

(1990) 05 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No"s. 11896 11897, 22837 to 22854, 11543 and 11544 of 1989

M/s. Katwe Jaggery Traders, Hubli and

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 28-05-1990

Acts Referred:

Bombay Act, 1956 — Section 36, 6 (2), 7, 8
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 114, 117, 3 (1), 4, 5

Citation : AIR 1991 Kar 63 : (1990) ILR (Kar) 1882

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : Subhash B. Adi, for the Appellant; N. Devadas, Govt Advocate and B.G. Sridharan, for the Respondent

Judgement

1. By consent of the learned Counsel appearing for both the parties, the writ petitions are taken up for final hearing.

2. Propelled by common cause, the petitioners in these cases being traders in Jaggery have approached this Court for quashing the impugned notifications and the notices. They have also sought for a direction to the respondents to comply with the procedure laid-down under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as "the Act") for the purpose of establishing a market and, on establishment of the same, recover the market fee from the date of such establishment.

3. The operative portion of the impugned notification dated 15-7-1982 reads thus:-

"Now, therefore, in exercise of the powers conferred by S. 5 read with S. 4 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27) with effect from the date of publication of this notification in the Karnataka Government Gazette, the marketing of Jaggery (gur) and Alasande (hitherto not

regulated) shall be regulated in addition to the agricultural produce already regulated in the market to the Agricultural Produce Market Committee Hubli."

The other impugned notification dated 3-9-1987 reads as follows:-

(Matter in vernacular Omitted Ed.)

The impugned notices are issued proposing action under Ss. 114 and 117 of the Act and also calling upon the petitioners to obtain licence and to pay the market fee demanded by the authorities.

4. Since in all these cases the questions of fact and law involved are the same, these writ petitions are disposed of by a common order.

5. The following are the essential facts: --

In Writ Petition Nos. 11896 and 11897 of 1989, the petitioners have shops in Alagundagi Oni, Hubli, situated outside the market sub-yard declared for the purpose of regulating trading in jaggery. After the District of Dharwar became a part of the new State of Karnataka, the Act became applicable. The object of the Act was to regulate the marketing of agricultural produce notified in accordance with the Act from time to time. Actually the object of the Act was two fold. On the one hand regulation of the marketing and on the other to provide better facilities and to establish Market Committee. With the promulgation of the Act, the Bombay Act came to be repealed. In 1980 for the first time the State Government declared its intention to notify jaggery as an agricultural produce. According to the petitioners, the notification declaring the intention u/s 3(1) of the Act was not published and was not made known in the area in question and the petitioners including the concerned persons did not have an opportunity to prefer objections as provided in Section 3(2) of the Act. On 15-7-1982 the State Government issued the impugned notification declaring jaggery as a notified agricultural produce. It was only in 1987 that the final notification declaring separate market sub-yard for the regulation of trading jaggery was issued u/s 6(2) of the Act. As on the date of filing the writ petitions, further notification u/s 7 of the Act intended to notify the date of establishment of the market after making the required arrangements for regulating the marketing of jaggery had not been issued. However, the Market Committee proceeded to levy and demand payment of market fee for the period prior to the establishment of market without issuing a notification u/s 7 of the Act. Therefore, the petitioners are aggrieved.

The petitioners in the other writ petitions are also traders in jaggery and their grievance is similar to those of the petitioners in Writ Petition Nos. 11896 and 11897 of 1989 and, therefore, it is redundant to state the facts again.

6. The learned counsel appearing for the petitioners in all these cases contended that the impugned notifications and notices are contrary to law for the following reasons:--

(1) There is a failure to publish the notification of intention of regulating the marketing of specified agricultural produce in specified area as required u/s 3(1) of the Act and, therefore, the impugned notifications are bad in law;

(2) The statutory compulsion to publish the notification in Kannada in a news paper circulating in such area is mandatory and noncompliance is fatal;

(3) Non-notification in Kannada as aforesaid renders Section 4 of the Act nugatory;

(4) In Section 3(1) of the Act, it is provided that "the notification may also be published in Kannada in a newspaper circulating in such area". The word "may" in the context should be construed as "shall" and the Legislature intended it to be so.

7. On the other hand, it was contended by the learned counsel appearing for the respondents that the writ petitions are not maintainable since the impugned notifications have already been upheld in other writ petitions which were disposed of earlier by this Court. Secondly, it was contended that the writ petitions are barred by the principle of resjudicata. Thirdly it was contended that the Press Note issued in Deccan Herald is the notification contemplated u/s 3(1) of the Act and though it was published in English, it is in substantial compliance with the requirements of Sections 3(1) of the Act. Lastly it was contended that publication of the notification in Kannada is only directory and not mandatory.

