

**(1986) 07 KAR CK 0014**  
**In the Karnataka High Court**  
**Case No : W.A. No. 1320 of 1981 etc.**

K.S.R.T.C.

APPELLANT

Vs

Rajeev Alwa

RESPONDENT

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**Date of Decision :** 31-07-1986

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16  
Karnataka Contract Carriages (Acquisition) Act, 1976 — Section 19 (3)

**Citation :** (1986) ILR (Kar) 2794

**Hon'ble Judges :** Puttaswamy, J;Mahendra, J

**Bench :** Division Bench

**Advocate :** S.G. Sundaraswamy and B B. Mandappa, for the Appellant; S. C Javali and R.U. Goulay, G. S Viveswara, H. Subramanya Jois, K. Subba Rao, S. K. Kulkarni, A. Ananda Shetty, K. Krishna Bhat, U.L. Narayana Rao, R.S. Hegde and S.B. Adi, Chandranna, for the Respondent

**Final Decision :** Allowed

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## Judgement

Puttaswamy, J.—As the questions that arise for determination in these cases are common, we propose to dispose of them by a common Judgment.

2. The Karnataka State Road Transport Corporation (KSRTC) constituted and functioning under the Road Transport Corporation Act of 1950 (Central Act No. 64 of 1950) by itself or in combination of some of its officers like the General Manager, Deputy General Manager (Administration) are the appellants in these appeals directed against the common order made on 30-6-1981 by Rama Jois, J. in Writ Petitions Nos. 16754 of 1980 and connected cases followed by other learned Judges in other Writ Petitions decided on 2-7-1981, 21-7-1981 and 10-8-1981 filed under Article 226 of the Constitution by the respondents herein except the State of Karnataka who were the petitioners. Any reference made hereafter to the KSRTC must, therefore, be treated as referring to the appellants who were the respondents in the Writ Petitions filed before this Court. The State of Karnataka which is only a formal respondent in these appeals and the Writ

Petitions will not be referred to hereafter.

3. On 30-1-1976 the Governor of Karnataka in exercise of the powers conferred by Clause (1) of Article 213 of the Constitution, promulgated the Karnataka Contract Carriages (Acquisition) Ordinance of 1976 (Karnataka Ordinance No. 7 of 1976) ("Ordinance") inter alia providing for acquisition of contract carriage permits and contract carriage vehicles held and owned by the contract carriage operators of the State and their transfer to the KSRTC. The Ordinance came into force from 30-1-1976 and under the several notifications issued thereto by Government there was acquisition of permits and vehicles and their transfer to the KSRTC.

4. The Ordinance was replaced by the Karnataka Contract Carriages (Acquisition) Act of 1976 (Karnataka Act 21 of 1976) ("the Act") which was given retrospective effect from 30-1-1976 (vide Section 1(3) of the Act). While Sub-section (1) of Section 31 of the Act repealed the Ordinance, Subsection (2) of the same provided for savings of anything done or any action taken under the Ordinance. On 20-9-1976 this Court struck down the Act, But, the Supreme Court on appeal since reported as *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, reversing the decision of this Court upheld the validity of the Act.

5. In terms of Section 20(3) of the Ordinance the services of the respondents and several others working in different capacities and 730 conductors working with ex-contract carriage operators had been absorbed by the KSRTC from 30-1-1976 and thereafter.

6. Before the KSRTC as many as 8416 persons or even more staked their claims for absorption, under the Act. On an indepth examination, the KSRTC rejected the claims of a large number of persons as spurious, the validity of which was challenged by many, one of whom was one Sri M. S. Shivananda of Chickmagalur before this Court in Writ Petition No. 10203 of 1977. On 26-7-1978 a Division Bench of this Court consisting of Malimath, J. (as His Lordship then was) and Kudoor, J. dismissed the said Writ Petition following which the other Writ Petitions were also dismissed, the correctness of which was challenged by them before the Supreme Court in Civil Appeal No. 2411 of 1978 and connected cases. Apart from those appeals, several others also challenged the actions of the KSRTC before the Supreme Court under Article 42 of the Constitution. On 18-9-1971 the Supreme Court dismissed the said appeals and Writ Petitions and upheld the decision of this Court which is since reported as *M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others*, .

7. On 12-3-80 the KSRTC examined the question of absorption of displaced employees of ex-contract carriage operators under the Act on its Sub. No. 7 and by its Resolution No. 4334 inter alia decided to terminate the services of the respondents on the ground that they do not fall within the ratio of the category earmarked for the personnel of ex-contract carriage operators, offered them

alternative appointment and regularise the services of 730 conductors. The resolution passed by the Board on that day to the extent that is material reads thus :

"Subject No. 7 :

1. Absorption of displaced employees of Ex-C.C. operators as per KCC (Acquisition).
2. Judgment dated 18-9-1979 passed by the Hon"ble Supreme Court of India in Civil Appeal No. 2411 of 1978 and Writ Petitions No. 4473, 4474, 4488, 4539, 4415 and 4528 of 1978.
3. Consideration of Government letter No. HD 67 TRE 79 dated 26-12-79.
4. Consideration of the recommendations made in the proceedings of a meeting held in the Chambers of the Chief Secretary to Government of Karnataka on 28-1-1980.

Resolution No. 4334 :

At the outset the DGM(A) explained that 2,637 employees have been absorbed so far in KSRTC in various categories after taking over the CC services. The Corporation noted that while taking over the employees of erstwhile CC operators, persons whose names have been sponsored by people other than notified operators and some incumbents who have been sponsored against vehicles which have neither been notified nor acquired have been absorbed. Similarly, there have been cases of appointments of persons on the basis of fabricated and false documents against whom action has been initiated.

