballistic expert, CW 1 it cannot be said with reasonable amount of certainty that the bullet recovered was of .303 bore and in any view of the matter the ballistic expert, CW 1 opined that cartridge of .303 bore could be fired from the country-made gun recovered, which was used during the course of the occurrence. In the decision of this Court cited by learned counsel appearing on behalf of the appellant, apart from the reason that the bullet recovered from the body of the deceased could not have been fired from the firearm used by the accused, this Court otherwise also doubted veracity of the prosecution case and, accordingly, it was held that the accused was entitled to acquittal. In view of the foregoing discussion that the evidence of PW 1 is supported by the medical evidence, we are of the view that the High Court was quite justified in holding that the prosecution succeeded in proving its case against the appellant Vijai Singh beyond reasonable doubt and converting his conviction from Section 302 read with Section 34 IPC to Section 302 IPC.

4. Turning now to the appeals against acquittal, having perused the reasonings of the High Court, we do not find that the ground which weighed with the High Court in acquitting accused Ashok Kumar and Vinod Kumar was perverse in any manner and it is well-settled that unless the judgment of acquittal is found to be perverse, the appellate court would not interfere with the same.

5. For the foregoing reasons, we do not find any merit in these appeals and the same are dismissed accordingly.

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(BEFORE ASHOK BHAN AND S.B. SINHA, JJ.)

BANGALORE DEVELOPMENT AUTHORITY
AND OTHERS

.. Appellants;

Versus

R. HANUMAIAH AND OTHERS

.. Respondents.

Civil Appeal No. 971 of 2003[†], decided on October 3, 2005

A. Land Acquisition and Requisition — Bangalore Development Authority Act, 1976 (12 of 1976) — S. 38-C — Power of BDA under — Scope — Held, does not extend to reconvey the land acquired or a part thereof by withdrawing the acquisition itself — Town Planning

¹ (2002) 9 SCC 447 : 2003 SCC (Cri) 1221

[†] From the Judgment and Order dated 9/10-7-2001 of the Karnataka High Court in WA No. 727 (GM) of 1989

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a B. Land Acquisition and Requisition — Bangalore Development Authority Act, 1976 (12 of 1976) — S. 38-C — Provision in, for allotment of sites — Nature of operation of — Held, prospective except to the extent of the allotments made between the dates specified in and saved by S. 9, Bangalore Development Authority (Third Amendment) Act, 1993 — Statute Law — Prospective or retrospective — Town Planning

b C. Doctrines — Doctrine of promissory estoppel — Basis and essence of, restated — Evidence Act, 1872, S. 115 — Administrative Law — Promissory estoppel

c D. Doctrines — Doctrine of promissory estoppel — Applicability — Held, it cannot be invoked to permit or condone a breach of law or to compel the Government to do an act prohibited by law — Hence, in the absence of a statutory provision enabling BDA to reconvey the land acquired to implement a scheme for forming of sites and allotment thereof as per Rules, held, BDA could not be directed to reconvey a part of such land merely because it had promised to do so — Further held, S. 29 of City of Bangalore Improvement Act, 1945 was not different in content and scope from S. 38 of the Bangalore Development Authority Act, 1976 — Hence, contention of the quondam landowner that his right to reconveyance of the acquired land in terms of CITB's resolution survived by virtue of S. 76(3) of BDA Act, rejected — Bangalore Development Authority Act, 1976 (12 of 1976) — Ss. 38 and 76(3) — Town Planning

d E. Land Acquisition and Requisition — City of Bangalore Improvement Act, 1945 (5 of 1945) — S. 29 — Comparison of, with S. 38, Bangalore Development Authority Act, 1976 — Held, both are in pari materia with each other — Statute Law — Pari materia provisions — Town Planning — Bangalore Development Authority Act, 1976 (12 of 1976), S. 38

e f F. Land Acquisition Act, 1894 — Ss. 48, 4, 6, 31, 11 and 16 — Power of Government under S. 48 to withdraw acquisition notification — Cesser of — Subsequent to preliminary and final notifications, Land Acquisition Officer passing award and taking possession after making payment in terms of the award and thereupon the land vesting in the Government — At this stage the notification for acquiring the land, held, could not be withdrawn or cancelled in exercise of the powers under S. 48 of the 1894 Act or even under S. 21, General Clauses Act — Merely because after taking possession the authorities offered to reconvey the land to the quondam landowner provided that the latter redeposited the amount of compensation, held, that did not mean that the vesting process became incomplete — The acquisition process in such a case, held, nonetheless stood completed — General Clauses Act, 1897, S. 21 — Karnataka Land Acquisition Act, 1894 (7 of 1894), S. 4

g G. Land Acquisition Act, 1894 — Preamble — Nature of the Act — Held, it is a code by itself — It deals not only with acquisition of land but also with payment of compensation and release of the acquired lands

h H. Land Acquisition and Requisition — Bangalore Development Authority Act, 1976 (12 of 1976) — S. 65 — Government's power under, to give direction to BDA — Scope and manner of exercise of — Held, it does not extend to give directions contrary to the provisions of the Act — Moreover, such a direction must conform to the provisions of Art. 166 of the Constitution — The authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent

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and not to destroy it — Further held, power under S. 65 can ordinarily be exercised where a policy matter is involved and not for interfering in day-to-day functioning of BDA — In the absence of an enabling provision, Chief Minister's direction to BDA to reconvey the land acquired, held, opposed to the object of the Act and therefore bad in law — Hence, BDA was not bound by it and rightly refused to comply with it — Administrative Law — Exercise of power/Discretionary power — Manner of exercise of

I. Town Planning — Bangalore Development Authority Act, 1976 (12 of 1976) — Preamble and S. 3 — Purpose of the Act and object of constituting BDA, held, are development of the city and improvement of the lives of the persons living therein

J. Land Acquisition Act, 1894 — Ss. 23, 24, 11 and 18 — Compensation — Relief in the peculiar circumstances of the case — Balancing of equities — Preliminary and final notifications issued, award passed, compensation paid and possession taken — At that stage, authorities offering to reconvey the land to the respondent quondam landowner provided he redeposited the compensation amount and withdrew his references under S. 18 — Respondent complying with the said conditions but land not reconveyed — In such circumstances, finding the reconveyance to be legally impermissible, respondent directed to be paid the compensation determined together with enhanced compensation granted by High Court in any of the references filed by the respondent or any other landowner inclusive of statutory benefits with interest @ 9% p.a. from the date it became due till payment — Further directed that in case the amount was not deposited within three months, interest would be payable @ 12% p.a. — Town Planning — Bangalore Development Authority Act, 1976 (12 of 1976), Ss. 23, 24, 11 and 18

A preliminary notification dated 26-11-1959 was published under Section 4 of the Karnataka Land Acquisition Act, 1894 proposing to acquire the land of the respondent for formation of a scheme to set up a layout. But all the subsequent proceedings were taken under the Land Acquisition Act, 1894. Final notification was published on 28-9-1965 and the award was made on 29-11-1966. The amounts of compensation were either paid or deposited in the treasury or in the Reference Court. By a resolution dated 26-6-1968 as amended by a resolution dated 19-4-1972, CITB [constituted under Section 3 of the City of Bangalore Improvement Act, 1945 (for short "1945 Act")] agreed to reconvey a certain extent of land in favour of the respondent subject to the conditions that the respondent: (i) withdrew the cases pending in the civil court, and (ii) drew the compensation amount and redeposited the same to CITB funds. The respondent complied with the said conditions. After the repeal of the 1945 Act by the Bangalore Development Authority Act, 1976 (for short "BDA Act"), BDA succeeded to CITB. The resolution for reconveyance of the land to the respondent was not given effect to as in a number of cases, the Karnataka High Court had held that the land acquired for the development scheme could not be returned or reconveyed to the owner and that it could be applied only for the purposes of the acquisition. The sites formed by BDA in that land were therefore allotted in the year 1985-86. In the present case, however, a Division Bench of the Karnataka High Court held that reconveyance was permissible. Drawing support from Section 21 of the General Clauses Act, it held that since the State was the acquiring authority, it could in exercise of its power under Section 48 of

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a the Land Acquisition Act, 1894 withdraw the acquisition or prune the area of acquisition. That BDA was barred by the doctrine of promissory estoppel to withdraw/not act upon the resolution dated 19-4-1972 specially when the respondent in pursuance of that resolution had acted prejudicially to his interest. That the decision of CITB was binding on BDA as successor. That the acquisition proceedings in the process of vesting of the land had not reached finality in respect of the land which was the subject-matter of reconveyance as the respondent had redeposited the amount of compensation as per resolution dated 19-4-1972 and thus had not received the amount of compensation.

b Therefore, it issued a direction to the BDA to issue the possession certificate to the respondent in respect of the land in question. Moreover, placing reliance on Section 38-C of the BDA Act, the Division Bench held that in a given case for good reasons it would be permissible for the Authority to alter the terms of the acquisition and restore the lands acquired. The Division Bench further held that the appellant could not be permitted to resile from the representation or promise made by it to the respondent as the respondent had acted on the representation and altered his position to his prejudice. The BDA then filed the present appeal.

c During the pendency of the present appeal, the Principal Secretary to the State Government by his letter dated 12-7-2005, wrote to the Commissioner, BDA that in the light of the Chief Minister's order, the land in question should be reconveyed to the respondent in accordance with the High Court's decision (which was impugned in the present appeal). The letter was written on behalf of the Government in purported exercise of its power under Section 65 of the Act.

d The BDA replied that the order of the Chief Minister was contrary to law and could not therefore be complied with.

e Opposing the appeal, the respondent contended, inter alia, that Section 29 of the 1945 Act was different in content and scope from Section 38 of the BDA Act. That the resolution, since it was passed under the 1945 Act, should be interpreted in the light thereof as Section 76(3) of the BDA Act which provided that any right, privilege, etc. arising under the old Act would remain intact. The respondent sought support for his claim also from the Principal Secretary's letter dated 12-7-2005.

Allowing the appeal, the Supreme Court

Held :

f Section 38-C of the BDA Act only authorises BDA to allot a site in a development scheme to a person whose land had been acquired. It does not give any power to BDA to reconvey the land or a part of the land by withdrawing the acquisition itself. Moreover, Section 38-C is prospective in its application except to the extent of the allotment made between 20-12-1973 to 8-5-1986 which are saved by Section 9 of Bangalore Development Authority (Third Amendment) Act, 1993 (for short "the Amendment Act"). The resolution of CITB of 1972 agreeing to reconvey the part of the land acquired is not covered by the provisions of Section 9 of the Amendment Act. (Paras 23, 24 and 18)

H.C. Venkataswamy v. Bangalore Development Authority, (2001) 9 SCC 204, distinguished

h The doctrine of promissory estoppel is not based on the principle of estoppel. It is a doctrine evolved by equity in order to prevent injustice. Where a party by his word or conduct makes a promise to another person in unequivocal and clear terms intending to create legal relations knowing or intending that it would be acted upon by the party to whom the promise is made and it is so acted

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upon by the other party the promise would be binding on the party making it. It would not be entitled to go back on the promise made. (Para 28)

There is no provision in the Act and the Rules framed thereunder enabling BDA to reconvey the land acquired to implement a scheme for forming of sites and their allotment as per Rules. Therefore, a direction cannot be issued to BDA to reconvey a part of the land on the ground that it had promised to do so. The rule of promissory estoppel cannot be availed to permit or condone a breach of law. It cannot be invoked to compel the Government to do an act prohibited by law. It would be going against the statute. The principle of promissory estoppel would under the circumstances be not applicable to the present case. (Para 34)

Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144; *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) 2 SCC 62; *Sharma Transport v. Govt. of A.P.*, (2002) 2 SCC 188; *Pune Municipal Corpn. v. Promoters and Builders Assn.*, (2004) 10 SCC 796; *TISCO Ltd. v. State of Jharkhand*, (2005) 4 SCC 272; *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636 : 2005 SCC (Cri) 787; *Devasahayam v. P. Savithramma*, (2005) 7 SCC 653 : (2005) 7 Scale 322, relied on

State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., (1973) 2 SCC 713; *Vasantkumar Radhakisan Vora v. Board of Trustees of the Port of Bombay*, (1991) 1 SCC 761; *STO v. Shree Durga Oil Mills*, (1998) 1 SCC 572; *Ashok Kumar Maheshwari (Dr.) v. State of U.P.*, (1998) 2 SCC 502 : 1998 SCC (L&S) 592; *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav*, (1988) 2 SCC 351 : 1988 SCC (L&S) 542 : (1988) 7 ATC 296; *Amrit Banaspati Co. Ltd. v. State of Punjab*, (1992) 2 SCC 411; *Hira Tikoo v. Union Territory, Chandigarh*, (2004) 6 SCC 765; *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530 : 1988 SCC (Cri) 182; *MD, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*, (2004) 9 SCC 619; *B.N. Sathyanarayana Rao v. State of Karnataka*, ILR 1987 Kant 790; *R. Hanumaiah v. Bangalore Development Authority*, (2002) 10 SCC 221; *A.V. Lakshman v. B.D.A.*, WA No. 729 of 1983 (Kant); *Rachappa v. State*, WA No. 581 of 1975 (Kant); *H.N. Abdul Rehman v. State*, WP No. 8321 of 1984 (Kant); *Bangalore Distt. Coop. Central Bank Employees Coop. Society Ltd. v. Bangalore Development Authority*, WP No. 12119 of 1988 (Kant); *B. Venkataswamy Reddy v. State of Karnataka*, ILR 1989 Kant 75, referred to

Muniyappa v. Bangalore Development Authority, ILR 1992 Kant 125, explained

State of Punjab v. Nestle India Ltd., (2004) 6 SCC 465, explained and distinguished

On a comparison and reading of Section 29 of the City of Bangalore Improvement Act, 1945 and Section 38 of the BDA Act, it is not possible to find any material difference between those two sections. In fact both are in *pari materia* with each other. The arguments of the respondent based on Section 76(3) of the BDA Act, therefore, have no force. (Para 40)

The possession of the land in question was taken in the year 1966 after the passing of the award by the Land Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in-interest of the appellant. After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Section 21 of the General Clauses Act could not be exercised after vesting of the land statutorily in the State Government. (Paras 46 and 43)

Lt. Governor of H.P. v. Avinash Sharma, (1970) 2 SCC 149; *Pratap v. State of Rajasthan*, (1996) 3 SCC 1; *Mohan Singh v. International Airports Authority of India*, (1997) 9 SCC 132; *Printers (Mysore) Ltd. v. M.A. Rasheed*, (2004) 4 SCC 460, relied on

