

(1992) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11819 of 1986

Aditya Constructions

APPELLANT

Vs

The Secretary, Housing, Municipal Administration and Urban
Development Dept. and Another

RESPONDENT

Date of Decision : 21-03-1992

Acts Referred:

Bhagyanagar Urban Development Authority Zoning Regulations, 1981 — Regulation 3
Constitution of India, 1950 — Article 14, 226
Hyderabad Municipal Corporation Act, 1955 — Section 428, 437, 446, 447

Citation : (1992) 3 ALT 597

Hon'ble Judges : Sivaraman Nair, J;M.N. Rao, J

Bench : Division Bench

**Advocate : R. Vijayanandan Reddy, for the Appellant; Government Pleader for
Respondent No. 1 and M. Rama Rao for M.C.H., for the Respondent**

Final Decision : Dismissed

Judgement

1. This writ petition comes before us on a reference by a learned single Judge, since it was urged that Regulation 3 of Bhagyanagar Multistoreyed Building Regulations was unconstitutional, and according to the learned single Judge that question was better decided by a Division Bench.

2. Petitioner filed an application dated 14-8-1981 for permission to construct 1 + 13 storeyed building, to the Municipal Corporation of Hyderabad. It contended that its application should have been dealt with under Municipal Corporation Bye-laws, 1972 and not under Bhagyanagar Urban Development Authority Multistoreyed Building Regulations, 1981 which came into force on 5-9-1981. It also contended that the Municipal Corporation Building Bye-laws enacted by G.O.Ms. No. 905 dated 7-8-1981 which came into force on 5-9-1981 were not applicable to its application.

3. The learned single Judge heard the matter along with W.P. No. 11818/86 and passed a common order referring both the writ petitions to a Division Bench. The

former - W.P. No. 11818/86 - was disposed of because it was rendered infructuous as the petitioner therein constructed the building in accordance with the sanction accorded by the relevant authorities. W.P. No. 11819/1986 remains for consideration.

4. The writ petition was filed on 2-9-1986. Our learned brother Ramaswamy, J., as he then was, issued rule nisi on 3-9-1986 and directed that the hearing may be expedited. On another application a learned brother of ours, on 2-3-1987 ordered that the writ petition may be posted in April, 1987. It was apparently in the list for a fairly long time. The reference order was made on 27-8-1987. After obtaining orders from the Chief Justice, the matter was posted for the first time on 14-9-1987. It remained in the list thereafter till it was dismissed for default of counsel on 4-7-1989. On an application, the same was restored on 20-10-1989. It was in the hearing list thereafter before various Division Benches. It came up before us on 17-7-1991. We heard the matter in part and ordered to post the same on 22-7-1991. The case was heard piecemeal on various occasions, till finally counsel for petitioner called for production of certain files from the Government and the Municipal Corporation of Hyderabad. These were produced after some time and arguments were heard with reference to them. The Corporation filed its counter affidavit on 28-11-1991 as suggested by us. Thereafter, counsel on both sides filed written arguments in December, 1991. Again on request of counsel, the case was posted for supplementary submissions. Fortunately, now we have come to the end of this six-year-old odyssey. As is evident from the above recitals, the period of about six years of pendency in this Court is referable partly to the delay in the judicial process and partly to default of counsel.

5. Now the facts. Petitioner firm applied on 14-8-1981 to the 2nd respondent for permission to construct a commercial complex at Sardar Patel Road, Secunderabad in land bearing No. 1-2-34 to 39 and 47. It claims to have paid an amount of Rs. 5,32,071/- under the Municipal Corporation of Hyderabad Building Bye-laws along with the application for permission to construct 1 + 13 floors including the ground-floor though the claim is disputed by the 2nd respondent. Second respondent in its letter dated 23-1-1982 allowed the petitioner to construct only four floors. It was so done apparently in view of the fact that the Government had promulgated G.O.Ms. No. 917, Housing, Municipal Administration and Urban Development Department, dated 11-8-1981 containing Bhagyanagar Urban Development Authority Multistoreyed Building Regulations, 1981. The Government also issued Bhagyanagar Urban Development Authority (Zoning) Regulations, 1981. Those Regulations came into force on 5-9-1981. In G.O.Ms. No. 905, Municipal Administration and Urban Development Department, dated 7-8-1981 the Government issued the Municipal Corporation Building Bye-laws. These Bye-laws replaced Municipal Corporation Building Bye-laws, 1972 which were framed under Hyderabad Municipal Corporation Act. Under the 1972 Bye-laws, there was no restriction as to the limit of the number of floors though Clause 70 provided that "no proposed construction shall contravene any of the

Zoning Regulations of the sanctioned development plan. The 1981 Regulations, which will be hereinafter referred to as the "Multistoreyed Building Regulations" introduced some limitations in respect of Building Zones as also the number of floors in multistoreyed constructions. We will refer the details in the course of this Judgment. Whether those limitations shall govern the application which the petitioner had filed on 14-8-1981 is the question for consideration.