8. According to the learned Counsel appearing for respondent-3, the impugned notifications were questioned in Writ Petition Nos. 8172 to 8189 of 1987 and that the writ petitions were dismissed on merits and hence these writ petitions are barred by the principle res judicata. It was also contended that Writ Appeals against the said order were preferred in Writ Appeal Nos. 604 to 621 of 1989 and they were also dismissed by a Division Bench of this Court. Lastly it was contended that the petitioners are indulging in abuse of process of Court and if they are aggrieved they have a remedy before the Supreme Court to which they have already preferred appeals and the said appeals are still pending before the Supreme Court.

9. It was pointed out by the learned Counsel appearing for the petitioners that the petitioners are not parties in the earlier batches of writ petitions disposed of by this Court and, therefore, the principle of res judicata is not attracted. The learned counsel appearing for the respondents maintained that all these writ petitions are liable to be dismissed for laches.

10. In order to ascertain whether the Government notification questioned in these writ petitions was published in Kannada, 1 called upon the learned counsel appearing for both the A. P. M. C. and the State Government to produce the news paper notification. The stand taken by the State Government and also the A. P. M. C. was that the notification had in fact been published in Kannada. In the earlier writ petitions both the State Government and the A. P. M. C. had

categorically stated that the notification u/s 3(1) of the Act was published in Kannada and the learned single Judge who heard those writ petitions was led to believe that it was so and on the assumption that there was a publication in Kannada proceeded to discuss the merits of the case ultimately dismissing the writ petitions. I called for the records of the disposed of writ petitions and I am satisfied that the respondents in those cases consisting of the State as well as the A. P. M. C. had made a false statement supported by affidavit that the publication had indeed been made in Kannada u/s 3(1) of the Act. When I called upon the learned counsel appearing for the respondents in these cases to produce the news paper in which the notification had been published in Kannada, time was taken to produce the same. After a few adjournments both the State and the A. P. M. C. came forward with a new version that only a Press Note was issued in Deccan Herald in English but the publication was not made in Kannada at all. An affidavit was filed to this effect on behalf of the State and also on behalf of the A. P. M, C. Thus the fact became established that the truth was not known to the Court when the earlier writ petitions were disposed of on merits in regard to the nonpublication of the impugned notification in Kannada. It is needless to venture to speculate as to what would have been the fate of those writ petitions had the learned single Judge been aware of and told the truth that the notification had not been published in Kannada. But the fact remains that it is only after my persistent efforts, the respondents in these cases came out with the truth. I am shocked and surprised that responsible Government officials who have sworn to the affidavits both in the past and present cases did not have regard for truth while making submissions before the Court and it took considerable coaxing and goading by this Court to elicit the truth. This is a sad commentary on the integrity of the officials who have sworn to false affidavits before this Court. These bureaucrats owe a duty to the Court to tell the truth not only because they are accountable, but also because they are answerable to their own conscience. Whether the notification is valid is to be decided on the question whether there is due compliance with the requirements of law u/s 3(1) of the Act. If this truth had been told before the Court which disposed of the earlier writ petitions, that Court would have had the opportunity of considering on merits whether nonpublication in Kannada is fatal to the notification or not. However, on account of what I choose to call as fraudulent representation on the part of the concerned officials, the events took a different turn. The learned Counsel appearing for the A. P. M. C. submitted that the nondisclosure of truth is not a deliberate act of fraud, but it is only a misstatement and a bona fide mistake. The learned Government Pleader appearing for respondents-1 and 2 adopted the same stand. I cannot persuade myself to accept the explanation offered by the learned Counsel. In my opinion, it is not only a deliberate act of fraud, but also an act intended to misguide the Court. In short, in my opinion, there has been a gross abuse of the process of the Court and it is for the concerned authorities to take appropriate action in the matter.

11. It was next contended by the learned Counsel appearing for the petitioners

that the impugned Government Notification cannot be sustained for noncompliance with subsection (1) of Section 3 of the Act. According to the learned Counsel, since the notification was not published in Kannada in any news paper circulating in the concerned area, there is a violation of the requirements of law and such a publication in Kannada is mandatory.