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a The High Court also erred in holding that land acquisition process and the vesting process became incomplete since the landowners were asked to redeposit the amount of compensation. The High Court failed to take notice of Section 31 of the Land Acquisition Act. None of the contingencies mentioned in Section 31(2) arose in the present case. Thus, once the amount was tendered and paid the acquisition process was complete. After making the award under Section 11 the Collector could take possession of the land under Section 16 which would thereupon vest absolutely in the Government free from all encumbrances. In the instant case, after making the payment in terms of the award, possession was taken. The acquisition process stood completed. The subsequent development could not alter the fact that the acquisition was complete. (Para 47)

b It is not possible to uphold the contention of the respondent that the directions issued by the Chief Minister through his note were binding on BDA or that BDA was bound in law to reconvey the land in terms of the directions issued in the impugned judgment. It has not been shown that the Chief Minister was authorised to issue the directions to BDA to reconvey the land. Power of the Government under Section 65 is not unrestricted. Directions have to be for carrying out the objective of the Act and not contrary to the provisions of the Act. (Para 51)

c Directions to release the lands would be opposed to the statute as the purpose of the Act and object of constituting BDA are the development of the city and improvement of the lives of the persons living therein. The authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Direction issued by the Chief Minister in the present case ran counter to and was destructive of the purpose for which BDA was created. It was opposed to the object of the Act and therefore, bad in law. (Para 52)

d The Land Acquisition Act, 1894 is a code by itself. It not only deals with acquisition of land but also deals with payment of compensation as also release of the acquired lands. (Para 53)

e The Bangalore Development Authority is a creature of statute. Its functions and duties are delineated by the Bangalore Development Authority Act, 1976. Its jurisdiction to reconvey the land vested in it in exercise of its power. The said Act does not confer any power on the said Authority to reconvey the land vested in it. Upon acquisition of the land, the same vests in the State. The State only can reconvey the said acquired land of the said Authority. (Para 54)

f The power of the State Government under Section 65 of the BDA Act, 1976 is circumscribed by the conditions precedent laid down therein. Thus, the directions can be issued only when the same are necessary or expedient for carrying out the purpose of the Act. In a case of this nature, the State Government did not have any such jurisdiction and, thus, the BDA has rightly refused to comply therewith. (Para 55)

g *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627 : (2005) 7 Scale 386; *Commr. of Police v. Gordhandas Bhanji*, 1952 SCR 135 : AIR 1952 SC 16; *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405; *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*, (2004) 2 SCC 65, referred to

h Equally untenable is the plea of the respondents that promise of CITB to reconvey is enforceable in law. (Para 57)

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The Bangalore Development Authority has been constituted for specific purposes. It cannot take any action which would defeat such purpose. The State also ordinarily cannot interfere in the day-to-day functioning of a statutory authority. It can ordinarily exercise its power under Section 65 of the 1976 Act where a policy matter is involved. It has not been established that the Chief Minister had the requisite jurisdiction to issue such a direction. Section 65 of the 1976 Act contemplates an order by the State. Such an order must conform to the provisions of Article 166 of the Constitution. (Para 58)

Since the respondent has redeposited the amount of compensation received and also withdrawn his reference applications seeking enhancement of the compensation, the equities have to be balanced. Therefore, the appellant BDA is directed to pay the amount of compensation which was determined by the Land Acquisition Officer along with enhanced compensation which may have been granted by the High Court in any of the references filed either by the respondent or any other landowner inclusive of statutory benefits with interest @ 9% per annum w.e.f. the date on which it became due till its payment. In case the amount is not deposited within three months, the respondent would be entitled to interest @ 12% per annum. (Paras 59 and 60)

H-M/AZ/33223/S

Advocates who appeared in this case :

Altaf Ahmed, Senior Advocate (S.K. Kulkarni and Vijay Kumar, Advocates, with him) for the Appellants;

K. Ramamurthy, Senior Advocate (V. Anand, B.K. Choudhary, Arul Muruganandham N.K., K. Lingaraja and E.C. Vidya Sagar, Advocates, with him) for the Respondents.

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- a 20. ILR 1992 Kant 125, *Muniyappa v. Bangalore Development Authority* 517f-g, 517g-h, 520c, 521d-e, 521f, 521f-g, 525c-d
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- c 27. WP No. 8321 of 1984 (Kant), *H.N. Abdul Rehman v. State* 519a-b
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32. (1973) 2 SCC 713, *State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* 526b-c
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34. 1952 SCR 135 : AIR 1952 SC 16, *Commr. of Police v. Gordhandas Bhanji* 534g, 535c

The Judgment of the Court was delivered by

e **ASHOK BHAN, J.**— This appeal is directed against the judgment of the Division Bench of the Karnataka High Court in Writ Petition No. 727 of 1989 wherein and whereunder the Division Bench while setting aside the judgment of the learned Single Judge in Writ Petition No. 15487 of 1987 issued a direction to the Bangalore Development Authority (for short “BDA”), the appellant herein, to issue possession certificate to the writ petitioner i.e. the 1st respondent herein in respect of 6 acres and 20 guntas of land as per its resolution dated 19-4-1972 and to allot alternative plots/sites of equal size to the persons who had been allotted sites carved out of 6 acres and 20 guntas of land.

g **2.** The City of Bangalore Improvement Act, 1945 was enacted by the then Government of Mysore. Under Section 3 of the said Act a Board of Trustees was constituted to implement the purposes of the Act. The Board (commonly known as CITB) was given the power to draw the improvement scheme and for undertaking any work for improvement or development of any area in or around the city of Bangalore. The Board was also given the power to acquire land by agreement and was deemed to be a local authority for the purposes of Section 50(2) of the Mysore Land Acquisition Act which

h was in *pari materia* with the Land Acquisition Act of 1894.

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3. On 28-1-1960 a preliminary notification dated 26-11-1959 was published in the Official Gazette proposing to acquire the land of the 1st respondent for formation of a scheme to set up a layout called the Koramangala Layout. Final notification was published on 28-9-1965 and the award was made on 29-11-1966. The amount of compensation was paid and in some cases it was deposited in the treasury. The 1st respondent sought a reference for enhancement of the compensation. In the cases in which a reference had been sought by the 1st respondent the amount of compensation was deposited in the civil court. Immediately after the passing of the award the possession of the land in question was taken. a

4. On 26-6-1968 a resolution was passed by CITB, Bangalore (wrongly typed as 26-6-1969 in the impugned judgment) to reconvey an extent of 8 acres and 21 guntas of the land out of the total land acquired to the 1st respondent. On 19-4-1972 another resolution was passed by CITB modifying its earlier resolution and agreeing to reconvey 6 acres, 20 guntas and 44 square yards in favour of the 1st respondent subject to the following conditions: b

“1. He should arrange to withdraw immediately the cases pending in the civil court.

2. He should withdraw the compensation deposited in the court and State Huzur Treasury and redeposit the same to the CITB funds within 30 days. c

The details of compensation deposited are noted below. The Additional Special Land Acquisition Officer (CITB) may be consulted if any difficulty arises in withdrawing the amounts in courts or State Huzur Treasury: d

1.	S. No. 32/6	Rs	24,845.17	Civil Judge's Court	e
2.	S. No. 32/8	Rs	2763.45	Civil Judge's Court	
3.	S. No. 32/9	Rs	1265.00	State Huzur Treasury	
4.	S. No. 32/11	Rs	3004.37	Civil Judge's Court	
5.	S. No. 32/12	Rs	6008.75	Civil Judge's Court	
6.	S. No. 32/10	Rs	<u>1265.00</u>	State Huzur Treasury	f
		Rs	39,151.74		

Compensation paid in respect of S. No. 32/17 amounts to Rs 3162.50p. may also be credited to the CITB funds, together with interest at 9% on the compensation amount drawn up to the date of repayment. g

Possession of S. No. 26/1 may be handed over to the Additional Special Land Acquisition Officer immediately, and informed to take further action.”

5. It suffices to mention that insofar as the refund of compensation amount was concerned it was found to be neither feasible nor practicable for the 1st respondent to withdraw the amount and redeposit it and he, therefore, gave it in writing to the Authority that these amounts would not be withdrawn h

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a by him or claimed by him whereupon the amounts in question were ultimately reclaimed by the Authority. He withdrew his reference applications filed under Section 18 of the Act.

6. On 10-7-1974 layout plan was approved by CITB in respect of the land which had been acquired for the development of the area. In the layout plan the land to the extent of 6 acres and 20 guntas was shown separately being reserved for reconveyance.

b 7. In the year 1976, the City of Bangalore Improvement Act, 1945 was repealed and in its place the Bangalore Development Authority Act, 1976 was enacted. The Bangalore Development Authority constituted under the 1976 Act succeeded to the City Improvement Trust Board.

c 8. The resolution passed by CITB to reconvey 6 acres and 20 guntas of land was not given effect to as the High Court of Karnataka in a series of judgments held that the land acquired for the development scheme could not be returned or reconveyed to the owner and that it must be applied for the purpose for which it was acquired and the sites formed therein should be distributed according to the allotment rules. In view of the declaration of law made by the High Court the resolution was not given effect to by BDA and sites were formed by the appellant in the said 6 acres and 20 guntas of land and the sites were allotted sometime in the year 1985-86.

d 9. After the formation of sites in the said 6 acres and 20 guntas and their allotment the 1st respondent approached the High Court of Karnataka at Bangalore seeking a writ of mandamus directing BDA to reconvey 6 acres and 20 guntas of land as per resolution of CITB dated 19-4-1972. A learned Single Judge of the High Court dismissed the writ petition summarily at the admission stage as being concluded by the decision of the High Court in *B.N. Sathyanarayana Rao v. State of Karnataka*¹. The writ appeal filed by the 1st respondent was also dismissed summarily at the initial stage as being covered by the earlier decisions of the High Court. The 1st respondent thereafter approached this Court in *R. Hanumaiah v. Bangalore Development Authority*² and this Court by its order dated 31-1-2001 accepted the appeal and set aside the orders impugned in the appeal and remitted the case back to the Division Bench to reconsider the appeal on merits in view of the contentions raised on behalf of the 1st respondent that in a later judgment in *Muniyappa v. Bangalore Development Authority*³ the High Court of Karnataka had taken a view that reconveyance was permissible.

g 10. The Division Bench after remand considered the matter afresh and set aside the judgment of the Single Judge inter alia holding that there was change in the judicial thinking and in *Muniyappa case*³ the Division Bench taking a wider perspective of the entire case-law had held that it was permissible to restore or reallocate the land to the owners. That in the previous judgments rendered, the High Court had failed to take into consideration

h 1 ILR 1987 Kant 790
2 (2002) 10 SCC 221
3 ILR 1992 Kant 125

certain important factors such as that the State being the acquiring authority and BDA being the beneficiary only, the State could withdraw the acquisition or prune the area of acquisition. Drawing support from Section 21 of the General Clauses Act it was held that the authority vested with the power to do a thing had a corresponding right to undo it as well. Since the State was the acquiring authority it could withdraw the acquisition or prune the area of acquisition. That BDA was barred by the doctrine of promissory estoppel to withdraw/not act upon the resolution dated 19-4-1972 specially when the 1st respondent in pursuance of the resolution passed had acted prejudicially to his interest. That the decision of CITB was binding on BDA being a successor. It was further held that land which was the subject-matter of the resolution of reconveyance could not and should not have been allotted at all. That the acquisition proceedings in the process of vesting of the land had not reached finality in respect of 6 acres and 20 guntas of land as the 1st respondent had redeposited the amount of compensation as per resolution dated 19-4-1972 and thus had not received the amount of compensation. In view of the above findings the Division Bench held that there was no necessity to give a direction to reconvey the land but the proper direction would be to direct BDA to issue the possession certificate to the 1st respondent in respect of the land which is the subject-matter of the writ petition. It was further held that since the allottees of the sites out of 6 acres and 20 guntas were likely/bound to be affected by the order a direction was required to be issued to BDA to allot equivalent sites/plots of land to such allottees within 4 months of the passing of the order.

11. Learned counsel for the parties have been heard at length.

12. A Division Bench of the High Court of Karnataka in *A.V. Lakshman v. B.D.A.*⁴ upheld the order of the Single Judge by observing that the owners of the land did not have a right in law to seek reconveyance of the acquired land. Another Division Bench in *Rachappa v. State*⁵ held that the lands acquired become the property of the Trust Board and it has to be dealt with in accordance with the law and owners of the land in the absence of a statutory provision entitling them to get the land reconveyed would not be entitled to seek relief from the Court under Article 226 of the Constitution. It was observed as under:

“Assuming for the sake of argument that the other lands which have been acquired by the Trust Board have been reconveyed, that by itself is not sufficient to hold that the appellants have a legal right in their favour for getting the lands acquired from them reconveyed to them. When the lands are acquired by the Trust Board they become the property of the Trust Board and the Trust Board has to deal with its own sites in accordance with law. In the absence of a statutory provision entitling the appellants to get reconveyance they would not be entitled to seek any relief from this Court under Article 226 of the Constitution on the ground

4 WA No. 729 of 1983 (Kant)

5 WA No. 581 of 1975 (Kant)

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that the Trust Board has in similar cases reconveyed lands in favour of persons from whom they were acquired. Hence this prayer cannot be granted.”

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13. A Single Judge in *H.N. Abdul Rehman v. State*⁶ again held that the Bangalore Development Authority had no power to pass a resolution of reconveyance. It was observed that it was not open to BDA to pass a resolution to reconvey the property and create a right in favour of the writ petitioner owner. In *B.N. Sathyanarayana Rao v. State of Karnataka*¹ a learned Single Judge (which decision was later on affirmed by the Division Bench), held that there was no provision in the Act and the Rules framed thereunder enabling BDA to reconvey the sites. Reconveyance was opposed to the scheme itself. The scheme was framed for forming of sites and allotting them as per Rules. The Rules did not provide for reconveyance and, therefore, it was not possible to hold that there is any right to seek reconveyance. It was also held that it was not possible to apply the rule of promissory estoppel on the facts of the case as there was no provision in the Act, or in the Rules framed thereunder enabling BDA to allot or reconvey the sites in the manner proposed to be done by the notification. Therefore, BDA could not be directed to allot or reconvey the sites on the ground that it had promised to allot or reconvey the sites. It was observed in para 4:

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“Learned counsel for the petitioner has not been able to place reliance on any of the provisions in the Act or on the Rules framed thereunder which enable BDA to reconvey the site. Reconveyance in a way is opposed to the scheme itself. Scheme is formed for the purpose of forming site for allotting them as per the Rules. The Rules do not provide for reconveyance. Therefore it is not possible to hold that the petitioners have a right to seek reconveyance.”