6. Regulation 3(b) of the Multistoreyed Building Regulations provides that:

"Every multistoreyed building to be constructed, reconstructed, added or altered and situated within the development area of Hyderabad but outside the restricted zones as per Appendix A, shall comply with these special regulations in addition to the Hyderabad Municipal Corporation Building Bye-laws, 1981, Zoning Regulations and any other Bye-laws and/or Regulations in force."

Appendix A of the above Regulations included the area proposed for construction into a restricted zone. Due to that restriction and the provisions of the two sets of Regulations and the Bye-laws read along with Sections 446 and 447 of the Hyderabad Municipal Corporation Act, the floors in and height of the building and zone construction were severely restricted.

7. Petitioner submits that the zoning restrictions whereby different areas within the Corporation limits were included in Appendix A are discriminatory, since the classification is based on irrational and irrelevant considerations. It is also submitted that had the petitioner's application been duly considered and disposed of in accordance with the Municipal Corporation Building Bye-laws, 1972, there would have been no occasion for the application of Multistoreyed Building Regulations or the Zoning Regulations or the Municipal Corporation Building Bye-laws of 1981 in such a manner as to restrict the building to four floors instead of 14.

8. Petitioner submits that u/s 437 of the Hyderabad Municipal Corporation Act, if the application for permission to construct a building notice of which is given u/s 428 of the Act, is not disposed of by the competent authority, the applicant is entitled to commence construction within one year and thereafter, the 2nd respondent has no competence either to reject the application or to introduce any conditions or restriction in the proposed construction for which notice was given. Reference is also made to regulation 12 of the Zoning Regulations, 1981 which confers power on the Government to grant exemption either suomotu or on an application for development of any site, sub-division or lay out from any of its provisions. Regulation 19 of Multistoreyed Building Regulations, 1981 also confers on the Government power to grant exemption from any of the provisions excepting Regulation No. 8,10(ii) and (iii) and 11, subject to certain limitations. Petitioner submits that he had approached the Government for such exemption on repeated occasions on 10-2-1982, 5-8-1982, 30-11-1982, 4-7-1983, 15-10-1983 and 18-7-1984 but the Government mechanically refused to grant exemption by its order dt. 19-3-1986 keeping all

the time a huge amount of about Rs. 5,60,000/- with the 2nd respondent. Petitioner submits that as many as 21 other builders were granted exemption under almost similar circumstances. Refusal of such exemption in its case alone is said to be discriminatory and arbitrary. It is on these grounds that the petitioner seeks the issue of a writ of mandamus directing respondents to consider his application dated 14-8-1981 in accordance with Building Bye- laws, 1972 and unrelated to the Regulations issued in 1981. The alternative prayer is to quash the order of the Government dated 19-3-1986 and to direct the first respondent to grant exemption as prayed for.