The Corporation noted that the Ordinance envisaged absorption of driver, conductors, supervisory, high supervisory staff and Managers, Ministerial and Secretarial staff and Technical staff including Foreman the ratio of 7.9 per vehicle while the CC Act, 3976 provided for absorption of Driver, Supervisory Staff and Managers, Ministerial and Secretarial staff and Technical staff including Foreman in the ratio of 4.45 per vehicle the category-wise ratio being as follows :-

As per Ordinance : As per KCC Act, 1976

Drivers

1.5

Drivers

1.5

Conductors

2.65

Supervision staff and

Supervision

0.125\*

Managers

0.1

Higher Supervision and Managers

0.075

Ministerial and Secretarial staff

0.1

Ministerial and Secretarial staff

0.8

Technical staff including Foreman

2.75

Technical staff including Foreman

2.75

\*Line staff and checking inspectors.

The Corporation was informed that immediately after the ordinance was issued, some persons were tentatively absorbed on an adhoc and a number of these recruited were beyond the ratio as prescribed in the Act.

The Corporation therefore having considered the question of absorbing these people who have been in the Corporation for a long time resolved that :

(i) in the category of drivers, Corporation should have no difficulty in absorbing them.

(ii) In the case of Conductors, there is no prescribed ratio under which any person could be absorbed as Conductor. In spite of this about 730 persons have actually been absorbed by the Corporation. It was noted that although under the scheme of the Act there is no provision for Conductors to be taken, yet, on the conversion of the CC into stage carriages, following nationalisation, there was an immediate need for Conductors to man these vehicles. Under the emergent circumstances then prevailing, it appears that the Corporation was obliged to take in a large number of persons in the category of Conductors, In view of the fact that they have already rendered services for more than 3 years in the Corporation and keeping in view that a fairly large number of vacancies existed to be filled up under this category, the persons already absorbed as Conductors could be continued as such. It was therefore resolved that the enlistment of Conductors from among the Ex. CC employees be ratified under the powers

available to the Corporation under Regulation No. 17(i) of the C & R Regulations 1968 subject to the following:

I. Any imbalance which might result in the various categories of reservations prescribed by the Government should be cured by restricting future recruitment in those categories, until such time as the deficiency is made up.

II. In the case of CC Employees absorbed in Supervisory cadres, it is noted that the number of persons absorbed already in these categories, who are found to be in excess of the number eligible for absorption cannot be continued in the Corporation in the light of the provisions of the CC Act as well as the Judgment of the Supreme Court. However, keeping in view the fact that these employees have already served in the Corporation for over three years and on purely humanitarian grounds, they could be considered for absorption provided that they are willing to be absorbed in the base level categories as Helper "B" or Drivers (subject to their having driving qualification) or conductors (subject to their getting valid Badge and Licence).

III. In the case of Ministerial staff, similarly, the excess number beyond the permissible ratio prescribed by the Act could be considered for absorption, only if they are willing to be absorbed in the category of Clerks,"

In pursuance of the said resolution, the General Manager of the KSRTC (GM) had issued identical but separate notices to the respondents proposing to terminate their services, however offering them alternative employment on the terms and conditions set out in the notice. One such notice issued thereto by the KSRTC reads thus :

"KARNATAKA STATE ROAD TRANSPORT CORPORATION, CENTRAL OFFICE,  
BANGALORE,

No. KST. Co. CC.....80-81 Bangalore Dated-July, 1980 To

Shri.....

Sub : Notice for termination of Service pursuant to the ruling of the Hon"ble Supreme Court of India under Karnataka Contract Carriage (Acquisition) Act, 1976.

As you are aware, the Hon"ble Supreme Court of India have clearly held in the ruling in Civil Appeal No. 2411/78 dated 18-9-1979 rendered under Karnataka Contract Carriages (Acquisition; Act, 1976 as under :

"Employees in excess of the scale prescribed for the categories specified under proviso to Sub-section (3) of Section 19 of the Act are clearly not entitled for absorption. Though Sub-clause (3) of Clause (20) of the Ordinance provided for absorption of certain classes of employees in a particular ratio with effect from January, 30, 1976, it does not follow that there was an automatic absorption as from that date".

"The Act substitutes a new proviso in Sub-section (3) of Section 19 in place of the old proviso to Sub-clause (3) to Clause 20 of Ordinance altering the whole basis of absorption".

"When an ordinance is replaced by an Act which is made retrospective in operation anything done or any action taken under the Ordinance stand wholly effaced".

In the light of the ruling of the Hon"ble Supreme Court and the provision the Karnataka Contract Carriages (Acquisition) Act, 1976, the matter pertaining to your appointment has been examined and found that your appointment as -- is in excess of the ratio provided in proviso to Sub-section (3) of Section 19 of the said Act.

You are not eligible for absorption in excess of the ratio laid down under the law. As such, you have no statutory right for absorption under the Act. Therefore, you are liable to be terminated from the services of the Karnataka State Road Transport Corporation.

On humanitarian grounds, taking into account of your service rendered in the Corporation, though you are not entitled under law, you are offered an appointment in the category -- on the terms and conditions stipulated in this Notice. (overleaf).

You are requested to express your willingness within 15 (fifteen) days from the date of receipt of this notice for being appointed in the category of.....

If your reply to this notice is not received within fifteen days from the date of receipt of this notice, it will be presumed that you are not willing to be appointed to the category of post offered and further action as deemed necessary will be taken which may lead to termination of your services from the Corporation.