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Plea of promissory estoppel noticed in para 5 of the order to the effect:

“However, the learned counsel for the petitioners has tried to take refuge under the equitable doctrine of promissory estoppel on the basis of the notification issued by the then Chairman of BDA dated 14-7-1976 as per Annexure B. The petitioners claim that as per and in pursuance of the notification (Annexure B) they have filed the affidavits and have not challenged the acquisition and have altered their position to their disadvantage, therefore, it is now not open to BDA to resile from the notification and deny allotment of sites to the petitioners by way of reconveyance.”

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The said plea was rejected by observing thus:

“In addition to this it is not possible to apply the rule of promissory estoppel in cases where there is no provision contained in the Act, or in the Rules framed thereunder enabling BDA to allot or reconvey the sites in the manner proposed to be done by the notification (Annexure B). Therefore I am of the view that BDA cannot be directed to allot or

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reconvey a site to each of the petitioners on the ground that it had promised to allot or reconvey a site to each one of the petitioners.”

14. In *Bangalore Distt. Coop. Central Bank Employees Coop. Society Ltd. v. Bangalore Development Authority*⁷ Justice Rama Jois expressed his agreement with the view taken by Bopanna, J. to the following effect: a

“If BDA were to be given the power to reconvey the land vested in it by exercising the power under Section 13 of the Act, that would be self-defeating the (*sic* and) destructive of the purpose of constituting a special authority for the development of the city of Bangalore.” b

15. In view of the abovequoted judgments and some other judgments of the High Court from 1983 onwards holding that the acquired land cannot be reconveyed, the extent of 6 acres and 20 guntas which was originally earmarked for reconveyance was also developed and sites were carved out and allotted. c

16. In *Muniyappa case*³ on which reliance has been placed in the impugned judgment to come to the conclusion that there was a shift in the judicial thinking regarding the power of BDA, to reconvey the land acquired to the owner, the facts were: c

Writ Petition No. 2495 of 1979 was filed by the owners of the land seeking issuance of a writ of mandamus directing BDA to deliver possession certificate in respect of 1 acre of land in Survey No. 5/3C of Jadahalli. The Single Judge held that BDA had/has no power to reconvey the land acquired to implement the scheme and negatived the plea of the writ petitioner. Aggrieved against the order passed by the Single Judge the writ petitioner filed the appeal which was accepted. It was held that no material had been placed on record to hold that the land in question had in fact been acquired for a scheme or that the allotment of site contravened the scheme. The Division Bench expressed its agreement with the proposition that BDA which is a statutory body working under the Act had no power under the Act or the Rules framed thereunder to reconvey the lands which had been acquired for implementation of the scheme. The agreement was expressed in para 3 of the judgment in the following words: d

“The learned Single Judge has pointed out that BDA had or has no power to reconvey the lands acquired to implement a scheme relying upon the decisions of this Court in *B.N. Sathyanarayana Rao v. State of Karnataka*¹ and in *B. Venkataswamy Reddy v. State of Karnataka*⁸. This proposition is absolutely unexceptionable having regard to the provisions of the BDA Act as also the Rules of Allotment of Sites framed under the said Act.” e
(emphasis supplied) g

The Bench after going through the pleadings of the party came to the conclusion that it was not a case of reconveyance of the land but allotment of the site as contemplated under Rule 5 and the word “reconveyance” appears h

7 WP No. 12119 of 1988 (Kant)

8 ILR 1989 Kant 75

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to have been used in a loose sense because the allottee happened to be the owner of the land prior to its acquisition. It was held:

- a "... Further, CITB had the power to allot site under Rule 5 without following the procedure prescribed in Rule 3 provided the other requirements of Rule 5 are fulfilled. No serious contention could be urged on behalf of the respondent to rebut the contention urged on behalf of the appellant that the word 'reconveyance' had been used in the resolution dated 12-1-1972 and all the subsequent correspondence in a loose sense and in fact the said word meant allotment/grant of site within the meaning of Rule 5. As seen earlier the earliest resolution dated 7-8-1963 only spoke of grant and not reconveyance. When that is so, and when in fact the resolution coupled with the correspondence between the petitioner and CITB shows that what was done was an allotment as contemplated under Rule 5, the contention that the word 'reconveyance' appears to have been used in a loose sense because the allottee was the previous owner of the said land prior to the acquisition, but in truth it is a case of allotment, has to be accepted. If that be so, it has to be held that there was a valid allotment of 1 acre of land in Survey No. 5/3C as per Resolution No. 646 dated 12-1-1972 by CITB in favour of the petitioner-appellant. Further he had also complied with all other requirements imposed by CITB."
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- c
- d

17. On close scrutiny it has to be held that in *Muniyappa case*³ the Bench did not express an opinion contrary to the opinion which had been expressed in the earlier decisions to the effect that there was no power under the Act or the Rules with BDA to reconvey the acquired land, on the contrary, the Bench expressed its agreement with the view taken in *B.N. Sathyanarayana Rao case*¹ and other cases to the effect that BDA was not vested with the power under the Act or Rules to reconvey the land which had been acquired for a scheme. On the facts of the case the Bench came to the conclusion that it was a case of allotment as contemplated under Rule 5 and not that of reconveyance. The Division Bench in the impugned judgment has misread and misapplied *Muniyappa case*³ to come to the conclusion that there was a shift in the judicial thinking and that the land acquired could be reconveyed to the owners. The findings recorded which are based on misreading of *Muniyappa case*³ are unsustainable and therefore set aside.

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18. The State of Karnataka amended the Bangalore Development Authority Act, 1976 by the Bangalore Development Authority (Third Amendment) Act, 1993 (for short "the Amendment Act") which came into force with effect from 31-3-1994. Section 5 of the Amendment Act introduced Section 38-C in the Act and Section 9 of the Amendment Act validated the allotments made between 20-12-1973 to 8-5-1986 retrospectively.

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19. Although the Division Bench in the impugned judgment held that though the issue regarding applicability of Section 38-C after its incorporation in the BDA Act lifting the ban on reconveyance was irrelevant because the 1st respondent did not contend that he was entitled to any relief

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under this provision but indirectly relying upon it the Division Bench held that in a given case for good reasons it would be permissible for the Authority to alter the terms of the acquisition and restore the lands that had been acquired under the provisions of the Land Acquisition Act if the facts and circumstances so justified. a

20. Section 38-C and Section 9 of the Amendment Act are reproduced below:

“38-C. *Power of Authority to make allotment in certain cases.*— Notwithstanding anything contained in this Act or in any other law or any development scheme sanctioned under this Act, or City Improvement Trust Board Act, 1945, where the Authority or the erstwhile City Improvement Trust Board, Bangalore has already passed a resolution to reconvey in favour of any persons any site formed in the land which belong to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of the development scheme, the Authority may allot such site by way of sale or lease in favour of such persons subject to the following conditions,— b

(a) the allottee shall be liable to pay any charges as the Authority may levy from time to time; and

(b) the total extent of the site allotted under this section together with the land already held by the allottee shall not exceed the ceiling limit specified under Section 4 of the Urban Land (Ceiling and Regulation) Act, 1976.” d

“9. *Validation of certain allotment.*—Notwithstanding anything contained in any law or any judgment, decree or order of any court where in pursuance of any resolution passed by the Authority or the erstwhile City Improvement Trust Board, Bangalore to reconvey in favour of any person any site out of the land which belonged to them or vested in or acquired by them for the purpose of any development scheme, the Authority has made allotment of such site by way of sale, lease or otherwise in favour of such person after the twentieth day of December, 1973 and before eighth day of May, 1986, such allotment shall be deemed to have been validly made and shall have effect for all purpose as if, it had been made under Section 38-C of the principal Act as amended by this Act and accordingly— e

(a) all acts, proceedings and things done or allotment made or action taken by the Authority shall for all purposes be deemed to be and to have always been done or taken in accordance with law; f

(b) no suit or other proceedings shall be instituted, maintained or continued in any court for cancellation of such allotment or for questioning the validity of any action or things taken or done under Section 38-C of the principal Act as amended by this Act, and no court shall enforce or recognise any decree or order declaring such allotment made or any action taken or things done under the principal Act as invalid.” g

21. Section 38-C commences with a *non obstante* clause. It provides that irrespective of anything contained in any law or any judgment, decree or order of any court where in pursuance of any resolution passed by the h

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a Authority or the erstwhile City Improvement Trust Board, Bangalore in favour of any person reconveying the site formed in the land which belong to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of any development scheme, the Authority may allot such site for the purpose of development scheme by way of sale or lease in favour of such persons subject to the allottee paying such charges which the Authority may levy from time to time and the extent of site allotted under this provision

b together with the land already held by the allottee shall not exceed ceiling limit specified under Section 4 of the Urban Land (Ceiling and Regulation) Act, 1976.

c 22. Section 9 of the Amendment Act speaks of validation of certain allotment. It also starts with a *non obstante* clause and provides that if a resolution has been passed by the Bangalore Development Authority or the City Improvement Trust Board to reconvey in favour of any person any site out of the land which belonged to him or vested or acquired from him for the purpose of any development scheme, the Authority has already made allotment of such site by way of sale, lease or otherwise in favour of such person after 20-12-1974 and before 8-5-1986, then such allotment shall be deemed to have been validly made and shall have effect for all purpose as if it

d is made under Section 38-C of the principal Act as amended by Act 17 of 1984.

e 23. On a conjoint reading of Section 38-C read with Section 9 of the Amendment Act it would be seen that Section 38-C gives the authority to make allotment in certain cases. It gives the authority to BDA to reconvey/allot in favour of any person any site formed in the land which belonged to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of development scheme by way of sale or lease in favour of such person whose land was acquired subject to his liability to pay any charges that the Authority may levy from time to time and that the total extent of site allotted under this section together with the land already held

f by the allottee would not exceed the ceiling limit under Section 4 of the Urban Land (Ceiling and Regulation) Act, 1976. Section 9 of the Amendment Act validates the allotment made between 20-12-1973 to 8-5-1986. Section 38-C only authorises BDA to allot a site in a development scheme to a person whose land had been acquired. It does not give any power to BDA to reconvey the land or a part of the land by withdrawing the acquisition itself.

g Observations made by the Division Bench in the impugned judgment that Section 38-C enabled BDA to reconvey the land which had been acquired for a development scheme for a purpose other than implementing the scheme are not sustainable.

h 24. This apart Section 38-C is prospective in its application except to the extent of the allotment made between 20-12-1973 to 8-5-1986 which are saved by Section 9 of the Amendment Act. The resolution of CITB of 1972 agreeing to reconvey the part of the land acquired is not covered by the

provisions of Section 9 of the Amendment Act. In the present case, the resolution of CITB predecessor-in-interest is dated 19-4-1972 and it would not be deemed to be validated by the deemed fiction created by Section 9 of the Amendment Act to bring it within the provisions of Section 38-C. a

25. We may here notice the judgment of this Court in *H.C. Venkataswamy v. Bangalore Development Authority*⁹ on which reliance has been placed by the counsel for the respondent to contend that Section 38-C would be applicable to the present case. In this case BDA had acquired land for the development of the scheme called "Rajamahal Vilas II Stage". BDA passed a resolution on 26-6-1984 whereunder it was decided that each of the owners of the land whose land had been acquired would be given a site measuring 40' x 60' free of cost. BDA did not implement the decision on the ground that the resolution was not approved by the State Government. The appellants challenged the decision of the State Government by way of a writ petition under Article 226 of the Constitution before the Karnataka High Court. A Division Bench of the High Court by the judgment dated 8-2-1991 dismissed the writ petition. Aggrieved against the decision of the High Court appeals were filed in this Court which were accepted. Taking note of Section 38-C read with Section 9 of the Amendment Act it was held that the provisions of Section 9 were fully applicable to the allotments made to the appellants during the period 1984-85. It was observed in the later part of para 10 as under: (SCC p. 207) b c d

"Even if it is assumed that the basis for the allotment of sites to the appellants was not the same as has been provided by the Amendment Act under Section 38-C, but that would not invalidate the allotments because the deeming fiction created by Section 9 of the Amendment Act would bring the allotments within the purview of Section 38-C. The effect of the deeming fiction is that even though these allotments may not have been made under Section 38-C they would be saved by Section 9 of the Amendment Act by virtue of the deeming fiction." e

It was further observed in para 11 as under: (SCC p. 207)

"II. Even otherwise we are of the view that the resolution of BDA did substantial justice to the appellants. A situation was created where it may not have been possible for BDA to implement the scheme. BDA entered into a settlement with the farmers and took a conscious decision to allot plots to them. It was neither fair nor just on the part of BDA and the State Government to have gone back on their decision which was taken with an open mind and after discussion with the farmers. BDA by passing the resolution, in a way, accepted the demand of the farmers for enhanced compensation. The allotment of plots to them was to further compensate them for acquiring their land for the development scheme." f g

26. This decision is of no assistance to the 1st respondent as it was a case of allotment of a site formed under the scheme and not of reconveyance by withdrawing from the acquisition itself. Moreover, Section 9 of the h

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Amendment Act would also be not applicable as the resolution of CITB does not fall within the prescribed dates i.e. 20-12-1973 to 8-5-1986.