9. In the counter affidavit, respondents contend that the application filed by the petitioner on 14-8-1981 u/s 428 of the Municipal Corporation Act was accompanied by only Rs. 1,94,257/- out of the prescribed fee of Rs. 4,00,157-50. The application thus not being valid or complete even otherwise, the revised plans were submitted on 17-8-1981 along with the balance amount of Rs. 2,05,900/-being the difference in permit-fee. Drainage charges amounting to Rs. 1,38,334-00 ought to have been paid along with the application. But that amount was paid only on 11-1-1982. Immediately thereafter, the competent authority granted permission on 22-1-1982 for constructing 1+3 floors as per the Building Bye-laws and the relevant Regulations then in force. It is contended that the application became valid and complete even under the 1972 Bye-laws only on payment of all fees and charges subsequent to the date of commencement of the Regulations and Bye-laws which were introduced in 1981. Petitioner having received order granting permission on 23-1-1982 should have started construction at least by 21-1-1983 and should have completed the same as per Bye-law No. 7 of the Building Bye-laws, 1981, within three years. Reference is made to Sections 428,429,437,433 and 430 of the Municipal Corporation Act. u/s 429, the Commissioner is empowered on receipt of an application u/s 428 for permission for construction, to require the applicant to submit plans and other documents. u/s 437 if within 30 days after receipt of any notice under Sections 428 or 433, the Commissioner does not signify his approval in writing of the building or work, the applicant may at any time within one year from the date of delivery of the notice to the Commissioner proceed with construction of such building or work in accordance with his intention as described in the notice or any other provisions of the Act or the Bye- laws. u/s 440, "no person shall commence to erect or re-erect any building or to execute any such work as is described in Section 428 unless he has given notice of his intention as hereinbefore required to erect or re-erect such building or execute such work and the Commissioner has either intimated his approval of such building or work or failed to intimate his disapproval thereof within the period specified in this behalf in Section 437 or 438". Respondents submit that the petitioner had not issued any notice nor commenced any construction under the deeming provision. Reference is made to Sections 446 and 447 of the Municipal Corporations Act. According to the former, the maximum height of the buildings in the Municipal area is prescribed as 70" as measured from the level of the centre of the street.

The latter restricts the height of the buildings with reference to the width of the streets. The height of the building with 1 + 13 floors as proposed by the petitioner was more than 140". It is therefore, submitted that even assuming that permission must be deemed to have been granted as urged by the petitioner, it could not have constructed a multistoreyed building with 1 + 13 floors as proposed by it. Respondents submit that G.O.Ms. No. 905 Housing, Administration & Urban Development dated 7-8-1981 came into force on 5-9-1981. The above Government Order was published in Andhra Pradesh Gazette dated 10-8-1981. Petitioner filed his application for permission for construction only, on 14-8-1981 apparently with the knowledge that the Multistoreyed Building Regulations, 1981 and Building Bye-laws, 1981 were already gazetted and were to come into force on 5-9-1981. Since the application was not complete as the applicant had not paid the entire permit-fee, drainage charges etc., on the date of submission of plans, no right had accrued to him on the date of submission of the application, to have his application considered under the Building Bye-laws, 1972. As the Zoning Regulations, 1981, the Building Bye-laws, 1981 and the Multistoreyed Building Regulations, 1981 came into force on 5-9-1981, before the petitioner's application was full and complete, the respondents submit that the petitioner is not entitled to contend that his application was entitled to be considered in terms of the preexisting Bye-laws and Regulations.

10. The first respondent in his written arguments submits that according to Regulation 2(v) of the Multistoreyed Building Regulations, "multistoreyed building" means and includes "all buildings with more than four floors (including the ground floor) or whose height is 15 metres or more". Under Appendix A of the Regulations, Secunderabad area; Municipal Corporation of Hyderabad Ward Nos. I (part), II, III and IV (complete) Block Nos. 1, 2, 3, 4, 5, 6 and 7 (complete) are demarcated as Restricted Zones for multi-storeyed buildings. Reference is also made to Bye-law 17-8 of the Building Bye-laws, 1981 which provides that no proposed construction shall contravene any zoning Regulations. The first respondent asserts that it was with full awareness of the above provisions which were already published in the gazette that the petitioner filed his incomplete application on 14-8-1981. Respondent proceeds further to submit that merely by filing the application on 14-8-1981, petitioner did not acquire any right; and Section 6 of the General Clauses Act, 1897 which deals with the effect of repeal cannot apply to the petitioner's hopes and aspirations, but only to vested or acquired rights of individuals under the pre-existing law. Dealing with the contention that the Zoning Regulations and Appendix A of the Multistoreyed Building Regulations are arbitrary and discriminatory, it is stated that the Zones were formed on the basis of density of population living in the particular area and the amenities like roads, water and drainage which have to be provided and therefore, the Regulations are reasonable. It is asserted that the grant of exemption, perhaps wrongly in other cases, does not entitle the petitioner to grant of any such exemption in his case, or, to a personal hearing before his

application for exemption is considered.

11. The main contentions which we have to consider are the following:

(1) Is the petitioner right in its submission that it was entitled, by virtue of the provisions contained in Section 437 of the Hyderabad Municipal Corporation Act, 1955 to commence construction because the 2nd respondent failed to intimate in writing his disapproval of the proposed building and does the 2nd respondent have authority, after expiry of the period of 30 days from the date of submission of the application, to deal with the application in such a manner as to reject it or impose conditions relating to the construction of the building?