Sd/- General Manager

#### TERMS AND CONDITIONS

1. You should possess and produce requisite valid Licence and Badge in case you are willing to be appointed as Driver/ Conductor.
2. The appointment is expressly subject to the condition that the employer is free to alter the service conditions of the employee at any time by Regulations framed u/s 45 of the RTC Act 1950 and by Resolutions of the Corporation passed u/s 12 of the said Act. Notwithstanding any standing orders now in force, it is expressly understood that when the Corporation frames uniform Rules/Regulations to govern the service conditions of its employees you will be governed by such Rules/ Regulations.
3. You will be governed by the KSRTC Leave Regulations 1964, KSRTC Servants (Conduct & Discipline) Regulations, 1971 and other Regulations in force and also the Regulations that may be enforced from time to time.

4. You are liable to be posted anywhere in the State of Karnataka.

5. The Appointing Authority is always competent to discharge or terminate, remove, or dismiss your services under the Regulations of the Karnataka State Road Transport Corporation."

On receipt of the notices, the respondents without seriously disputing the correctness of the factual statements stated therein or exercising the options given to them approached this Court in Writ Petitions Nos. 16754 of 1980 and connected cases under Article 226 of the Constitution challenging them in identical but separate Writ Petitions on a large number of grounds which were seriously resisted by the appellants. On consolidating all of them, Rama Jois, J. by a Common order made on 30-6-1981 allowed them and has quashed the impugned termination notices. Following the said decision of Rama Jois, J. other learned Single Judges have allowed other Writ Petitions posted before them. Hence, these appeals by the appellants.

8. Sri S. G. Sundaraswamy, learned Senior Advocate assisted by Sri B. B. Mandappa has appeared for the appellants. Sriyuths S.C. Javali, Senior Advocate, R. U. Goulay, G. S. Visveswara, H. Subramanya Jois, K. Subbarao, S. K. Kulkarni, A. Ananda Shetty, K. Krishna Bhat, U.L. Narayana Rao, R. S. Hegde, S.B. Adi, Chandranna and M. G. Ismail, learned Advocates have appeared for the respondents. While Sri Sundaraswamy had addressed leading arguments for the appellants, Sriyuths Javali and Goulay have addressed leading arguments for the respondents. Whenever we refer to the name of any one Counsel we should be understood to refer to the names of other learned Counsels also. Both sides in their full and elaborate arguments extending for four days have relied on various rulings which will be noticed and dealt by us at the appropriate places.

9. On the pleadings and the contentions urged before us, the following four points arise for determination and they are :

(1) Whether Section 19(3) of the Act prescribing category-wise scale was mandatory or directory ?

(2) Whether the principle of contemporanea expositio governs the construction of Section 19(3) of the Act or not ?

(3) Whether the termination of employees in excess of the category-wise ratio was barred by the doctrine of equitable estoppel as held by the Learned Judge or not or on the doctrine of promissory estoppel supported by the Respondents ?

(4) Whether the regularisation of conductors who are not absorbable under the Act, renders the decision of the KSRTC for not absorbing those in excess of the ratio of other categories discriminatory and violative of Articles 14 and 16 of the Constitution or not ?

We will now proceed to examine them in their order.

RE : POINT NO. 1

10. Sri Sundaraswamy has urged that Section 19(3) of the Act stipulating the category-wise scale of employees absorbable was mandatory and disobedience of the same was impermissible and the view expressed by the learned Judge to the contrary was unsound.

11. Sri Javali had sought to support the reasoning adopted as also the conclusion reached by the learned Judge on the point.

12. Under the several notifications issued by Government under the Ordinance and the Act a large number of vehicles were notified for acquisition but ultimately the KSRTC acquired 603 vehicles only. In respect of those vehicles, the KSRTC, however, absorbed 2615 persons in different categories as detailed hereunder :

(1)

Drivers

687

(2)

Supervision staff and Managers

237

(3)

Ministerial and Secretarial staff

397

(4)

Technical staff including foreman

564

(5)

Conductors.

730

2615

On the basis of the Supreme Court Judgment in M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, and the fact situations, the KSRTC had issued termination notices on 14-8-1980 to 246 Supervisory staff and 67 Ministerial and Secretarial staff as unobservable under the category-wise quota allowed to them under the Act. We are concerned with their terminations. But, in order to satisfactorily decide the same, it is necessary to notice the relevant provisions in the Ordinance and the Act and the changes made therein in some detail.



13. On the absorptions of personnel working with ex-contract carriage operators, Section 19 of the Act corresponds to Section 20 of the Ordinance. Section 19 of the Act is not a mere re-enactment of Section 20 of the Ordinance. While enacting Section 19 of the Act the legislature made certain departures.

14. Section 20(3) of the Ordinance providing for absorption of employees of ex-contract carriage operators reads thus :

"20(3). Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and has been immediately before the commencement of this Ordinance exclusively employed in connection with the acquired property, shall, on and from the notified date, become an employee of the Corporation on the same terms and conditions applicable to the employees holding corresponding posts in the Corporation. Any person not willing to become such an employee of the Corporation shall be entitled to retrenchment compensation as provided in Industrial Disputes Act.

Provided that the number of workmen that shall become employees of the Corporation under this sub-section shall not exceed the following scale, the junior most being excluded :

Scale for vehicle

1.

Drivers

1.5

2.

Conductors

2.65

3.

Supervision

0.125\*

4.

Higher Supervision staff and Managers.

0.075

5.

Ministerial and Secretarial staff.

0.8

6.

Technical staff including Foreman.