- a 27. The Division Bench in the impugned judgment has taken the view that the correspondence exchanged between the parties established that the respondent acted on the representation or the promise held out to him to his prejudice and altered his position to his detriment in not pressing his claim for higher compensation and withdrawing the legal proceedings. That the respondent had also not claimed the compensation that was offered to him,
- b which was redeposited by him with the Authority. That the appellant could not be permitted to resile from the representation or promise made by it to the respondent as the respondent had acted on the representation and altered his position to his prejudice. Plea taken by the appellant that rule of promissory estoppel shall not apply to do or perform an act prohibited by law or not authorised by law was rejected by observing that act to reconvey the
- c land was not prohibited as there was a shift in the judicial thinking in *Muniyappa case*³. It was held that the appellant was bound to reconvey the land to the petitioner as per its resolution. That the appellant was debarred from resiling from the promise/representation made especially in view of the fact that the respondent acting on the promise made to him had altered his position to his prejudice.
- d 28. The doctrine of promissory estoppel is not based on the principle of estoppel. It is a doctrine evolved by equity in order to prevent injustice. Where a party by his word or conduct makes a promise to another person in unequivocal and clear terms intending to create legal relations knowing or intending that it would be acted upon by the party to whom the promise is made and it is so acted upon by the other party the promise would be binding
- e on the party making it. It would not be entitled to go back on the promise made. This Court in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*¹⁰ after analysing the doctrine of promissory estoppel as applied in the courts of England and the United States held that in India the law may be taken to be settled that principle of promissory estoppel would be applicable to the Government as well where it makes a promise knowing or intending that it
- f would be acted upon by the promisee, and the promisee in fact acting on the promise alters his position, then the Government will be held bound by the promise and such a promise would be enforceable against the Government at the instance of the promisee. That the Government stood on the same footing as a private individual so far as the obligation of law is concerned. The Government, committed as it is to the rule of law, cannot claim immunity
- g from the applicability of rule of promissory estoppel and repudiate a promise made to it on the ground that such a promise may fetter its future executive action. It was pointed out that since the doctrine of promissory estoppel is equitable doctrine it must yield when the equity so requires and if it can be shown by the Government that, having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise
- h made by it, the court will not raise an equity in favour of the promisee and

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enforce the promise against the Government. Another exception carved out was that doctrine of promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. It was observed in para 28 as under: (SCC p. 447) a

“It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. *Vide State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.*¹¹” b

29. In *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*¹² it was held that there can be no estoppel against the statute. Rejecting the plea for applying the principle of promissory estoppel, it was observed in para 69 as under: (SCC p. 84)

“69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of ‘promissory estoppel’ applied to the facts of this case. *There could be no estoppel against the statute. The Industry could not therefore seek an NOC after violating the policy decision of the Government. Point 4 is decided against the 7th respondent accordingly.*” c

(emphasis supplied) d

30. Similarly, in *Sharma Transport v. Govt. of A.P.*¹³ it was held that the Government as a public authority cannot be compelled to carry out a representation or promise which is prohibited by law or which was devoid of authority or power of the officer of the Government or the public authority to make the promise. It was observed in para 24 as under: (SCC p. 203) e

“24. It is equally settled law that the *promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make.* Doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against the Government or the public authority. These aspects were highlighted by this Court in *Vasantkumar Radhakisan Vora* f

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11 (1973) 2 SCC 713

12 (2001) 2 SCC 62

13 (2002) 2 SCC 188

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v. *Board of Trustees of the Port of Bombay*¹⁴, *STO v. Shree Durga Oil Mills*¹⁵ and *Ashok Kumar Maheshwari (Dr.) v. State of U.P.*¹⁶ Above
a being the position, the plea relating to promissory estoppel has no substance.” (emphasis supplied)

31. In *Pune Municipal Corpn. v. Promoters and Builders Assn.*¹⁷ it was held that it is a settled proposition of law that there could be no “promissory estoppel” against the statute. Relying upon the earlier decisions of this Court and overturning the view taken by the High Court in invoking the principle of
b promissory estoppel it was held in para 6 as under: (SCC p. 800)

“6. DCR are framed under Section 158 of the Act. Rules framed under the provisions of a statute form part of the statute. (See *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav*¹⁸, SCC para 14.) In other words, DCR have statutory force. It is also a settled
c position of law that there could be no ‘promissory estoppel’ against a statute. (*A.P. Pollution Control Board II v. Prof. M.V. Nayudu*¹², SCC para 69, *STO v. Shree Durga Oil Mills*¹⁵, SCC paras 21 and 22 and *Sharma Transport v. Govt. of A.P.*¹³, paras 13 to 24.) Therefore, the High Court again went wrong by invoking the principle of ‘promissory estoppel’ to allow the petition filed by the respondents herein.”

(emphasis supplied)
d 32. Reliance placed by the counsel for the respondent on the decision in *State of Punjab v. Nestle India Ltd.*¹⁹ to contend that the principle of promissory estoppel would be applicable to the present case cannot be accepted. In the aforesaid case, the State of Punjab had come up in appeal against the order passed by the High Court quashing the demand raised by the State of Punjab for purchase tax on milk for the period 1996-97. The
e High Court quashed the demand raised by the State of Punjab on the principle of promissory estoppel as the State of Punjab had promised to abolish the purchase tax on milk for the period in question and was estopped from contending to the contrary. The respondent-writ petitioners were the factories producing various milk products. As registered dealers under the Punjab General Sales Tax Act, 1958 the respondent-writ petitioners had been
f paying purchase tax on milk in terms of Section 4-B of the Act however for one year i.e. from the period 1-4-1996 to 4-6-1997 none of the respondents paid the purchase tax on the plea that the Government had decided to abolish purchase tax on milk for the period in question and was estopped from contending to the contrary.

g 33. It was averred in the writ petition that the Chief Minister of Punjab on 26-2-1996 while addressing dairy farmers at a State-level function had announced that the State Government had abolished purchase tax on milk

14 (1991) 1 SCC 761

15 (1998) 1 SCC 572

16 (1998) 2 SCC 502 : 1998 SCC (L&S) 592

h 17 (2004) 10 SCC 796

18 (1988) 2 SCC 351 : 1988 SCC (L&S) 542 : (1988) 7 ATC 296

19 (2004) 6 SCC 465

and milk products in the State. Similarly, the Finance Minister in his Budget speech echoing the view of the Chief Minister had stated that the State Government had abolished the purchase tax on milk. The Financial Commissioner in its memo dated 26-4-1996 addressed to the Excise and Taxation Commissioners had written that it has been decided in principle to abolish purchase tax on milk with effect from 1-4-1996. In a meeting held under the Chairmanship of the Chief Minister a decision was taken to abolish the purchase tax on milk and it was decided to issue a formal notification in a day or two. Later on, the Government resiled from its promise and issued demand notices raising the demand of purchase tax for the year 1996-97. Upholding the decision of the High Court and noticing and analysing the entire case-law on promissory estoppel it was held that the State Government in view of the provisions of the Punjab General Sales Tax Act, 1948 had the power to exempt the purchase tax on milk. Since there was nothing in law which prohibited it from doing so, the State Government was held bound to act upon its representation and exempt the milk from purchase tax for the relevant period. It was held that no representation could be enforced which is prohibited by law but this principle would not be applicable to the cases where there is power under the statute to grant exemption. Grant of exemption could not be said to be contrary to the statute. Statute did not debar the grant of exemption rather it envisaged it. Distinguishing the judgment in *Amrit Banaspati Co. Ltd. v. State of Punjab*²⁰ it was observed as under: (SCC p. 479, para 41)

“41. *Amrit Banaspati Co. Ltd. v. State of Punjab*²⁰ is an example of where despite the petitioner having established the ingredients of promissory estoppel, the representation could not be enforced against the Government because the Court found that the Government’s assurance was incompetent and illegal and ‘a fraud on the Constitution and a breach of faith of the people’. This principle would also not be applicable in these appeals. No one is being asked to act contrary to the statute. What is being sought is a direction on the Government to grant the necessary exemption. The grant of exemption cannot be said to be contrary to the statute. The statute does not debar the grant. It envisages it.”

34. There is no provision in the Act and the Rules framed thereunder enabling BDA to reconvey the land acquired to implement a scheme for forming of sites and their allotment as per Rules. The Rules do not provide for reconveyance. In the absence of any provision in the Act or the Rules framed thereunder authorising BDA to reconvey the land direction cannot be issued to BDA to reconvey a part of the land on the ground that it had promised to do so. The rule of promissory estoppel cannot be availed to permit or condone a breach of law. It cannot be invoked to compel the Government to do an act prohibited by law. It would be going against the statute. The principle of promissory estoppel would under the circumstances be not applicable to the case in hand.

20 (1992) 2 SCC 411

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35. It is well settled that there cannot be any estoppel against a statute. In *TISCO Ltd. v. State of Jharkhand*²¹ this Court observed: (SCC pp. 291-92, paras 53-54)

a “53. This is also not a case where the appellant altered its position pursuant to or in furtherance of a promise made to it by the State. The doctrine of promissory estoppel, therefore, is not applicable. It is not even a case where the doctrine of legitimate expectation could be invoked. (See *Hira Tikoo v. Union Territory, Chandigarh*²².)

b 54. We, however, are not oblivious that the doctrine of promissory estoppel would be applicable where a representation has been made by the State in exercise of its power to exempt or abolish a commodity as taxable commodity. Such promise, however, must be made by the persons who have the power to implement the representation.”

c **36.** In *Savitaben Somabhai Bhatiya v. State of Gujarat*²³ this Court observed: (SCC pp. 642-43, para 17)

d “17. In *Yamunabai case*²⁴ plea similar to the one advanced in the present case that the appellant was not informed about the respondent’s earlier marriage when she married him was held to be of no avail. The principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code.”

37. Recently in *Devasahayam v. P. Savithramma*²⁵ this Court observed: (SCC p. 664, para 33)

e “33. The doctrine of approbate and reprobate is a species of estoppel. However, there cannot be any estoppel against a statute. [See *MD, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*²⁶]”

f **38.** Learned counsel for the respondent vehemently contended that Section 29 of the City of Bangalore Improvement Act, 1945 was different in content and scope than Section 38 of the Bangalore Development Act. Since the resolution was passed under the City of Bangalore Improvement Act, 1945, the resolution has to be seen and interpreted in the light of Section 29 of the City of Bangalore Improvement Act, 1945. That Section 76(3) of the BDA Act provides that any right, privilege, obligation or liability acquired, accrued or incurred arising under the old Act shall remain intact. We do not find any force in the submission.

g **39.** Section 27-A of the City of Bangalore Improvement Act, 1945 provided that notwithstanding anything contained in the Act during a period of fifteen years from the date of commencement of the Act, the Government may acquire the land under the Mysore Land Acquisition Act, 1894 for the

21 (2005) 4 SCC 272

22 (2004) 6 SCC 765

23 (2005) 3 SCC 636 : 2005 SCC (Cri) 787

24 *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530 : 1988 SCC (Cri) 182

h 25 (2005) 7 SCC 653 : (2005) 7 Scale 322

26 (2004) 9 SCC 619

purpose of improvement, expansion or development of the city of Bangalore or any area to which this Act extends, and any land so acquired after it has vested in the Government, stand transferred to the Board and such land may be dealt with under the provisions of Sections 28 and 29, or in such manner as the Government may direct. Section 29 of the said Act reads as under: a

“29. *Power of Board to acquire, hold and dispose of property.*—(1) The Board shall for the purposes of this Act, have power to acquire and hold movable and immovable property, whether within or outside city.

(2) Subject to such restrictions, conditions and limitations as may be prescribed by rules made by the Government, the Board shall have power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any improvement scheme. b

(3) The restrictions, conditions and limitations contained in any grant or other transfer of any immovable property or any interest therein made by the Board shall, notwithstanding anything contained in the Transfer of Property Act, 1882 (Central Act 4 of 1882) or any other law, have effect according to their tenor.” c

The first part of sub-section (1) of Section 29 provides that the Board shall have the power for the purpose of the Act to acquire and hold movable and immovable property, whether within or outside the city. Sub-section (2) provides that subject to such restrictions, conditions and limitations as may be prescribed by rules made by the Government, (i) the Board shall have power to lease, sell or otherwise transfer any movable or immovable property which belongs to it, and (ii) to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any improvement scheme. The first part deals with the power of the Board to lease, sell or otherwise transfer any movable or immovable property which belongs to it and, second, to appropriate or apply any land vested in or acquired by it for the formation of open spaces or for building purposes or in any other manner for the purpose of any improvement scheme. The present case falls in the second part which provides that the lands which have been acquired by it or have been vested in it for formation of open spaces or for building purposes shall be utilised for the purpose of the improvement scheme for which the lands have been acquired. It cannot be used for any purpose other than for which it was acquired which in the present case was for formation of open spaces or for building purposes and since the land was acquired for the purpose of forming sites it could only be used for the purpose of forming sites and their allotment. There is no power as per this provision to reconvey the lands which have been acquired under a scheme for forming sites. The power of the Board to lease or sell or transfer the sites was made subject to the restrictions, conditions and limitations which may be prescribed by the Rules. In the Rules framed there is no provision for reconveying the land and, therefore, power does not vest in the Board to reconvey the lands which were acquired for formation of sites in an improvement scheme. d
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a 40. On comparison and reading of Section 29 of the City of Bangalore Improvement Act, 1945 and Section 38 of the BDA Act we do not find any material difference between these two sections. In fact both these sections are in *pari materia* with each other. The arguments raised, based on Section 76(3) of the BDA Act, therefore, have no force and hence are rejected.

b 41. The notification under Section 4 was issued under the Mysore Land Acquisition Act, 1894 which is *pari materia* with the Central Act i.e. the Land Acquisition Act. By the Land Acquisition (Karnataka Extension and Amendment) Act, 1961 (Karnataka Act 17 of 1961) the earlier Act of Mysore State was repealed and the Land Acquisition Act of 1894 (Central Act 1 of 1894) was extended to the whole of the State of Karnataka in its application to the State of Karnataka. It was specifically provided that all amendments made by the Act repealed shall cease to continue and shall be omitted from the Land Acquisition Act of 1894 and such of the provisions thereof as were affected by the repealed Act shall stand revived to the extent to which they would have otherwise continued in operation but for the passing of the repealed Act.

d 42. Preliminary notification under Section 4 dated 26-11-1959 was published under the Karnataka Land Acquisition Act, 1894 (the Mysore Land Acquisition Act). But all proceedings thereafter including the final notification and the subsequent proceedings were under the Land Acquisition Act, 1894. The Division Bench in the impugned order has taken the view applying the principle laid down in Section 21 of the General Clauses Act which provides that power to issue the notification, order or rules or bye-laws would include the power to add, amend, vary or rescind any notification, order, rule or bye-law held that where the authority is vested with the power to do something then it is entrusted with the power to undo it as well. Since the State Government had the power to acquire the land it has the power to release the land from acquisition as well.

f 43. In our considered view, the Division Bench has erred in holding that the State Government could release the lands in exercise of its power under Section 48 of the Land Acquisition Act, 1894 from the acquisition.

44. This Court in *Lt. Governor of H.P. v. Avinash Sharma*²⁷ has held in para 6 as under: (SCC p. 151)

g “Power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act; by a notification under Section 21 of the General Clauses Act, the Government may cancel or rescind the notification issued under Sections 4 and 6 of the Land Acquisition Act. But the power under Section 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the State Government.”

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It was concluded in para 8 that: (SCC p. 152)

“It is clearly implicit in the observations that after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification.”