(2) Is the petitioner right in its submission that its application for permission to construct a multistoreyed building (1 + 13 floors), having been submitted on 14-8-1981, should be considered under the then existing Regulations and Bye-laws? In other words, is it right in its submission that the Multistoreyed Building Regulations, 1981, Zoning Regulations, 1981 and the Building Bye-laws, 1981 which came into force on 5-9-1981 do not apply to its application for permission to construct the building?

(3) Is the petitioner right in its submission that the inclusion of Zones in Appendix A of the Multistoreyed Building Regulations is arbitrary and unsustainable?

(4) Is the petitioner right in its submission that the power to grant exemption confers arbitrary power and has been used arbitrarily in favour of 21 others, but not in its case? and

(5) Is the petitioner entitled to a direction that the building proposed by it shall be exempted from the 1981 Regulations and Bye-laws?

12. As far as the first submission is concerned we find considerable force in the submission made by the respondents that what the petitioner submitted on 14-8-1981 was not a valid or complete application which could have been considered and in relation to which the deemed provisions contained in Section 437 would have been operative. Admittedly, petitioner paid only a part of the prescribed permit fee. The balance amount was paid only on 17-8-1981 and the drainage-fee was paid only on 11-1-1982. If the respondents are right in their submission that the application became complete only when all the amounts due were paid, the application of the petitioner permission would be complete only on 11-1-1982. That application could not but have been dealt with under the then existing Bye-laws and Regulations. Reference in this connection may be made to Clause 7 of the Building Bye-laws, 1972 to the effect that "no notice referred to in Bye-laws 3 and 6 shall be deemed valid unless the person giving notice has paid to the Commissioner in advance the fees determined by the Commissioner from time to time with the previous approval of the Corporation for grant of permission and a receipt in token of such fee is attached to the notice." Section 428 of the Hyderabad Municipal Corporation Act provides for notice of intention

of the owner in a form prescribed u/s 435 specifying the position of the building intended to be erected, the description of the building, the purpose for which it is intended, its dimensions and the name of the person whom he intends to employ to supervise its erection. On receipt of the notice at any time within 30 days thereafter, the Commissioner may require the applicant to furnish the correct plans and section of every floor of the building, a specification of each description of work proposed to be executed, a block plan of such building, a plan showing the intended line of drainage etc. u/s 430, the Commissioner is authorised to decline to accept any plan or description which does not bear the signature of a licensed Surveyor who has prepared or supervised the preparation of such plan. Section 431 enables the Commissioner to call for additional information as he deems necessary. Section 432 provides that if the applicant does not respond to any of the requirements of Sections 429 or 431, the notice given u/s 428 shall be deemed not to have been given. Section 437 provides as follows:

"When building or work may be proceeded with:-

If within thirty days after receipt of any notice u/s 428 or 433, or of the plan, section, description or further information, if any, called for under Sections 429, 431 or 434 as the case may be, the Commissioner fails to intimate in writing, to the person who has given the said notice, his disapproval of the building which the said person proposes to erect or of the work which he proposes to execute, or if, within the said period the Commissioner signifies in writing to the said person his approval of the said building or work, the said person may at any time within one year from the date of the delivery of the notice to the Commissioner proceed with the said building or work in accordance with his intention as described in the notice or in any of the documents aforesaid, but not so as to contravene any of the provisions of this Act or any bye-law made thereunder."

It is clear from the above provision, that if disapproval is not signified within 30 days of receipt of notice u/s 428, permission is deemed to have been granted and the applicant is entitled to commence the construction within one year thereafter. But such construction shall not contravene any of the provisions of the Act or any other Bye-law made thereunder. The deemed permission u/s 437 operates two ways. The first is to enable the applicant to commence construction deeming that permission as sought for is granted. The second is that he shall do so, within one year of service of notice, but such commencement of construction shall be in strict compliance with the provisions of the Act and the Rules. In the present case, the applicant had not availed of the deeming provision. It had not commenced construction within one year. It cannot, therefore, take advantage of the deeming provision. If that be so, it is not entitled to urge that the Commissioner had lost his authority to deal with the application in accordance with law, because he had not signified his approval of the proposal, or imposed conditions and restrictions within 30 days after receipt of notice u/s 428 of the Act.