2.75

\*

Line staff and checking inspectors :

Provided further that in the case of such persons to whom labour laws for the time being in force apply, no such termination or alteration of remuneration, terms or conditions of service shall be made except in accordance with such laws."

This Section provided for absorption or continuance of certain categories of employees of ex-contract carriage operators in the ratio fixed therein. The proviso specified six categories of employees and their absorption in the ratio specified against each category. The line staff and checking inspectors were also included in the category of Supervision or Supervisors.

15. Section 19(1) and (2) of the Act providing for transfer of acquired property to the KSRTC re-enacting Section 20(1) and (2) of the Ordinance, are not material for our purpose and, therefore, they are not noticed.

16. But, Section 19(3) to (8) of the Act given retrospective effect from 30-1-1976 which are material reads thus :

"19(3). Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and has been immediately before the commencement of this Act exclusively employed in connection with the acquired property, shall, on and from the notified date, become an employee of the Corporation on the same terms and conditions applicable to the employees holding corresponding posts in the corporation. Any person not willing to become such an employee of the Corporation shall be entitled to retrenchment compensation as provided in the Industrial Disputes Act :

Provided that the number of workmen that shall become employees of the Corporation under this sub-section shall not exceed the following scale, the junior most being excluded :

Scale per vehicle

1.

Drivers.

1.5

2.

Supervision staff and Managers.

0.1

3.

Ministerial and Secretarial staff.

0.1

4.

Technical staff including Foreman.

2.75

Provided further that in the case of such persons to whom labour laws for the time being in force apply, no such termination or alteration of remuneration, terms or conditions of service shall be made except in accordance with such laws.

(4) If any question arises as to whether any person referred to in Sub-section (3) was exclusively employed in connection with the acquired property immediately before the notified date, it shall be decided by the authorised officer and an appeal shall lie to the State Government against such decision within such time as may be prescribed.

(5) For the persons who immediately before the notified date were trustees for any pension, provident fund, gratuity or other like fund constituted for the persons referred to in Subsection (3), other than trustees nominated by or under any law, there shall be substituted as trustees such persons as the State Government may by general or special order specify.

"(6)(a) All sums deducted by the State Government under Sub-section (3) of Section 10 shall stand transferred to the corporation referred to in Sub-section(1).

(b) The corporation shall credit the sums transferred to the appropriate funds or if any part of the sums is payable to the employee directly, such part shall be paid to him directly.

(7) The transfer of an employee to the Corporation under Sub-section (3) shall not entitle any such employee to any compensation and no such claim shall be entertained by any Court, Tribunal or other authority.

(8) Save as otherwise provided in Sub-section (3), the services of every person other than the persons referred to in Sub-section (3) employed in connection with the acquired property immediately before the notified date shall stand terminated on and from the notified date and if any such person whose services are so terminated is entitled to any payment by way of gratuity or retirement benefit or for any leave not availed of, or for any other benefits, such person may enforce his claim against his employer under whom he was employed in connection with acquired property immediately before the notified date but not against the Corporation".

The first proviso to Section 19(3) of the Act on the true construction of which the

question hinges re-grouped the category of employees into four categories only as against 6 categories specified in the proviso to Section 20(3) of the Ordinance, The ratio fixed for the Drivers and Technical staff including Foreman in the Ordinance was continued in the Act. But, the ratio fixed for Supervision staff and Managers and Ministerial and Secretarial staff were considerably reduced. The provisions made in the Ordinance for conductors at Item No. 2 and "Higher Supervision staff and Managers" at item No. 4 were totally deleted in the Act or they become totally unobservable under the Act.

17. Under the Ordinance, the total of different categories absorbable per vehicle was 7.75 which stood reduced to 4.45 under the Act and there is no dispute that such total ratio was not violated, though there was infraction of category-wise ratio.

18. Before the Learned Judge, the argument strongly pressed for the respondents was that the prescription or specification of total ratio only was mandatory and the category-wise ratio was only directory which has found favour with his Lordship.

19. The task of primary and progressive interpretation of statutes has been felicitously explained by Bhagwati, J (as His Lordship then was) in *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, in these inimitable words:

"....The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be ""drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said : "....it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing be it a statute, a contract or anything else. But, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary ; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". We must not adopt a strictly literal interpretation of Section 52 Sub-section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 Sub-section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language : "... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create". Keeping these observations in mind we may now

approach the construction of Section 52 Sub-section (2).

Bearing these and other well settled Rules of construction relevant for the determination of whether a provision is mandatory or directory explained in standard treatises on Construction of Statutes like Craies, Maxwell, Crawford, Singh, we must ascertain whether the proviso to Section 19(3) of the Act is mandatory or directory.

20. The validity, the scope and ambit of Section 20(3) of the Ordinance, Sections 19(3) and 31 of the Act have been set at rest by the Supreme Court and this Court in M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others,

21. On the scope and ambit of Section 19(3) of the Act, this Court in M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, expressed thus :

"8. A bare reading of Sub-section (3) of Section 19 of the Act or the corresponding provisions of Clause 20 of the Ordinance, make it clear that certain categories of the employees of the erstwhile contract carriage operators are given the right of absorption in the service of the Corporation subject to their satisfying certain conditions, The right that has been conferred by Sub section (3) of Section 19 of the Act is not in recognition of any pre-existing right of the employees but by way of equitable consideration. It is to help certain categories of employees of the erstwhile contract carriage operators who are rendered jobless that a provision has been made for absorption of their services in the Corporation. At the same time, care has been taken to see that the Corporation is not burdened with excessive and unnecessary staff, it is with this object of helping the employees of the erstwhile contract carriage operators and at the same time taking care not to unduly burden the Corporation that a scale has been prescribed limiting the number of persons to be absorbed .....