45. Again in *Pratap v. State of Rajasthan*²⁸ it was reiterated that once the possession is taken and the land vests in the Government then the Government cannot withdraw from acquisition under Section 48 of the Land Acquisition Act. Same view was reiterated by this Court in *Mohan Singh v. International Airports Authority of India*²⁹ and in *Printers (Mysore) Ltd. v. M.A. Rasheed*³⁰.

46. The possession of the land in question was taken in the year 1966 after the passing of the award by the Land Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in-interest of the appellant. After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Section 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Government.

47. The High Court also erred in holding that land acquisition process and the vesting process became incomplete since the landowners were asked to redeposit the amount of compensation. The High Court failed to take notice of Section 31 of the Land Acquisition Act. Section 31 contemplates that on making of an award under Section 11 the Collector shall tender amount of compensation awarded by him to the person interested and entitled thereto according to the award and shall pay to them unless prevented by any one or more of the contingencies mentioned in the subsequent clauses. None of those contingencies arose in the present case. Thus, once the amount was tendered and paid the acquisition process was complete. After making the award under Section 11 the Collector can take possession of the land under Section 16 which shall thereupon vest absolutely in the Government free from all encumbrances. In the instant case, after making the payment in terms of the award, possession was taken. The acquisition process stood completed. The subsequent development will not alter the fact that the acquisition was complete.

48. This brings us to the last contention raised by the counsel for the respondent. The respondent placed on record copy of Letter No.

28 (1996) 3 SCC 1
 29 (1997) 9 SCC 132
 30 (2004) 4 SCC 460

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a UDD/260/2005 dated 12-7-2005 addressed by the Principal Secretary to the Government, Urban Development Department, Bangalore to the Commissioner, Bangalore Development Authority, Bangalore. This letter was addressed by the Urban Development Department with reference to Chief Minister's Note No. CM/SCM-2/49/BDA/05 dated 5-7-2005. The letter reads as under:

b "With reference to the above subject the copy of the note under reference is enclosed along with this letter and the subject is self-explanatory.

c I have been directed to inform you that in the light of the order of the Hon'ble Chief Minister, an extent of 6 acres 20 guntas of land should be reconveyed to Shri. R. Hanumaiah in accordance with the decision rendered by the High Court of Karnataka in Writ Appeal No. 727 of 1989, dated 9-7-2001/10-7-2001, you should take necessary action immediately and send a report to the Government regarding the action taken."

d 49. The Bangalore Development Authority sent their reply contending inter alia that the directions issued by the Chief Minister were contrary to law and the third-party rights had set in and therefore, not capable of being implemented. Thereafter, there has been no communication from the office of the Chief Minister to BDA.

50. The letter was written on behalf of the Government in purported exercise of its power under Section 65 of the Act which reads:

e "65. *Government's power to give directions to the Authority.*—The Government may give such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions."

f 51. We do not agree with the contention raised by the counsel for the respondent that the directions issued by the Chief Minister through his note were binding on BDA or that BDA was bound in law to reconvey the land in terms of the directions issued in the impugned judgment. It has not been shown that the Chief Minister was authorised to issue the directions to BDA to reconvey the land. Under Section 65 the Government can give such directions to the Authority which in its opinion are necessary or expedient for carrying out the purpose of the Act. It is the duty of BDA to comply with such directions. Contention that BDA is bound by all directions of the Government irrespective of the nature and purpose of the directions cannot be accepted. Power of the Government under Section 65 is not unrestricted. g Directions have to be to carry out the objective of the Act and not contrary to the provisions of the Act. The Government can issue directions which in its opinion are necessary or expedient for "carrying out the purposes of the Act".

h 52. Directions issued by the Chief Minister in the present case would not be to carry out the purpose of the Act rather it would be to destroy the same. Such a direction would not have the sanctity of law. Directions to release the lands would be opposed to the statute as the purpose of the Act and object of constituting BDA are the development of the city and improvement of the

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(2005) 12 SCC

lives of the persons living therein. The Authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Directions issued by the Chief Minister run counter to and are destructive of the purpose for which BDA was created. It is opposed to the object of the Act and therefore, bad in law. Directions of the Chief Minister are to reconvey the land in terms of the decision rendered by the High Court in the impugned judgment i.e. Writ Appeal No. 727 of 1989. Since we are setting aside the impugned judgment, BDA as per directions issued by the Chief Minister cannot reconvey the land to the respondent in terms of the decision rendered by the High Court in the impugned judgment i.e. Writ Appeal No. 727 of 1989.

53. The Land Acquisition Act, 1894 is a code by itself. It not only deals with acquisition of land but also deals with payment of compensation as also release of the acquired lands.

54. The Bangalore Development Authority is a creature of statute. Its functions and duties are delineated by the Bangalore Development Authority Act, 1976. Its jurisdiction to reconvey the land vested in it in exercise of its power. The said Act does not confer any power on the said Authority to reconvey the land vested in it. Upon acquisition of the land, the same vests in the State. The State only in terms of Section 13 (*sic*) of the said Act can reconvey the said acquired land of the said Authority.

55. It is not in dispute that Section 48 of the Land Acquisition Act would apply to the acquisitions made under the 1976 Act and in that view of the matter the State could exercise its jurisdiction for reconveyance of the property in favour of the owner thereof only in the event possession thereof had not been taken. Once such possession is taken even the State cannot direct to reconvey the property. It has been accepted before us that Section 21 of the General Clauses Act has no application but reliance has been sought to be placed on Section 65 of the 1976 Act which empowers the Government to issue such directions to the Authority as in its opinion are necessary or expedient for carrying out the purpose of the Act. The power of the State Government being circumscribed by the conditions precedent laid down therein, thus, the directions can be issued only when the same are necessary or expedient for carrying out the purpose of the Act. In a case of this nature, the State Government did not have any such jurisdiction and, thus, the Bangalore Development Authority has rightly refused to comply therewith.

56. Recently in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*³¹ this Court noticed: (SCC pp. 639-40, paras 25-27)

“25. In *Commr. of Police v. Gordhandas Bhanji*³² it is stated: (SCR p. 140)

‘We are clear that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant,

³¹ (2005) 7 SCC 627 : (2005) 7 Scale 386

³² 1952 SCR 135 : AIR 1952 SC 16

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a or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

26. Yet again in *Mohinder Singh Gill*³³ this Court observed: (SCC p. 417, para 8)

b '8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*³²:'

c 27. Referring to *Gordhandas Bhanji*³² it was further observed: (SCC p. 417, para 8)

'Orders are not like old wine becoming better as they grow older.'

d (The said decisions have been followed by this Court in *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*³⁴.)"

57. Equally untenable is the plea of the respondents that promise of CITB to reconvey is enforceable in law.

e 58. The Bangalore Development Authority has been constituted for specific purposes. It cannot take any action which would defeat such purpose. The State also ordinarily cannot interfere in the day-to-day functioning of a statutory authority. It can ordinarily exercise its power under Section 65 of the 1976 Act where a policy matter is involved. It has not been established that the Chief Minister had the requisite jurisdiction to issue such a direction. Section 65 of the 1976 Act contemplates an order by the State. Such an order must conform to the provisions of Article 166 of the Constitution.

f 59. Since the 1st respondent has redeposited the amount of compensation received and also withdrawn his reference applications seeking enhancement of the compensation, the equities have to be balanced. As per the averments made in para 5.2 of the writ petition the question of compensation for lands acquired was finally decided by the High Court in MFA No. 217 of 1974 and MFA No. 219 of 1974 decided on 11-9-1975 and MFA No. 545 of 1974 g decided on 29-9-1975. The High Court enhanced the compensation to Rs 10,000 per acre excluding interest and statutory allowances. On adding of interest and statutory allowances the amount would come approximately to Rs 19,000 per acre. But for the promise made by the appellant, the 1st

h 33 *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405

34 (2004) 2 SCC 65

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(2005) 12 SCC

respondent would have been entitled to compensation at the said rate for the extent of 6 acres 20 guntas 42 square yards as well.

60. In equity we deem it appropriate to direct the appellant to pay the amount of compensation which was determined by the Land Acquisition Officer along with enhanced compensation which may have been granted by the High Court in any of the references filed either by the 1st respondent or any other landowner inclusive of statutory benefits with interest @ 9% per annum with effect from the date on which it became due till its payment. As the 1st respondent has been deprived of the amount due for quite some time we direct the appellant to redeposit the entire amount within three months from today. In case the amount is not deposited within three months then the 1st respondent would be entitled to interest @ 12% per annum. On deposit of the amount the first respondent would be entitled to withdraw the same.

61. We accept this appeal and set aside the judgment of the High Court as well as the directions issued by the State Government on the asking of the Chief Minister vide letter dated 12-7-2005 to BDA to reconvey the land measuring 6 acres, 20 guntas and 42 sq yd to the 1st respondent. The judgment under appeal is set aside and that of the Single Judge is restored. The writ petition is dismissed except to the extent that the 1st respondent would be entitled to reclaim the amount of compensation along with interest as indicated in the earlier paragraphs. Parties shall bear their own costs.

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(BEFORE P. VENKATARAMA REDDI AND B.N. SRIKRISHNA, JJ.)

BABUBHAI RATILAL PATEL .. Appellant;

Versus

STATE OF GUJARAT AND ANOTHER .. Respondents.

Criminal Appeal No. 973 of 2005[†], decided on August 5, 2005

Constitution of India — Art. 136 — Interference in bail matters — Interim bail — Grant of — Accused conspired in the siphoning off of the funds of a cooperative bank — He undertaking to deposit Rs 15 lakhs immediately and Rs 35 lakhs within six or eight months — He had been in jail for about 22 months — In these circumstances, held, accused to be released on interim bail for a period of six months — High Court to consider continuance of said bail, subject to further developments in the matter — Criminal Procedure Code, 1973, Ss. 439 and 437 — Penal Code, 1860, Ss. 406, 420, 467 & 120-B (Para 3)

W-M/32967/SRF

[Ed.: Decision based on facts, therefore text of judgment not printed.

For text of judgment see Supreme Court Cases FULL TEXT ON CD-ROM.]

[†] Arising out of SLP (Crl.) No. 1313 of 2005

(4)

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company in a rather precarious position, since they are not able to realise their dues from the sick industrial company in view of the provisions of Section 22 of SICA. It is only desirable that the formulation of the scheme and its execution must be done within a reasonable time. a

19. We do hope and trust that BIFR will now take up the matter and dispose of the proceedings within a short period, say, within a period of six months from the date of receipt of a copy of this order or its production by any of the parties before it. Similarly, the writ petition pending in the High Court should also be disposed of as early as possible and preferably within a period of six months from today. b

(2006) 5 Supreme Court Cases 330

(BEFORE S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.) c

NAUTAM PRAKASH DGSVC, VADTAL
AND OTHERS

Appellants;

Versus

K.K. THAKKAR AND OTHERS

Respondents. d

Civil Appeal No. 2409 of 2006[†], decided on May 2, 2006

A. Trusts and Trustees — Bombay Public Trusts Act, 1950 (29 of 1950) — Ss. 41-A and 41-B — Jurisdiction of Assistant Charity Commissioner, Bombay to interfere with administration of religious Trust having its office for administration in Gujarat but properties both in Gujarat and Maharashtra — Held, in terms of cl. 4(b) of the Bombay Charity Commissioner (Regional Reorganisation) Order, 1960, the jurisdiction of the aforesaid authority was confined only to the property which was situate within the State of Maharashtra and not in relation to the entire trust — Doctrine of *lex situs*, applied — Bombay Statutory Corporations (Regional Reorganisation) Act, 1960 (16 of 1960), S. 3(1) e

B. Trusts and Trustees — Religious and Charitable Trusts — State legislation relating to such institutions — Applicability of, to properties of said institutions — Limitations — Held, would be presumed to be applicable only in respect of the properties or any part thereof which are situate within the State — Constitution of India, Art. 245 & 7th Sch., List III, Item 28 f

C. Trusts and Trustees — Bombay Public Trusts Act, 1950 (29 of 1950) — Ss. 41-A and 41-B — Jurisdiction of Assistant Charity Commissioners of Bombay and State of Gujarat — Determination of — Held, has to be determined primarily on a construction of clauses 4(b) and 4(c) of the Bombay Charity Commissioner (Regional Reorganisation) Order, 1960 g

D. Constitution of India — Art. 245 — Extra-territorial operation — Doctrine of nexus — Territorial extent of law made by State — Held, ordinarily, the legislation enacted by a State will be applicable only within h

[†] Arising out of SLP (C) No. 4529 of 2003. From the Judgment and Order dated 25-9-2002 of the High Court of Judicature at Bombay in WP No. 1519 of 2002

the territorial limits thereof — General presumption is that the legislature does not intend to exceed its jurisdiction — The State legislature while enacting a law is required to maintain the territorial nexus — Extra-territoriality provided for in the Act is accepted only in certain cases

a

Delhi Cloth & General Mills Co. Ltd. v. Harnam Singh, (1955) 2 SCR 402 : AIR 1955 SC 590, *relied on*

Held :

b

The Assistant Charity Commissioner, Bombay derived his jurisdiction from the provisions of the Bombay Public Trusts Act. Upon reorganisation of the State, he had a limited jurisdiction to exercise. (Para 15)

The jurisdiction of the Assistant Commissioners of Greater Bombay and State of Gujarat is required to be determined primarily on a construction of clauses 4(b) and 4(c) of the 1960 order. (Para 19)

c

Indisputably, the office for administration of the Trust is situate in the State of Gujarat. Only some properties of the Trust are situate in the Maharashtra region. Clause 4(c) creates a legal fiction in terms whereof the Trust shall be deemed to be registered in the Gujarat region whereafter no other or further inquiry is required to be conducted. The Trust was already registered having its office at Baroda. In terms of clause 4(b) of the Order, only so much of the property which was situate in the Maharashtra region would be deemed to be so registered in Bombay. The jurisdiction of the Assistant Charity Commissioner, Greater Bombay was, therefore, confined only to the management of the property situate within the State of Maharashtra. (Paras 20, 21 and 28)