13. Even assuming that there was deemed permission petitioner could not have commenced construction of the building in contravention of the maximum height of buildings as provided in Sections 446 and 447 of the Hyderabad Municipal Corporation Act, because Section 437 of the Act imposes a restriction that it shall not construct the building "so as to contravene any of the provisions of this Act or any other bye-law made thereunder". Admittedly, the proposal to construct 1 + 13 floors contravened those provisions.

14. Assuming again that the petitioner was deemed to have permission in terms of Section 437 of the Act and it should have commenced construction 30 days after receipt of valid application by the 2nd respondent on 17-8-1981 and within one year thereafter he could have done so only subject to the Zoning Regulations, 1981 and the Multistoreyed Building Regulations, 1981 which had come into force in the mean time. It could have commenced construction at the earliest only on 16-9-1981 and mat too, subject to the provisions of the above Regulations. Those Regulations contain restrictions regarding construction of multistoreyed buildings with more than 1+3 floors in the Zone in question. It is difficult to accept the submission that the petitioner is entitled to avoid and escape the provisions of the relevant Rules and Regulations which were in force as on the earlist date on which it could have commenced construction on the basis of the permission which was deemed to have been granted in accordance with the provisions of Section 437 of the Hyderabad Municipal Corporation Act. Clause 17(viii) of the Building Bye-laws, 1981 which were in force with effect from 5-9-1981 contained an absolute prohibition that "no proposed construction shall contravene the Zoning Regulations". Petitioner could not therefore, have commenced construction on 16-9-1981 or within one year thereafter in violation of the above provision. It is also necessary to refer to the Building Bye-laws of 1972. Clause 70 of those Bye-laws also contained a similar provision as follows:

"70. Violation of Zoning Regulations:- No proposed construction shall contravene any of the Zoning Regulations of the sanctioned development plan."

Assuming that the petitioner is right in its submission that its application should have been dealt with only under the Bye-laws of 1972, Clause 70 of the 1972 Bye-laws disabled it from undertaking any construction contrary to the Zoning Regulations. "Zoning Regulations" mentioned in the above provision shall necessarily mean - the Zoning Regulations which were in force at the relevanttime. Admittedly, on 16-9-1981 and thereafter, the Zoning Regulations, 1981 had come into force. So also had the provisions in the Multistoreyed Building Regulations, 1981, Appendix A. of which, contains restrictions on buildings in specified Zones become operative. We, therefore, hold that even assuming that petitioner is right in its submission that its application ought to have been considered in terms of 1972 Building Bye-laws, it will not be entitled to commence construction in contravention of the Zoning Regulations introduced on 5-9-1981 and other restrictions which were brought into force by the Multistoreyed Building Regulations.

15. On the third contention of the Zoning Regulations and Appendix A of the Multistoreyed Building Regulations being unreasonable and discriminatory, the assertions of the petitioner are not specific or definite. Petitioner asserted in the affidavit that the formation of the restricted Zones as per Appendix A of the Multistoreyed Building Regulations, 1981 was without guidelines and Appendix A suffers from the vice of being capricious and was the result of "rule of thumb". It was also asserted that the classification was so irrational and not based on permissible criteria or intelligible differentia and therefore, suffer from the vice of discrimination. It is true that all general averments which may perhaps attract the provisions of Article 14 are made by the petitioner. Equally true is the fact that in the counter affidavit respondents have asserted in equally general terms that the Zones were formed on the basis of density of population living in a particular area and the amenities like roads, water and drainage to be provided. It is asserted on the above basis that the provisions are not arbitrary or without guidelines.

16. In cases where violation of Article 14 is alleged, it is for the person who makes those allegations to be more specific and to prove them to the satisfaction of the Court. General and equivocal statements alleging unreasonable classification and discrimination, may not be sufficient. In the present case, we do not find anything more specific, definite and precise about the alleged classification resulting in discrimination violative of Article 14 of the Constitution. Even in a case where general and equivocal statements are not controverted, Courts have to be wary in assuming that there has been discriminatory classification. It was so said by the Supreme Court as far back as in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, ., and as recently as in *Bank of Baroda v. Nagaclwya Devi*, AIR 1990 SC 2105. Petitioner could as well have given details of instances where the classification was made for the purpose of inclusion of various Zones in Appendix A of the Multistoreyed Building Regulations without reference to the criteria stated in the counter affidavit. No such attempt was made. In this state of pleadings, we have to assume mat the assertion contained in the counter affidavit mat the classification was based on density of population living in a particular area and the obligation to provide amenities like roads, water, drainage etc., stands uncontroverted. Those criteria are neither irrelevant nor extraneous. They have nexus to the purpose of the classification and the formation and demarcation of Zones for imposing restrictions for construction of multistoreyed buildings. We are therefore, not satisfied that the petitioner has made out a case of discrimination either in the matter of inclusion of Zones in Appendix A, particularly about inclusion of the area where the petitioner proposed to construct multistoreyed building as a restricted zone.