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Employees in excess of the scale prescribed for the categories specified under Sub-section (3) of Section 19 of the Act will not be entitled for absorption. In such a situation, the proviso clearly states that the junior most employee in the category has to be excluded and the senior employee in the particular category has to be preferred.

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The clear effect of Sub-section (3) of Section 19 of the Act is to entitle the employees of every contract carriage operators whose vehicles have been acquired to be absorbed in the service of the Corporation subject to the scale prescribed.

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We, therefore, reject the contention of Shri Raikar that the scale prescribed by

the proviso to Sub-section (3) of Section 19 should be applied taking the totality of the vehicles acquired and not operator-wise. In our opinion, the scale should be worked out operator-wise."

On appeal the Supreme Court while concurring with the same expressed thus:

"Employees in excess of the scale prescribed for the categories specified under proviso to Sub-section (3) of Section 19 of the Act are clearly not entitled for absorption. Though Sub-clause (3) to Clause 20 of the Ordinance provided for absorption of certain classes of employees in a particular ratio with effect from January 30, 1976, it does not follow that there was an automatic absorption as from that date. Every such person eligible for absorption had to fulfill three conditions, viz., (1) he had to be a workman within the meaning of the Industrial Disputes Act, 1947, (2) he should have been immediately before the commencement of the Ordinance, exclusively employed in connection with the acquired property, and (3) he had to come within the ratio provided in the proviso to Sub-clause (3) to Clause 20. The whole object of inserting Sub-clause (3) to Clause 20 of the Ordinance was to obviate the unemployment of persons suitable for employment. For this purpose, the Corporation had necessarily to screen the applicants.

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20. The very fact that all these various steps were necessary to be taken, which necessarily takes time, shows that automatic absorption of the employees of the erstwhile contract carriage operators was not legally permissible. When the Ordinance came to be replaced by the Act, the Corporation felt that the number of employees of the erstwhile contract carriage operators was too large for its requirements. The legislature, therefore, stepped in and reduced the scale of absorption in the proviso, to Subsection 3) of Section 19 from 7, 9 per vehicle to 4. 45 per vehicle.

"21. This is, in our judgment, sufficient for the determination of the appeal. But, as we have formed a clear opinion on the other aspect, we do not hesitate to express that opinion. That contention is of this nature. It is pointed out that the employees of the erstwhile contract carriage operators acquired vested right to absorption in the service of the Corporation by virtue of Sub-clause (3) to Clause 20 of the repealed Ordinance with effect from January 30, 1976, which cannot be taken away by the proviso to Sub-section (3) of Section 19. Even if contrary to the decision reached by us, it were possible to hold that they had some kind of such right, that right is expressly-taken away by the legislature. The contention does not take note of the fact that by Subsection (1) of Section 1 the Act was brought into force with effect from - January 30, 1976, i.e., the date on which the Ordinance was promulgated. The Act substitutes a "new" proviso in in Sub-section 3) of Section 19 in place of the old proviso to Sub-clause (3) to Clause 20 of the Ordinance, altering the whole basis of absorption. The new proviso is given a retrospective effect, and it now holds the field from the notified date i.e.

January 30, 1976. The proviso in Sub-clause (3) to Clause 20 laying down a particular ratio of absorption, is pro tanto avoided by an express enactment of a "new" proviso to Sub-section (3) of Section 19 which is entirely inconsistent with it. When an Ordinance is replaced by an Act, which is made retrospective in operation, anything done or any action taken under the Ordinance stand wholly effaced."

We are of the view that what is stated in these paras in particular and other paras in general by the Supreme Court are sufficient to dispel the contention urged for the respondents. But, we will however, assume that the precise question whether the ratio was category-wise or total ratio was not directly raised and decided by the Supreme Court and this Court and examine the same on that basis.

22. Section 19(3) of the Act corresponding to Section 20(3) of the Ordinance, first provides for absorption of all employees of ex-contract carriage operators. But, the first proviso to that Section really curtails the general sweep and content of the main enacting provision and provides for the categories and the number of employees to be absorbed. The proviso to the Section in emphatic, clear and unambiguous language stipulates that the number of persons to be absorbed in each category shall not exceed the scale prescribed against specified category. The legislature being fully aware of the inevitable necessity for elimination, had also provided the principle to be adopted in the process of that elimination. We must read this proviso along with Sub-section (8) of the same section which expressly provides for termination of the employees who are found in excess of any category.

23. The scale prescribed in the proviso is of different categories of employees. Each category of employees are different and distinct from the other category of employees. One category has nothing to do with the other. For the categories of Drivers, Supervision Staff and Managers, Ministerial and Secretarial Staff and Technical Staff including Foreman, a scale of 1.5, 0.1, 0.1 & 2.75 per vehicle is specified in the proviso. The term "scale" in the context means the measure for each category of employees computed with reference to each contract carriage vehicle acquired by the KSRTC under the Act. The proviso very advisedly nowhere employs the total ratio per vehicle. When the different components or the scales prescribed for each category per each vehicle is totalled up, then the same results in 4.45. The ratio of 4.45 is nothing but the arithmetical total but is not the ratio per vehicle specified in the Act. The ratio fixed is with reference to each category and not with reference to all the employees grouped as one lot irrespective of the nature of the duties performed by them and their job requirements. If that construction is accepted, then the same would naturally permit filling of any one category to the exclusion of all other categories. The object of Section 19(3) of the Act or the corresponding Section 20(3) of the Ordinance was not to absorb any one category to the exclusion of all other categories. Any such attempt would only result in legislation in the thin guise of

interpretation which is impermissible [vide: Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, With respect to the Learned Judge, we are of the view that the contrary construction placed is plainly opposed to the language, scheme and object of the Act and is unsound and we regret our inability to subscribe to the same.