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Thus, if by reason of the provisions of the 1960 Act or the 1960 Order, the jurisdiction of the Assistant Charity Commissioner, Bombay was confined only to the properties situate within the State of Maharashtra, having regard to the doctrine of *lex situs*, the said authority could not have assumed jurisdiction in respect of the entire Trust. The High Court committed a manifest error insofar as it proceeded to hold that the appellants in view of their conduct could not question the jurisdiction of the Assistant Charity Commissioner of Bombay. (Paras 15 and 22)

f

Anant Prasad Lakshminivas Ganerival v. State of A.P., 1963 Supp (1) SCR 844 : AIR 1963 SC 853; *State of Bihar v. Charusila Dasi*, 1959 Supp (2) SCR 601 : AIR 1959 SC 1002; *Charity Commr. v. Administrator of the Shringeri Math and its Properties*, (1969) 1 SCR 660 : AIR 1969 SC 566; *Ramswarup Gurus Chhore Balakdas v. Motiram Khandu Patil*, (1968) 1 SCR 641 : AIR 1968 SC 422, *relied on*

g

The legislature of a State while enacting a law is required to maintain the territorial nexus. Only in certain cases, extra-territoriality provided for in the Act is accepted. The field of legislation in respect of religious endowments and religious institutions is referable to Item 28 of List III of the Seventh Schedule of the Constitution. Ordinarily, therefore, the legislation enacted by a State will be applicable only within the territorial limits thereof. There is a general presumption that the legislature does not intend to exceed its jurisdiction. An Act relating to religious and charitable institutions would be presumed to be applicable only in respect of the properties or any part thereof situate in the State. The 1960 Act, however, makes the provisions explicit, clear and unambiguous.

h

The property of the Trust situate within the Maharashtra region in terms of clause 4(b) of the 1960 Order is to be deemed to be registered with the Charity

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Commissioner, Bombay. The said authority could thus have exercised its jurisdiction only in respect of that property. (Para 24)

E. Doctrines — Doctrine of *lex situs* — Determination of *lex situs* — Relevant considerations — Held, whether in the area of international law or the domestic law, *lex situs* has to be determined in the context of the proper law applicable therefor, be it in the realm of contract or otherwise — Civil Procedure Code, 1908, Ss. 16 and 17 (Para 23)

F. Statute Law — Exercise of power — Held, a statutory authority must exercise its jurisdiction within the four corners of the statute — It cannot act beyond the same — Any order passed by an authority which lacked inherent jurisdiction would be *ultra vires* — Administrative Law — *Ultra vires* — Absence of power/Acting beyond statutory powers (Para 24)

Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 : AIR 1954 SC 340, *relied on*

G. Trusts and Trustees — Bombay Public Trusts Act, 1950 (29 of 1950) — Applicability of provisions of, to State of Maharashtra and State of Gujarat

Held :

All the provisions of the Bombay Public Trusts Act were not applicable to both the State of Maharashtra and the State of Gujarat. The Assistant Charity Commissioner, Bombay exercised his jurisdiction in terms of Sections 41-A and 41-B of the said Act. Section 41-B of the Act indisputably is not applicable in the State of Gujarat. (Paras 15, 16 and 18)

W-M/A/34201/C

Advocates who appeared in this case :

Ramesh P. Bhatt, Senior Advocate (Ms. Tanuja Sheel, Chirag M. Shroff, Mukesh Kumar and M.N. Shroff, Advocates; with him) for the Appellants;
A.P. Mayee, Ranji Thomas, V.N. Raghupathy, Ms Hemantika Wahi, Ms Pinky Behera, Ms Sumita Hazarika, H.A. Raichura and Ms H.A. Raichura, Advocates, for the Respondents.

Chronological list of cases cited

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| 1. (1969) 1 SCR 660 : AIR 1969 SC 566, <i>Charity Commr. v. Administrator of the Shringeri Math and its Properties</i> | 338e-f |
| 2. (1968) 1 SCR 641 : AIR 1968 SC 422, <i>Ramswarup Gurn-Chhote Balakdas v. Motiram Khandu Patil</i> | 339b |
| 3. 1963 Supp (1) SCR 844 : AIR 1963 SC 853, <i>Anant Prasad Lakshminivas Ganerwal v. State of A.P.</i> | 338d-e |
| 4. 1959 Supp (2) SCR 601 : AIR 1959 SC 1002, <i>State of Bihar v. Charusila Dasi</i> | 338d-e |
| 5. (1955) 2 SCR 402 : AIR 1955 SC 590, <i>Delhi Cloth & General Mills Co. Ltd. v. Harnam Singh</i> | 337h |
| 6. (1955) 1 SCR 117 : AIR 1954 SC 340, <i>Kiran Singh v. Chaman Paswan</i> | 338d-e |

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2. Jurisdiction of the Assistant Charity Commissioner of Bombay in relation to the administration of the appellant Trust is in question in this

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appeal which arises out of a judgment and order dated 25-9-2002 passed by the High Court of Judicature at Bombay in Writ Petition No. 1519 of 2002.

a 3. The appellant herein is a religious trust. A scheme for management of the temple of Swami Narain Vadtal and other temples subordinate to it, was framed by the High Court of Bombay in the year 1922. The said scheme contained provisions as to how accounts should be maintained. Clauses 26 to 29 thereof, which are relevant are as under:

b "26. At each temple proper accounts of all receipts and expenditure shall be kept and for such purposes the following books of accounts shall be kept:

- (i) Rukad (cash book)
- (ii) Auro (monthly rozmel)
- (iii) Nondh (daily journal)

c (iv) Ledger containing separate khatas for each head of income and expenditure including all expenditures on account of tyagis.

The ledger kept at the Vadtal temple shall also contain separate khatas of:

- (a) names, vero and bhets;
- (b) the household expenditure on account of the Acharya;
- d (c) any expenditure incurred on account of the Acharya on official tours and other official occasions; and
- (d) what may be paid to the Acharya on account of the personal expenditure but not (*sic*) of such personal expenditure.

27. * * *

e 28. At the close of each samvat year a separate financial statement and balance sheet shall be drawn up in regard to each temple and in regard to the whole institution. Copies of such statements and balance sheets shall be furnished to each member of the Committee by the Kothari (Manager) before the first quarterly meeting of the following year and such balance sheets and statements shall be checked and passed by the Committee at such meeting.

f 29. In terms of clause 29, all books of accounts and vouchers were to be opened for inspection of each member of the Committee or all satsangies appointed by the Committee."

4. Upon coming into force of the Bombay Public Trusts Act, 1950 ("the Act"), the Trust was to be governed thereunder.

g 5. An application for registration of the Trust was filed, pursuant whereto a certificate of registration in respect of the temple of Lakshmi Narayan Devasan and properties of the temples subordinate thereto was issued by the Assistant Charity Commissioner, Greater Bombay.

h 6. Parliament enacted the Bombay Reorganisation Act, 1960 in terms whereof the State of Gujarat was carved out of the State of Bombay. In anticipation of such reorganisation, the legislature of the State of Bombay

enacted the Bombay Statutory Corporations (Regional Reorganisation) Act, 1960 (21 of 1960). Section 3(1) whereof read as under:

“3. (1) If it appears to the State Government expedient that any existing corporation, which is operating and functioning immediately before the commencement of this Act, should be dissolved or that it should be reconstituted and reorganised so that there are established or functioning separate corporations for the Maharashtra and Gujarat regions, that Government may by order make provision for such dissolution or reconstitution and reorganisation of such existing corporation.”

The said provision was intended to apply to the institution of Charity Commissioner.

7. The State of Gujarat was formed with effect from 1-5-1960. However, immediately prior thereto, an order known as the Bombay Charity Commissioner (Regional Reorganisation) Order, 1960 was issued which came into force with effect from 28-4-1960, the relevant provisions whereof are as under:

“*Bombay Charity Commissioner (Regional Reorganisation) Order, 1960*

On the bifurcation of the former State of Bombay with effect from 1-5-1960, the State of Gujarat and the State of Maharashtra have their own charity organisations for public trusts within their respective States. In view of the bifurcation of the Bombay State, it was proposed to provide for the reorganisation of such statutory corporate bodies into two intra-regional bodies before bifurcation of the State as also for distribution of their assets and liabilities, etc., and allocation of their employees. By virtue of the Legal Department Order No. 12921/E, dated 28-4-1960, the Charity Commissioner, Bombay, a corporation sole, was reconstituted and reorganised so as to constitute a new corporation for Gujarat region and to reconstitute the existing corporation to function for Maharashtra region.”

8. Clauses 4(b) and (c), 5 and 6(a) and (b) read thus:

“4. *Registration of public trusts where property or office is situate.*—In the case of a public trust duly registered under the Act before the appointed day, or deemed to be so registered, if, immediately before that day,—

(a) * * *

(b) the trust property is situated partly in the Maharashtra region and partly in the Gujarat region, then in respect of so much of the said property as is situate in the Maharashtra region or the Gujarat region, the Trust shall, whether the office for the administration of the Trust is or is not situate in that region, be deemed to be so registered on that day without further inquiry, charge or fee in the Maharashtra region or, as the case may be, the Gujarat region.

(c) The trust property is situate in the Maharashtra region and the office for the administration of the Trust is situate in the Gujarat region or vice versa, then the Trust shall be deemed to be so registered on that day without further inquiry, charge or fee in each of the two regions.

5. *Payment from the Public Trusts Administration Fund of the existing corporation to new corporation.*—From the balance standing to the credit of the Public Trusts Administration Fund of the existing corporation (including

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a the investment made therefrom), immediately before the appointed day, and struck after taking into account all outstanding liabilities up to that date, there shall be paid to the new corporation in respect of the Gujarat region an amount in the ratio in which the income from all sources including any sums specified in clauses (a) to (c) of sub-section (2) of Section 57 of the Act, court fees and miscellaneous receipts other than deposits received in respect of that region during the period between the establishment of the Public Trusts Administration Fund for the first time under the Act and 30-11-1959, bears to the total income from those sources credited to that fund during the said period from the Maharashtra as well as the Gujarat regions.

b 6. *Recovery of outstanding contributions and dues.*—The right to recover contributions and other dues, payable before the appointed day in respect of any public trust but not recovered, shall belong—

c (a) Where the trust under para 4 is deemed to be registered exclusively in the Maharashtra or the Gujarat region, to the corporation having jurisdiction over that region.

(b) Where the trust is deemed to be registered in both the regions, to the corporation having jurisdiction over the region within which the Public Trusts Registration Office in which the Trust was registered is, on that day, situate.”

d 9. In the year 1961, despite the 1960 Act and the 1960 Order, presumably, in view of the fact that one of the temples was situate in the State of Maharashtra, the appellant herein filed an application for registration thereof to the Assistant Charity Commissioner, Bombay and the same was granted. The appellant indisputably also filed statements of accounts in respect of the said Trust up to 1973 before the Maharashtra Charity Commissioner’s office. It is not in dispute that the office of the Trust had been situate in the State of Gujarat. In the meanwhile, having regard to the fact that the office of the Trust was situate in the State of Gujarat, an application was filed for modification of the said scheme in the City Civil Court at Ahmedabad. A contention raised in the suit that the courts of Gujarat had no jurisdiction was negatived. Ultimately, the said scheme was modified by the Gujarat High Court by a judgment and order dated 20-6-1974; clause f 30(c) of the scheme as mentioned is as under:

g “30. (c) The Board shall within nine months after the close of every financial year, prepare a balance sheet and the statement of income and expenditure for the said year and forward the same together with the auditor’s report to every person whose name is entered in the voters’ list and also to the Acharya.”

h 10. According to the appellant, the Trust had been rendering its accounts to the Assistant Charity Commissioner in Gujarat at Nadiad and had also been filing other documents and changed reports from time to time therein. Respondent 1 herein claiming himself to be a member of the Trust, filed an application before the Assistant Charity Commissioner of Greater Bombay purportedly under Sections 41-A and 41-B of the Act praying, *inter alia*, for appointment of proper persons and trustees of the said Trust.

11. By an order dated 31-12-2001, the said application was allowed. The Assistant Charity Commissioner in the said order directed:

“1. The Application No. 5924 of 2000 is partly allowed. a

2. The opponents are hereby directed to submit the audited statement of accounts from years 1973 to 2001 within a fortnight.

3. The opponents are further directed to submit the change report of changes that occurred from time to time in trustees, properties, etc. under sections of the BPT Act, 1950 within a fortnight.

4. The opponents are further directed to take the steps for amendment of the scheme framed by the Hon'ble High Court of Bombay in Civil Application No. 690 of 1937.” b

12. A writ petition filed thereagainst by the appellant herein was dismissed by the Bombay High Court by reason of the judgment impugned herein opining that as the appellant never challenged the vires of the provisions of the Act or the 1960 Order and having itself filed an application for registration and furthermore having filed the statement of accounts before the Assistant Charity Commissioner after 1973, they have disentitled themselves from contending that the provisions of the Act, 1960 or the Order, 1960 are unconstitutional. The appellants are thus before us. c

13. The short question which arises for consideration in this appeal is as to whether the Assistant Charity Commissioner, Greater Bombay had jurisdiction to interfere with the administration of the appellant Trust. d

14. The Trust was registered at Baroda in the State of Gujarat. Some proceedings in relation to the said Trust were also initiated in the State of Gujarat. However, after the Reorganisation Act came into force, an application for registration of the property situate in Gujarat was filed. The audited statements of accounts admittedly were also filed till 1973. e

15. But as would appear from the discussion hereinafter, the same by itself would not be determinative of the jurisdictional question raised before us. The High Court had proceeded to dismiss the writ petition of the appellant herein only on the ground that the jurisdiction of the Assistant Charity Commissioner could not have been questioned by the appellant as the vires of the 1960 Act or the 1960 Order had not been questioned by them. If by reason of the provisions of the said Act or the 1960 Order, the jurisdiction of the Assistant Charity Commissioner, Bombay was confined only to the properties situate within the State of Maharashtra, having regard to the doctrine of *lex situs*, the said authority could not have assumed jurisdiction in respect of the entire Trust. The Assistant Charity Commissioner, Bombay derived his jurisdiction from the provisions of the Bombay Public Trusts Act. Upon reorganisation of the State, he had a limited jurisdiction to exercise. All the provisions of the said Act were indisputably also not applicable to both the State of Maharashtra and the State of Gujarat. f
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h

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16. The Assistant Charity Commissioner exercised his jurisdiction in terms of Sections 41-A and 41-B of the Act.

a 17. Section 41-A of the Act reads thus:

“41-A. *Power of Commissioner to issue directions for proper administration of the trust.*—(1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

b

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).”

c 18. Section 41-B of the Act indisputably is not applicable in the State of Gujarat.