17. The larger question which the petitioner urged with great emphasis was that since it had submitted the application under the 1972 Building Bye-laws, it is entitled to have that application considered under the pre-existing Bye-laws notwithstanding its repeal by the 1981 Bye-laws. We have already stated that

even if the 1972 Bye-laws continued petitioner would not have been able to construct the building as proposed by it. Petitioner referred us to a number of authorities in support of its submission that 1972 Building Bye-laws being substantive law, its alteration after the petitioner filed its application should not affect its right to have the same dealt with under the pre-existing Bye-laws. In the light of the above finding that even according to 1972 Bye-laws, petitioner was bound to construct the building for which it issued notice, only in accordance with the provisions of the Act and the Rules which were in force at the relevant time, it may not be necessary for us to consider the number of authorities which counsel for the petitioner has cited. We need not consider the argument that the mere submission of an application does or does not create vested rights in the petitioner, to have the application dealt with under the 1972 Bye-laws. Even assuming that in favour of the petitioner, we are still of the opinion that it could not have insisted on construction of a multistoreyed building as proposed by it either on the basis of the deemed permission or on the basis of the law as it applied, namely the Zoning Regulations or minimum height of the building as provided in Sections 446 or 447 of the Municipal Corporation Act.

18. Government Pleader has produced the files relating to the grant of exemption by the State Government in a few cases after the commencement of the Building Bye-laws, the Multistoreyed Building Regulations and the Zoning Regulations of 1981. On a scrutiny of the relevant Rules, we find that there is no power at present under any of the above statutory provisions for the Government to grant any such exemption. This was brought to the notice of the State Government as the files moved up. It is unfortunate that inspite of the persistent reminders with reference to the relevant statutory provisions that the Government had no power to grant exemption and that the cases which were before the Government did not deserve any such exemption, the Government thought it fit to exercise a non-existing power to grant exemption. Petitioner may be right in its submission that it could or should also have been granted similar exemption. Unless we are certain that the Government has got power to grant exemption by virtue of any of the statutory provisions, it is not possible for us to issue the direction which the petitioner seeks. It is not as if this Court shall countenance the illegality committed by the Government in granting exemptions and direct the Government that it shall proceed and continue to pass such illegal orders in other cases as well. The jurisdiction under Article 226 of the Constitution of India is equitable and discretionary. That jurisdiction cannot be exercised for the purpose of compounding any illegality or for directing that such illegality shall be committed in other like-cases also, because it was once committed.

19. We cannot leave this case without viewing with considerable consternation the manner in which the Government went about granting exemption in exercise of an assumed, but non-existent power. Counsel for the petitioner is right in his submission that such exemptions would have been granted on the basis of irrelevant and totally extraneous considerations. We may perhaps agree, because we do not find any explanation for the Government spurning the advice of every

person in the echelon of the Government cautioning against the entertainment and grant of applications for exemption. All those cautions were thrown to winds for reasons which are not discernible from the record. Counsel may be right in his submission that the reasons were more than obvious. Since neither the orders nor the parties concerned are before us, we do not venture any further consideration of the validity or propriety of such orders or make any observation about them. Still we leave this case with an impression the the Government acted improperly in those other cases where exemption was gleefully dished out, whereas it stuck to the letter of the law in the case of the petitioner. May be it is unfortunate that the petitioner was not on the right side of the decision-makers to whom statutory restrictions were not commands which they shall obey in the discharge of their governmental functions. Such performance of the Government in other cases do not justify us in directing that they shall continue to act in such illegal and unconstitutional manner in the case of the petitioner as well, in the interest of equality before law. It must be equality before law and not before lawlessness.

20. In the light of the above discussions, we have to and do dismiss this writ petition. The only manner in which we can express our anguish at and disapproval of the manner in which the Government seems to have acted, is by directing that it shall pay costs of the petitioner including Advocate's fee of Rs. 500/-.