24. As noticed earlier the ratio of persons absorbable in each category is specified in the first proviso to Section 19(3) of the Act. A proviso is normally construed as an exception or a qualifying clause to the main provision. A proviso cannot be construed as enlarging the scope of the main provision itself.

25. The term "shall" is generally employed by the legislature in a provision to make that provision mandatory and not directory. A legislature normally employs negative terms in a provision to prohibit something to be done and make that provision as imperative or mandatory and not directory. Every one of the rulings noticed by the Learned Judge as also the various rulings of the Supreme Court relied on by both sides only reiterate these propositions

26. The first proviso stipulates that the number of persons to be employed by the KSRTC shall not exceed the scale stipulated to each category. The principle for elimination of the excess is also indicated in that very provision. Sub-section (8) of Section 19 imperatively directs the termination of excess employees in each category. With all these requirements and applying the principles correctly, the one and the only conclusion to be reached is that the category-wise specification in the first proviso to Section 19(3) of the Act was an imperative and mandatory provision and the disobedience of the same was impermissible.

27. In holding the provision as directory, the learned Judge had referred to the fraction ratio of different categories. The fraction ratio for each category if properly interpreted and worked out with reference to that category and the total number of employees of that category to be absorbed, does no violence to the scheme of absorption or the first proviso to Section 19(3) of the Act. We are of the view that the fraction ratio has no relevance for holding whether the first proviso to Section 19(3) of the Act was mandatory or directory. With respect we find it difficult to subscribe to the views expressed by the learned Judge on this aspect.

28. On the foregoing discussion, we hold that the first proviso to Section 19(3) of the Act was a mandatory provision and is not a directory provision and its disobedience is impermissible. We, therefore, with respect, regret our inability to subscribe to the reasoning adopted and the conclusion reached by the learned Judge on Point No I.

RE: POINT NO. 2.

29. Sri Sundaraswamy has urged that contemporanea expositio had no application to the construction of the first proviso to Section 19(3) of the Act and that in any event a construction opposed to the language of the Act cannot be



reached applying that principle.

30. Sri Goulay has sought to support the reasoning adopted and the conclusion reached by the learned Judge on point No. 2.

31. For invoking contemporanea expositio, the learned Judge had relied on the case pleaded by the KSRTC before this Court and the Supreme Court in M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, . We will first examine whether this is well founded.

32. In M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, this Court was primarily dealing with the wild and spurious claim laid by him and others before the KSRTC and. rejected by it. In justification of that action and as by way of only defence the KSRTC at the hearing urged that the total ratio of 4.45 per vehicle cannot be exceeded. In that case the precise question as to whether the absorption should be on the basis of category-wise ratio or the total ratio as had now arisen did not directly arise at all. Even in that case also, the defence urged by the KSRTC is not inconsistent with its defence urged in these cases. On these facts themselves there is hardly any ground to invoke contemporanea expositio to sustain the case of the Respondents.

33. We will, however, assume that the learned Judge was right in invoking contemporanea expositio for the reasons stated by his Lordship and examine whether the same had been correctly applied or not.

34. The Act enacted in 1976 is a recent enactment. The true construction of several provisions including Section 19 of the Act are being agitated before this Court and the Supreme Court. As pointed out by Craies on Statute Law (Sixth Edition) at pages 80 to 82 of Chapter 5 - Construction where the meaning is plain- contemporaneous expositio ought, rarely, if ever to be applied to modern Acts. On this principle which is unexceptionable and sound, it is unsafe to invoke the principle to the construction of the first proviso to Section 19(3) of the Act. Even otherwise, every one of the principles bearing on contemporanea expositio succinctly set out by Craies under that heading do not justify us to invoke the principle to the construction of the first proviso to Section 19(3) of the Act.

35. The principle of contemporanea expositio is only a subordinate principle in the construction of statutes. [See : Chapter-II "Subordinate Principles" of Maxwell on Interpretation of Statutes" (Eleventh Edition)]. We cannot therefore, elevate the subordinate principle to the status of a main principle and distort the meaning of the first proviso to Section 19(3) of the Act.

36. Assuming that contemporanea expositio can be properly invoked in that event also, a construction that is opposed to the language of the Act cannot be placed by a Court. While examining point No. 1, we have held that the ratio specified in the first proviso to Section 19 (3) of the Act was the category wise ratio and was not the total ratio per vehicle. On the application of the principle enunciated in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, we

are of the view, that the construction which is plainly opposed to the language of the Act cannot be placed by this Court.

37. On the foregoing discussion, we hold that contemporanea expositio had no application and even if applicable was opposed to the plain language of the Act and must necessarily be rejected. We, therefore, with respect regret our inability to subscribe to the views expressed by the learned Judge on Point No. 2.

RE: POINT NO 3.

38. Sri Sundaraswamy has urged that the terminations in excess of the ratio specified in the proviso to Section 19(3) of the Act was the mandate of that Section to which the principle of estoppel either equitable or promissory was wholly inapplicable and the finding of the learned Judge to the contrary was unsound.

39. Sri Javali in supporting the finding of the learned Judge on the point, had however, urged for upholding the claim of the Respondents applying the doctrine of promissory estoppel.