19. The jurisdiction of the Assistant Commissioners of Greater Bombay and State of Gujarat is required to be determined primarily on a construction of clauses 4(b) and 4(c) of the 1960 Order.

d

20. Indisputably, the office for administration of the Trust is situate in the State of Gujarat i.e. the Gujarat region. Only some properties of the Trust are situate in the Maharashtra region. Clause 4(c) creates a legal fiction in terms whereof the Trust shall be deemed to be registered in the Gujarat region whereafter no other or further inquiry is required to be conducted. The Trust was already registered having its office at Baroda. The said registration, therefore, continued to have force.

e

21. The Trust has properties both in the Maharashtra and the Gujarat regions. In terms of clause 4(b) of the Order, only so much of the property which was situate in the Maharashtra region would be deemed to be so registered in Bombay. The jurisdiction of the Assistant Charity Commissioner, Greater Bombay was, therefore, confined only to the property which was situate within the Maharashtra region.

f

22. The High Court, therefore, in our opinion, committed a manifest error insofar as it proceeded to hold that the appellants in view of their conduct could not question the jurisdiction of the Assistant Charity Commissioner of Bombay.

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23. The contentions raised in this appeal should have been determined having regard to the doctrine of *lex situs*. The law in this behalf, in view of the provisions of the Act and the Order, is clear and explicit. Whether in the area of international law or the domestic law, *lex situs* has to be determined in the context of the proper law applicable therefor, be it in the realm of contract or otherwise. (See *Delhi Cloth & General Mills Co. Ltd. v. Harnam Singh*¹.)

h

24. The legislature of a State while enacting a law is required to maintain the territorial nexus. Only in certain cases, extra-territoriality provided for in the Act is accepted. The field of legislation in respect of religious endowments and religious institutions is referable to Item 28 of List III of the Seventh Schedule of the Constitution. Ordinarily, therefore, the legislation enacted by a State will be applicable only within the territorial limits thereof. There is a general presumption that the legislature does not intend to exceed its jurisdiction. An Act relating to religious and charitable institutions would be presumed to be applicable only in respect of the properties or any part thereof situate in the State. The 1960 Act, however, makes the provisions explicit, clear and unambiguous. The property of the Trust situate within the Maharashtra region in terms of clause 4(b) of the 1960 Order is to be deemed to be registered with the Charity Commissioner, Bombay. The said authority could thus have exercised its jurisdiction only in respect of that property. It had no jurisdiction in relation to the administration of the entire Trust as the office of the Trust is situate within the State of Gujarat. The Assistant Charity Commissioner, therefore, could not have issued any direction as prayed for in the application filed before it by the first respondent herein. A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the statute. It cannot act beyond the same. Any order which is passed by an authority which lacked inherent jurisdiction would be *ultra vires*. (See *Kiran Singh v. Chaman Paswan*².)

25. In *Anant Prasad Lakshminivas Ganeriwal v. State of A.P.*³ this Court relying on its earlier decision in *State of Bihar v. Charusila Das*⁴ opined: (SCR p. 856)

“This decision in our opinion makes it abundantly clear that, where the trust is situate in a particular State, the law of that State, will apply to the trust, even though any part of the trust property, whether large or small, is situate outside the State where the trust is situate.”

26. In *Charity Commr. v. Administrator of the Shringeri Math and its Properties*⁵ this Court embarked on a discussion of the question as to how situs of the Trust is required to be determined and opined: (SCR p. 665)

“It seems to us that, in view of the above authorities, in order to determine the situs of the trust, which consists of a math and a subordinate so-called math or maths, it is the situs of the principal math which will determine the applicability of the Act. We need not here decide the position of an independent real math though connected with another math. The High Court has found in this case that in the Nasik Math no religious instructions are imparted and no spiritual service is rendered to any body of disciples. Further no member of the public is allowed to enter the place of worship without permission although

² (1955) 1 SCR 117 : AIR 1954 SC 340

³ 1963 Supp (1) SCR 844 : AIR 1963 SC 853

⁴ 1959 Supp (2) SCR 601 : AIR 1959 SC 1002

⁵ (1969) 1 SCR 660 : AIR 1969 SC 566

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a worship is carried out by the pujaris according to vedic usage. In view of these findings the Nasik Math cannot be held to be a real math or temple within the definitions set out above. In our opinion, the High Court was right in holding that the Nasik Math is not liable to be registered under the Act.”

b 27. Yet again, dealing with almost an identical question, this Court in *Ramswarup Guru Chhote Balakdas v. Motiram Khandu Patil*⁶ opined that two different authorities cannot exercise the right to supervise and control the management of the trust properties, holding: (SCR p. 645)

“The curious result of such a construction would be that though the trust is situate and is administered at Burhanpur in Madhya Pradesh the authorities under the Bombay Act can claim to control its management.”

It was categorically held: (SCR p. 645)

c “The fact that a part of its property is situate in Maharashtra State, though the trust is within Madhya Pradesh State, would not mean that the Trust would be governed partly by the Madhya Pradesh Act and partly by the Bombay Act. Such a division of the Trust and its administration is not contemplated by either of the two Acts. It is, therefore, clear that the present Trust does not fall within the ambit of Section 28 and is not one
d of those trusts which can be deemed to be registered under the Bombay Act. That being so, it is obviously not a trust which fulfils the second condition of Section 88-B of the Bombay Tenancy and Agricultural Lands Act and the appellant cannot be said to be entitled to the certificate under that section.”

e 28. In the premises abovementioned, the jurisdiction of the Charity Commissioner, Bombay must be held to be confined only to the management of the property situate within the State of Maharashtra and not in relation to the entire Trust.

f 29. The Charity Commissioner did not find that the allegations relating to mismanagement had any foundation. It has been clearly held that the said allegations are not proved. The Charity Commissioner also declined to pass an order in terms of Section 41-A as regards the prayer for appointment of an administrator. The first respondent was only given liberty to file an appropriate application under the Act. In the event, such an application is filed, indisputably the same has to be determined on its own merit. We would, however, observe that any such application alleging to
g mismanagement of the Trust, if filed, may be forwarded to the Assistant Charity Commissioner, Gujarat who shall deal with it. It is further made clear that the respondent would be at liberty to inspect the audited accounts in the office of the Assistant Charity Commissioner in terms of the scheme framed by the Gujarat High Court.

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30. In view of the aforementioned observations and directions, the impugned judgment cannot be sustained. The appeal is, therefore, allowed. In the facts and circumstances, the parties shall bear their own costs.

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(BEFORE S.B. SINHA AND P.P. NAOLEKAR, JJ.)

PANCHANAN DHARA AND OTHERS

.. Appellants;

Versus

MONMATHA NATH MAITY (DEAD) THROUGH
LRS. AND ANOTHER

.. Respondents.

Civil Appeal No. 5187 of 2001[†], decided on May 12, 2006

A. Limitation Act, 1963 — Art. 54 — Suit for specific performance of contract — When barred by limitation — Considerations involved — Applicability of first and second parts of Art. 54 — Extension of time fixed for performance in contract — Effect — Held, once it is proved that time fixed for performance of the contract has been extended by the parties (as in present case), instead of the first part of Art. 54, the second part thereof would become applicable — Moreover, on facts, held, the claim that the time fixed for performance was determinable with reference to the event of perfection of title of the vendor, is not borne out by a perusal of the agreement of sale — Hence the second part of Art. 54 was rightly applied by the courts below

B. Contract Act, 1872 — Ss. 50 and 55 — Extension of time for performance of contract — Inference of — Basis for — Held, the same is not necessarily to be inferred from a written document — It can also be implied — Conduct of parties would be relevant in this behalf — Evidence Act, 1872, S. 8

C. Contract Act, 1872 — S. 55 — Contract for sale of immovable property — Time when of the essence — Held, ordinarily time would not be of the essence in such contracts

Dismissing the appeal, the Supreme Court

Held:

A plea of limitation is a mixed question of law and fact. The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement but also on the conduct of the parties and also as to how they understood the terms and conditions of the agreement. (Para 20)

While determining the applicability of the first or the second part of Article 54 of the Limitation Act, 1963, the court will firstly see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed beyond the prescribed period unless any case of extension of time for performance was pleaded and established. When, however,

[†] From the Judgment and Order dated 29-1-1998 of the High Court of Calcutta in SA No. 887 of 1991

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(BEFORE S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.)

a OSWAL WOOLLEN MILLS LTD. .. Appellant;

Versus

PUNJAB STATE ELECTRICITY BOARD
AND ANOTHER .. Respondents.

b Civil Appeals No. 2335 of 2006[†] with No. 2334 of 2006[‡],
decided on April 28, 2006

A. **Electricity — Tariff — Surcharge by way of additional rate or penalty — Permissible mode for levy of — Held, the same can be levied only in terms of a tariff notification — Same cannot be levied in terms of circular letter issued by State Electricity Board (SEB) — Electricity (Supply) Act, 1948 — Ss. 49, 59 and 79(j) — Electricity Act, 1910 — S. 23 — Electricity Act, 2003, Ss. 62 and 64**

c Disposing of the appeals in the terms below, the Supreme Court

Held :

d Surcharge by way of additional rate or penalty can be levied only in terms of a tariff notification. Such a power, therefore, can be exercised by the State Electricity Board (“SEB”) only in exercise of its statutory power and not by reason of an executive power. Therefore, neither any surcharge nor any penalty could be levied in terms of a circular letter issued by SEB. SEB being a statutory authority, its power to issue bills for consumption of the electricity would be governed solely by the tariff notification. It being a statutory authority must act within the four corners of the statute. (Paras 14 and 16)

e The circular letter dated 21-1-1991 was followed by the tariff notification issued in terms of Sections 46 and 49 of the Act. The subsequent circular letter dated 3-5-1991 was, however, not followed by any notification making the tariff applicable with retrospective effect. (Para 15)

f The tariff notification dated 26-7-1991 speaks of levy of a surcharge *inter alia* on arc furnaces. Similar is the position in regard to the notification dated 1-2-1994. From Note (ii) of the tariff notification dated 1-2-1994 it is evident that surcharge @ 17½% was leviable only for all the arc furnace load consumers which were being given supply at 11 kV. Moreover, those other mills which were liable to bear the specified surcharge were specifically mentioned in the tariff notification. As in the notification it has clearly been stated that 17½% surcharge should be leviable for all the arc furnace load consumers which were being given the supply at 11 kV, the High Court clearly fell in error in arriving at the finding that by reason of the said notification the circular letters dated 21-1-1991 and 3-5-1991 were not superseded. The High Court failed to pose unto itself the correct question, namely, as to whether after issuance of the tariff notification, SEB could levy any surcharge @ 17½% on the tariff on those consumers who did not have arc furnace. The High Court, therefore, misdirected itself in law in

h † Arising out of SLPs (C) Nos. 1398-442 of 2005. From the Judgment and Order dated 23-11-2004 of the High Court of Punjab and Haryana at Chandigarh in RSAs Nos. 5666-710 of 2003

‡ Arising out of SLPs (C) Nos. 15357-58 of 2005

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passing the impugned order. The surcharge @ 17½% was not required to be paid in terms of the tariff notification dated 1-2-1994 by the appellant.

(Paras 16, 8, 17 and 27)

B. Electricity — Tariff — Surcharge by way of additional rate or penalty — Date from which payable — Date of issuance of tariff notification or date of final notice issued by State Electricity Board (SEB) as to payment of surcharge — Effect of acquiescence to orders of High Court in this regard in writ petition challenging the levy of surcharge, though erroneous — Effect of negligence and delay in assisting SEB as to setting up of site for installation of sub-station so as to provide electricity on a higher voltage line (the point of time at which levy of surcharge was to cease) — Practice and Procedure — Acquiescence to erroneous orders of court — Effect — Evidence Act, 1872 — S. 115

The further question that arose before the Supreme Court was whether the one-year period for switching over to the appropriate load, so as to avoid the surcharge as provided for in SEB's circulars and tariff notification, should be calculated from 13-5-1992, the date on which the final notice in this regard had been issued by SEB or from the date of issuance of the notification.

Held :

Although on the basis of the finding that SEB could not have levied a surcharge by way of any circular, but only by way of a notification, the Company could have contended that no surcharge could have been levied from 13-5-1992, but it did not raise such a contention before the High Court. (Para 18)

Normally the period should be counted from the date of issuance of the notification and not from the date of the High Court's judgment. The High Court however made observations, whereupon both the parties acted. The said observations were made in terms of the affidavit affirmed on behalf of SEB itself. The High Court's direction leads only to one conclusion that the cut-off date would be considered to be one in futuro i.e. a date after 29-1-1992, that is, the date of the High Court's direction alone was required to be fixed. The High Court's observations might be incorrect; but then the same were accepted. The period of one year in terms of the judgment of the High Court, therefore, was to start from the date when the feasible point for installation of sub-station at the factory premises by SEB was pointed out. Selection of a site for the purpose of drawing 33 kV line was not an empty formality. Several factors including the convenience of SEB were required to be taken into consideration. In some cases probably compensation for acquisition of land was required to be paid.

(Paras 22, 23 and 25)

Further, once the final notice by SEB had been issued, the negligence on the part of the consumer to point out the actual site had not been condoned by the courts. All the courts had arrived at a finding of fact, having regard to SEB's letter dated 3-12-1992 that the final notice in terms of the said circular had been given only on 13-5-1992.

(Paras 24 and 26)

Therefore, for all these reasons the Company is liable to pay the surcharge with effect from 13-5-1992.

(Para 27)

D-M/34185/S

Advocates who appeared in this case :

- R.K. Jain, Senior Advocate (Neeraj Kr. Jain and Ugra Shankar Prasad, Advocates, with him) for the Appellant;
a Ranjit Kumar, Senior Advocate (Rajiv Nanda, Ms Ruchi Narula and Arvind Kumar, Advocates, with him) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

- b* 2. The appellant is a mill represented by its authorised representative. For the purpose of its working, it at all material times was and still is a consumer of electrical energy. It had for the said purpose taken electrical connection from the respondent Board. The connected load is 6664 kW. In terms of the tariff framed by the Board, the appellant herein (the Company) comes under the category of “general industry”. The Board on or about 21-1-1991 issued a circular whereby it proposed to levy surcharge @ 17½% on the actual
c consumption of electricity in respect of those industrial consumers who had been sanctioned load exceeding 5000 kW or sanctioned contract demand exceeding 5000 kVa and had supply from a 11 kV line. The said circular stipulated that surcharge would continue to be levied till conversion of supply to 33 kV or higher voltage by the consumers. It is, however, not in dispute that a letter was issued to the Company intimating that for installation of 66
d kV sub-station, a site plan was required to be supplied.

d 3*. Yet again by circular dated 3-5-1991, it was stipulated:

- “Continuation to CC No. 5/91 dated 21-1-1991 vide which it was decided to levy surcharge @ 17% on general industrial consumers having sanctioned load/demand exceeding 5000 kW/kVa and running at 11 kV till conversion of supply to 33 kV or higher voltage. The matter has been
e reconsidered by the Board and it has been decided that the surcharge @ 17½% shall be levied on such consumers who do not switch over their supply system to 33 kV and higher voltage in line with the following provisions:

- f* (i) A lead time of 12 months may be given to all the existing consumers having load/demand above 5000 kW/kVa and running at 11 kV to convert supply to higher voltage within stipulated period. This period includes the time spent on getting estimated cost of works, deposit of charges with the Punjab SEB and erection of 33 kV or higher voltage works by the consumer as well as by the Punjab SEB. The time schedule for different activities involved for
g erection/completion of higher voltage works shall be fixed by the load sanctioning authority, and any slippage/evasion in adhering to the laid-down targets on the part of the consumer shall attract levy of surcharge @ 17½%. In case after the stipulated period, the higher voltage works of the consumers are ready but the works of the Punjab SEB are not ready, surcharge shall not be levied and also

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* Ed.: Para 3 corrected vide Official Corrigendum No. F.3/Ed.B.J./49/2006 dated 24-7-2006.

likewise if the Board's works of higher voltage are ready but the consumers are not ready this surcharge shall be leviable."