40. Before the learned Judge, the respondents urged to invalidate the actions of the KSRTC as barred by the principles of promissory or equitable estoppel. On examining both these claims, the Learned Judge rejecting the former had upheld the latter as well founded. We must, therefore, first examine this view of the Learned Judge.

41. Chapter VIII of the Evidence Act containing Sections 115 to 117 deal with "Estoppel" in our Country.

42. Section 115 of the Evidence Act defines estoppel as "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his reprehensive shall be allowed, in any suit or proceeding between himself and such person or his representatives, to deny the truth of that thing". This section incorporates the exposition of estoppel in the well known case of Pickard -v.- Sears, 1832 A and E 469 by Lord Denman, Chief Justice, King's Bench in which that learned Judge expressed thus:

"Where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things and induces him to act on that behalf so as to alter his own previous position the former is concluded from averring against the latter a different state of things as existing at the same time."

Sections 116 and 117 which deal with estoppel by tenants and licensee in possession and acceptors of bill of exchange, bailee or licensee are only extension of the principle to specific cases. Estoppel is regarded as a rule of evidence and does not furnish a cause of action. We must, however, read this observation subject to what has been declared by our Supreme Court in invoking the doctrine of promissory estoppel as furnishing a cause of action.

43. We have noticed earlier that the KSRTC had founded its actions to implement the mandatory requirements of the first proviso to Section 19 (3) and 19(8) of the Act or the mandate of law only. There can be no estoppel against statute is also well settled (vide : (i) No estoppel against law or statute by Sarkar on "Evidence" page 1077 (Eleventh Edition), (ii) Union of India and ors. v. Godfrey Philips India Limited 1985 SCC 369 para 13 at pages 387-388). On these principles the actions of the KSRTC being in conformity with law, the doctrine of equitable estoppel had no application at all. We are of the view that the ruling of the High Court of Madras in University of Madras v. Sundar Shetty AIR 1956 Mad 309 does not really bear on the point and assist the respondents. From this it follows that the view expressed by the learned Judge to the contrary with respect, is unsound.

44. In paras 26 and 27 Rama Jois, J. had rejected the claim of the respondents based on the doctrine of promissory estoppel. In rejecting the same, the learned Judge had copiously referred to the principle enunciated by the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, reiterated in Godfrey Philips India Limited's case 1985 SCC 369 para 13 at pages 387-388, Sri Javali has, however, urged that the reasoning adopted and the conclusion reached by the learned Judge on this aspect were unsound and we should uphold that contention.

45. In Godfrey Philips India Limited's case 1985 SCC 369 para 13 at pages 387-388 the Supreme Court again reviewing all the earlier cases and reiterating the principles enunciated in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, had summarised the doctrine of promissory estoppel in these words :

"...The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to raise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be equitable to allow him to do so, having regard to the dealings which have taken place between the parties It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action : it can only be a shield and not a sword ; but the Jaw in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Padampat Sugar Mills -v.- State of U.P. it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in Motilal Sugar Mills case contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in this decision.

On the limitation of the doctrine also the Court had expressed thus:

"13. Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case, that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make ....."

Bearing these principles we must examine the claim of the respondents.

46. We have seen earlier under what circumstances or in the immediate take, over, mad rush to secure jobs and the almost endless litigation with no respite to anybody, the respondents had become employees in excess of the mandate of law. When one has regard to all these and the true principles of promissory estoppel, the claim of the respondents based on the same is wholly misconceived and has no merit whatsoever. We are in respectful agreement with the views expressed by the learned Judge on this point. We see no merit in this contention of the respondents and we reject the same.

RE: POINT NO. 4.

47. Sri Sundaraswamy has urged that the regularisation of unobservable conductors who belonged to a separate and distinct category with no common features with the respondents was not violative of Articles 14 and 16 of the Constitution and the contrary finding of the learned Judge thereon was unsound.

48. Sri Goulay has sought to support the finding of the learned Judge on this point.

49. The Ordinance provided for absorption of conductors in the ratio of 2.65 per vehicle on which basis 730 conductors were initially absorbed. But, the Act completely deleted that provision. On the termination of the proceedings in M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, the KSRTC examined their claims, found that there was necessity for their continuance and for the reasons set out in its resolution on 12-3-1980 decided to regularise their services by virtue of the powers conferred by Regulation No. 17 of the Regulations. In that very Resolution, the KSRTC decided to terminate the services of the respondents and offer them alternative jobs. On these facts that are not in dispute, the learned Judge had found that the conductors and the respondents all came from a common stock of ex-contract carnage operators and that the action of the KSRTC to terminate the respondents only was violative of Articles 14 and 16 of the Constitution, the correctness of which is seriously assailed before us.

50. The true scope and ambit of Article 14 has been explained by the Supreme Court in a large number of cases. In Ram Krishna Dalmia Vs. Shri Justice S.R.

Tendolkar and Others, and in Re: The Special Courts Bill, 1978, In Re: The Special Courts Bill, 1978, the Supreme Court reviewing all the earlier cases had re-stated the scope and ambit of Article 14 of the Constitution exhaustively. On the new dimension of Article 14 of the Constitution namely that arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution first evolved in E.P. Royappa Vs. State of Tamil Nadu and Another, elaborated in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, is now firmly settled. In addition to the principles enunciated in these cases by the Supreme Court, it is profitable to refer to a very pregnant statement made by Justice Holmes, one of the greatest Judges of the American Supreme Court in Noble State Bank -v.- C. N. Haskell 219 US 104 considered to be one of the land mark cases (see : The Mind and Faith of Justice Holmes - Max Lerner Modern Library). In that case that great Judge in adjudging the validity of an action for a guarantee deposit by Banks under an Oklahoma legislation to safeguard depositors as offending the 14th Amendment of the American Constitution, which guaranteed equal protection of laws, in that country to its citizens which finds its place in Article 14 of our Constitution (see : para 73 page 508 of Special Courts Bills case) expressed thus :

"In answering that question we must be cautious about pressing the broad words of the Fourteenth Amendment to a dryly logical extreme. Many laws which it would be vain to ask the Court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights."

Bearing the principles enunciated in all these cases we must examine the correctness of the finding reached by the learned Judge on Point No. 4.

51. Absolute and dead equality among all men in the Country, which is unattainable is only a myth and a dogma. At any rate that is impossible to attain is well settled. The theory of classification has been evolved by Courts only to give meaning and content to Article 14 of the Constitution. The fact that the respondents and conductors came from a common stock of ex-contract carriage operators and, therefore, they should all be treated alike is to over simplify the problem and thus rob the true content of Article 14 of the Constitution. If that plea of the respondents is carried to its logical conclusion, then every one borne on the establishment of ex-contract carriage operators irrespective of the qualifications and nature of duties performed by them must all be absorbed and must be treated alike in all respects. Without any doubt, then the first proviso to Section 19 (3) of the Act or the first proviso to Section 20 (3) of the Ordinance, the validity of which had been upheld, would themselves be violative of Article 14 of the Constitution. We are of the view that both on principle and authority, the fact that the respondents and conductors came from a common stock is hardly a ground to hold that the termination of the respondents is violative of Article 14 of the Constitution.

52. Even otherwise, the conductors belong to a separate and distinct class and they cannot be compared to the respondents who belonged to a separate and distinct class of employees. In that view also the separate and distinct treatment meted out to conductors cannot be a ground for the respondents to contend that the very same treatment should be meted out to them also. On these grounds also, the claim of the respondents that there was infraction of Article 14 of the Constitution in the KSRTC deciding not to absorb them is misconceived and is not well founded.

53. In its resolution, the KSRTC had given two reasons for regularising the services of the conductors that were unobservable and they are (i) that the contract carriage vehicles had been converted into stage carriages necessitating the employment of conductors and (ii) that the expansion of its operations had created vacancies in the cadre of conductors. We cannot condemn these grounds as arbitrary, whimsical and was done to favour the conductors. We are of the view that the separate treatment meted out to conductors was not violative of Articles 14 and 16 of the Constitution either on the traditional doctrine of classification or its new dimension. We are of the view that the principles enunciated by the Supreme Court in *B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*, on which considerable reliance was placed by Sri Goulay to sustain the finding of the Learned Judge do not really bear on the point. For all these reasons, we regret our inability to subscribe to the views expressed by the Learned Judge on Point No. 4 also.

54. On the foregoing discussion, it follows that every one of the grounds urged for the Respondents to invalidate the notices are without merit. Before us, the Respondents did not seek to invalidate the notices on any other grounds. As noticed earlier the Respondents have not taken exception to the factual basis on which they are founded. From this it follows that there are no grounds to invalidate the notices at all.

55. Sri Goulay had passionately urged before us that the Respondents have been holding the posts for well over a decade and their termination at this stage would cause them considerable hardship and on the principles enunciated by the Supreme Court in *Narender Chadha and Others Vs. Union of India and Others*, we should not undo what had been done by the Learned Judge.

56. As noticed earlier, on the termination of the proceedings before the Supreme Court in *M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others*, the KSRTC had taken prompt action to terminate the services of the respondents and offer them alternative employments also. But, the respondents without availing the same have approached this Court, obtained stay orders and have thus continued in service. When once we hold that the action of the KSRTC is legal and valid and the same had been wrongly interfered by the Learned Judge, we are bound to rectify the same on appeals. We are of the view that the principles enunciated by the Supreme Court in *Narender Chadha and Others Vs. Union of India and Others*, do not bear on the point. On the other hand,

acceptance of the contention urged by Sri Goulay would run counter to the principle that *Actus Curiae Neminem Gravabit*- "An act of the Court shall prejudice no man," and cannot, therefore be acceded by us. We see no merit in this contention of Sri Goulay and we reject the same.

57. We have disagreed with the Learned Judge on all the four points formulated by us and found that the action of the KSRTC was legal and valid. In that view, there is no other alternative for us except to reverse the decision of the Learned Judge and dismiss the Writ Petitions filed by the Respondents.

58. In the termination notices themselves the KSRTC had offered alternative employment to all the Respondents. In its statements of objections also the KSRTC had stood by that assurance. Sri Sundaraswamy also stated before us that the KSRTC stands by the same. We have every hope that the KSRTC will rehabilitate all those who are willing to continue in its service and minimise the hardship to the extent that is possible.

59. In the result, we allow these writ appeals, set aside the orders made by the learned Single Judges in Writ Petition Nos. 16630 to 16635, 16754 to 16781, 16801 to 16850, 16859 to 16863, 36956 to 17020, 17153 to 17159, 17185 to 17187, 17192 to 17198, 17238, 17280 to 17282, 17367 to 17369, 17388 to 17396, 17400 to 17404, 17433, 17437, 17438, 17444 to 17446, 17455, 17456, 17461, 17503, 17510 to 17513, 17540, 17541, 17614, 17615 to 17618, 17749 to 17751, 17769 to 17771, 17831, 17888, 17917, 18075 and 18247 of 1980 and dismiss all those Writ Petitions with no order as to costs throughout. We, however, grant one month's time from this day to the respondents-petitioners to exercise their options to the respective notices received by them from the KSRTC.