4. The validity of the said circular dated 21-1-1991 came to be questioned by the Company in a writ petition, filed before the High Court, which was marked as CWP No. 7069 of 1991. In the meanwhile, the said circular letter was modified by the Board, in terms whereof it was stipulated that a time of 12 months extendable up to the maximum of 18 months was to be granted to all the existing consumers having load above 5000 kW/kVa and running at 11 kV to convert supply system to higher voltage.

5. Another letter dated 19-9-1991 was issued by the Board intimating it that electric supply had to be converted to 66 kV and hence the Company was required to show the place of installation of 66 kV sub-station, failing which a penalty @ 17½% would be levied. A further letter was issued by the Board demanding a sum of Rs 34 lakhs towards the tentative cost of conversion. The writ petition filed by the Company, however, was disposed of stating:

"... In the short reply filed on behalf of the Electricity Board, it is stated that from the petitioners 17½% surcharge collected will be adjusted in the subsequent bills. It is further mentioned that there would be conversion from 11 kV to 33 kV or 66 kV. Certain formalities are to be observed by both the parties in that connection and one year's time has been given to the petitioners to comply with the directions. *However, it is made clear that the period of one year would start from the pointing out of feasible point for installation of sub-station at the factory premises by the Board.*" (underlining* is ours for emphasis)

6. Yet again, without complying with the said directions, a demand was made by the Board from the Company for depositing the said amount of Rs 34 lakhs. On or about 14-2-1992, the Company replied to the said letter stating that the matter was pending adjudication before the civil court and furthermore no other feasible point had been pointed out by the officers of the Board so far. A site plan was again sought for from the Company by the Board by a letter dated 13-5-1992, wherein it was stated:

"Your kind attention is drawn to above references and it is requested that the site plan and site for the construction of 33/66 kV sub-grid must be shown to the undersigned within 7 days and according to the instructions of the Board required amount may be deposited so that further action may be taken, otherwise 17½% surcharge will be levied."

7. In exercise of its powers under Sections 46 and 49 of the Electricity (Supply) Act, 1948 (for short "the Act") the Board made a tariff which came into force with effect from 1-2-1994. Section (B) of the said Tariff refers to the Schedule thereof the relevant portion of which reads as under:

"Schedule of Tariff

Schedule LS — Large Industrial Power Supply

1. Availability

* Ed.: Herein italicised.

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a (i) This tariff shall apply to consumers having industrial connected load above 100 kW. Their contract demand shall not be less than 100 kVa (85 kW).

b (ii) No consumer availing supply of energy at high tension 11,000 volts and above (33 kV and above for arc furnace) shall increase his connected load without approval of the Board. The consumer availing supply at high tension shall indicate the rating capacity of all the step-down transformer(s) installed in his premises and shall not increase the capacity of such step-down transformer(s) without prior approval of the Board."

Clause 3 of the Schedule of Tariff reads as under:

"(A) General category

c	(a) Consumers with connected load of less than 1000 kW	153 paise/unit
	(b) Consumers with connected load of 1000 kW and above:	
	Demand charges	Rs 90/kVa
	plus	
d	Energy charges	128 paise/unit
	Maximum overall rate	163 paise/unit

(B) Power intensive units

	(a) Consumers with connected load of less than 1000 kW	158 paise/unit
e	(b) Consumers with connected load of 1000 kW and above:	
	Demand charges	Rs 90/kVa
	plus	
	Energy charges	133 paise/unit
	Maximum overall rate	168 paise/unit

f The energy charges under Categories (A) and (B) above shall be without prejudice to the monthly minimum charges leviable under Item 7 of this Schedule LS.

Note.— (i) * * *

g (ii) Surcharge of 17½% on the above tariff shall be leviable for all the arc furnace load consumers which are being given supply at 11 kV."

h 8. From Note (ii) of the aforesaid Tariff, it is, therefore, evident that surcharge @ 17½% thereupon was leviable only for all the arc furnace load consumers which were being given supply at 11 kV. Moreover, those other mills which were liable to bear the specified surcharge were specifically mentioned in the tariff notification. It is also not in dispute that prior to issuance of the said notification, executive orders had been issued levying

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such surcharge. The said executive order, however, was later on made part of the Tariff.

9. However, on 26-7-1991 a notification was issued under Sections 46 *a* and 49 of the Act inter alia stating:

“(b) For consumers with connected load of 1 MW and above

Demand charges Rs 60 per kVa

plus plus

Energy charges Rs 83 paise/unit *b*

Subject to maximum rate of 107 paise/unit without prejudice to MMC under Item 7 of this Schedule LS.

(i) * * *

(ii) Surcharge of 17½% on the above tariff shall be leviable for all the arc furnace load consumers which are being given supply at 11 kV. *c*

(iii) * * *”

10. Questioning the said demand, admittedly, a suit was filed by the Company. The trial court as also the appellate court on the basis of the materials brought on record came to the conclusion that the Board could levy such surcharge only with effect from 13-5-1992. *d*

11. By reason of the impugned judgment the High Court opined:

“Learned counsel for the appellant could not point out any clause in the circulars which stipulates the modification or suppression of the earlier circulars dated 21-1-1991 and 3-5-1991. In the absence of any supersession of notifications, I am unable to hold that such notification stood superseded by virtue of a fresh notification dealing with revision of tariff for general category consumers as well as contemplate levy of surcharge for the arc furnace load consumers. There is no clause in the said circular that surcharge will be leviable only on the arc furnace. Still further, such argument was not raised before the courts below. Therefore, it is apparent that levy of surcharge by the notifications dated 21-1-1991 and 3-5-1991 was never superseded.” *e*

12. A limited notice was issued by this Court on the special leave petition filed by the Company as to whether revision of tariff issued as per Memo No. 10061/10761/CC/T/2/Rev./Vol. XIII dated 1-2-1994 was applicable to the Company or not. The Board has also approached this Court in regard to the question as to whether the one-year period should be calculated from 13-5-1992 or from the date of issuance of the notification. *g*

13*. Two questions, thus, arise for our consideration in these appeals: (i) whether the High Court is correct in holding that in view of the fact the matter relating to payment of surcharge was governed by circulars dated 21-1-1991 and 3-5-1991 which having not been superseded by the notification the impugned demand was valid in law; and (ii) what would be *h*

* Ed.: Para 13 corrected vide Official Corrigendum No. F.3/Ed.B.J./49/2006 dated 24-7-2006.

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the proper interpretation of the judgment of the Division Bench of the Punjab and Haryana High Court dated 29-1-1992.

a **14.** The Board is a creature of the statute. It is constituted in terms of Section 5 of the Act. It is incorporated and can sue and be sued in its own name in terms of Section 12 thereof. Section 46 of the Act provides for the grid tariff and Section 49 thereof empowers the Board to make provision for the sale of electricity by it to persons other than the licensees. While exercising the said power the Board would be governed by the general terms
b which may be issued by the State in terms of Section 79 of the Act. Surcharge by way of additional rate or penalty can be levied only in terms of a tariff notification. Such a power, therefore, can be exercised by the Board only in exercise of its statutory power and not by reason of an executive power. In terms of a circular letter issued by the Board, therefore, neither any
c surcharge nor any penalty could be levied.

c **15.** In the year 1991, indisputably, the said circular letter dated 21-1-1991 was followed by the tariff notification issued in terms of Sections 46 and 49 of the Act. The subsequent circular letter dated 3-5-1991 was, however, not followed by any notification making the tariff applicable with retrospective effect.

d **16.** We have noticed hereinbefore that the tariff notification dated 26-7-1991 speaks of levy of such surcharge inter alia on arc furnaces. Similar is the position in regard to the notification dated 1-2-1994. The Board, therefore, could levy surcharge only in terms of the notification and not by reason of any circular letter. As in the notification, it has clearly been stated that 17½% surcharge on the above tariff should be leviable for all the arc
e furnace load consumers which were being given the supply at 11 kV, the High Court clearly fell in error in arriving at the finding that by reason of the said notification the circular letters dated 21-1-1991 and 3-5-1991 were not superseded. The Board being a statutory authority, its power to issue bills for consumption of the electricity would be governed solely by the tariff
f notification. It being a statutory authority must act within the four corners of the statute.

g **17*.** The High Court, therefore, in our opinion was clearly wrong in arriving at the finding that the earlier circulars dated 21-1-1991 and 3-5-1991 were not superseded. The High Court failed to pose unto itself the correct question, namely, as to whether after issuance of the tariff notification, the Board could levy any surcharge @ 17½% on the tariff on those consumers who did not have arc furnace. The High Court, therefore, misdirected itself in law in passing the impugned order.

h **18*.** The question which falls for consideration is from which date the period of one year could have started. Although on the basis of the aforementioned finding, the Company could have contended that no

* Ed.: Paras 17 and 18 corrected vide Official Corrigendum No. F.3/Ed.B.J./49/2006 dated 24-7-2006.

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surcharge could have been levied from 3-5-1991, but it did not raise such a contention before the High Court.

19. We have seen that herein also a limited notice was issued.

a

20*. It is not in dispute that for the purpose of giving effect to the offer made by the Board in terms of its letter dated 3-5-1991, no surcharge could have been levied immediately. A Division Bench of the High Court, as noticed hereinbefore, by an order dated 29-1-1992 clearly stated that the period of one year would start from the date when the feasible point was pointed out.

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21. The observation of the High Court in the earlier writ petition was in the nature of a direction.

22. The submission of Mr Ranjit Kumar, the learned Senior Counsel appearing on behalf of the Board, in this behalf, cannot be accepted. Normally the period should be counted from the date of issuance of the notification and not from the date of the High Court's judgment. The High Court, however, made observations, whereupon both the parties acted. The said observations were made in terms of the affidavit affirmed on behalf of the Board itself.

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23. The High Court's direction leads only to one conclusion that the cut-off date would be considered to be one in futuro i.e. a date after 29-1-1992 alone was required to be fixed.

d

24. Once the final notice by the Board had been issued, the negligence on the part of the consumer to point out the actual site had not been condoned by the courts.

25. The High Court's observations might be incorrect; but then the same was accepted. As indicated hereinbefore, the parties acted thereupon. The period of one year in terms of the judgment of the High Court, therefore, was to start from the date when the feasible point for installation of sub-station at the factory premises by the Board was pointed out. Selection of a site for the purpose of drawing 33 kV line was not an empty formality. Several factors including the convenience of the Board were required to be taken into consideration. In some cases probably compensation for acquisition of land was required to be paid.

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26. All the courts had arrived at a finding of fact, having regard to the Board's letter dated 3-12-1992 that the final notice in terms of the said circular had been given only on 13-5-1992. The Company had contended that actual feasibility was found out on 28-5-1994, but as noticed hereinbefore, the Court did not accept its plea that even the date of the said notice could not have been considered to be the date for the purpose of the starting point of the period of one year.

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27. For the reasons aforementioned, although Mr R.K. Jain, the learned Senior Counsel appearing for the Company, may be right in his submission

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* Ed.: Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./49/2006 dated 24-7-2006.

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a that the Board has no jurisdiction to levy surcharge after 29-1-1992, but as the said contention had not been raised and furthermore as notice was issued by the Court on a limited question, we are of the opinion that the Company is liable to pay the surcharge with effect from 13-5-1992. We may furthermore notice that the actual amount of surcharge payable from that date has already been paid by the Company to the Board. However, in view of our findings aforementioned, there cannot be any doubt that the surcharge @ 17½% was not required to be paid in terms of the tariff notification dated 1-2-1994.

b **28.** For the reasons aforementioned, the civil appeals arising out of SLPs (Civil) Nos. 1398-442 of 2005 preferred by the Company are allowed to the aforementioned extent and the civil appeals arising out of SLPs (Civil) Nos. 15357-58 of 2005 preferred by the Board are dismissed. In the facts and circumstances of the case, the parties shall pay and bear their own costs.

c

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(BEFORE S.B. SINHA AND MARKANDEY KATJU, JJ.)

REGIONAL MANAGER, SBI .. Appellant;

Versus

d MAHATMA MISHRA .. Respondent.

Civil Appeal No. 4636 of 2006[†], decided on November 1, 2006

e **A. Labour Law — Industrial Disputes Act, 1947 — Ss. 25-H and 2(oo)(b) — Relative scope and applicability — Appointment as casual worker for fixed period — Termination in terms of contract of employment — Held, S. 25-H would not be attracted in such a case — Temporary employment**

f **B. Labour Law — Industrial Disputes Act, 1947 — Ss. 11-A, 25-F and 25-H — Exercise of discretion under S. 11-A — Principles for, reiterated — Workman neither satisfying conditions for invocation of S. 25-F nor S. 25-H but reinstated with full back wages by Labour Court — Impermissibility — U.P. Industrial Disputes Act, 1947 (28 of 1947) — S. 6-N**

C. Labour Law — Reinstatement — Entitlement to — Necessity of illegal termination of services

g **D. Labour Law — Regularisation — Entitlement to — Grant of permanent status to casual worker — Impermissibility — Reinstatement in service on a finding of illegal termination of service even if warranted, held, does not entitle workman to benefit to which he was not entitled if he had remained in service — Hence, a casual worker appointed for a fixed term cannot be granted permanent status even if the reinstatement is found to be valid**

Allowing the appeal, the Supreme Court

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[†] Arising out of SLP (C) No. 8064 of 2006. From the Final Judgment and Order dated 20-2-2006 of the High Court of Judicature at Allahabad in CMWP No. 14605 of 1985 : (2006) 3 ALJ 78