12. On the other hand, it was contended by the learned counsel appearing for the respondents that what is mandatory is only the publication of the notification in the Gazette declaring the intention of the State Government of regulating the marketing of specific agricultural produce in such area as may be specified in the notification. The case of the respondents is that the publication of the notification in Kannada in a news paper circulating in such area is not mandatory since the word used is "may".

13. In order to examine the merits of the rival contentions, reference has to be made to Section 3 of the Act which reads as follows:--

"3. NOTIFICATION OF INTENTION OF REGULATING THE MARKETING OF SPECIFIED AGRICULTURAL PRODUCE IN SPECTFTFD AREA :--

(1) The State Government may, by notification, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in Kannada in a newspaper circulating in such area.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification, not being less than thirty days, will be considered by the State Government."

Sub-section (1) of Section 3 of the Act is capable of division into two parts. The first part refers to the requirement that the State Government may notify declaring its intention of regulating the marketing of such agricultural produce in such area as may be specified in the notification. The second part provides that the notification may also be published in Kannada in a newspaper circulating in such area. The word "notification" is defined in sub-section (27) of Section 2 of the Act. According to the definition notification means a notification published in the official Gazette. Thus, it is clear that any notification contemplated under sub-section (1) of Section 3 of the Act is a notification published in the official Gazette. But sub-section (1) of Section 3 of the Act also provides for notification being published in Kannada in a newspaper circulating in such area. It appears to me that the notification to be published in Kannada in a newspaper circulating in such area is required to be the Kannada version of the Gazette notification. The point for consideration is whether the publication of the notification in the official Gazette is sufficient for the purpose of Section 3(1) of the Act. It appears to me that the word "may" to be found in the first part of sub-section (1) of Section 3 of the Act is mandatory and not directory. If the State Government decides to establish markets, it is required to notify its intention of regulating the marketing

of specified agricultural produce in specified area by means of a notification published in the official Gazette. No choice is left to the State Government in this regard. This is not disputed by the learned counsel appearing for the respondents. It also appears to me that the second part of sub-section (1) of Sec. 3 of the Act is equally mandatory though the word used is "may" it has to be construed that publication in Kannada is mandatory. The only appendage to the word "may" seems to be the word also in regard to publication in Kannada.

14. The purpose of notifying the intention is manifest in sub-section (2) of Section 3 of the Act. The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification not being less than thirty days will be considered by the State Government.

15. In Section 4 of the Act it is provided that after the expiry of the period specified in the notification issued u/s 3 and after considering such objections and suggestions as may be received before the expiry of the stipulated period, the State Government may by another notification declare the area specified in the notification issued under Sec. 3 or any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued u/s 3 shall be regulated under the Act in such market area. It is further provided in Section 4 that a notification u/s 4 may also be published in Kannada in a newspaper circulating in such area. Thus, there is a continuity in the process of decision making of what is required to be done before issuing a notification u/s 4 of the Act.

16. At the risk of repetition, the proper construction to be placed on Sections 3 and 4 would be that under sub-section(1) of Section 3 of the Act the State Government is expected to declare its intention by notification of regulating the marketing of such agricultural produce in such area as may be specified in the notification and further publish a notification in Kannada in a newspaper circulating in such area. The content of the notification should disclose that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification and not being less than 30 days, would be considered by the State Government. u/s 4 of the Act, after the expiry of the stipulated period aforementioned and after considering such objections and suggestions as may be received before such expiry, by issuing another notification the State Government may declare the area specified in the notification issued u/s 3 or any portion thereof to be a market area and declare that the marketing of all or any of the kinds of agricultural produce specified in Section 3 notification shall be regulated under the Act in such market area. Section 4 enjoins upon the authority to publish the notification in Kannada in a newspaper circulating in such area. The last sentence in Section 4 of the Act requires to be reproduced and it reads thus:--

"A notification under this section may also be published in Kannada in a newspaper circulating in such area".

Whereas the object of sub-section (1) of Section 3 of the Act is the declaration of intention and that of sub-section (2) is to invite objections or suggestions to the said declaration, the object of Section 4 is to consider the objections and suggestions if any, received before the expiry of the stipulated period and thereafter proceed to issue a final notification specifying as to what shall be the market area wherein the marketing of all or any of the kinds of agricultural produce specified in Section 3 notification shall be regulated under the Act in such market area. The common feature of both Sections 3 and 4 of the Act is that a notification under Sections 3 and 4 may also be published in Kannada in a newspaper circulating in such area. The scheme of the Act is the provision for better regulation of buying and selling of agricultural produce and the establishment and administration of markets for agricultural produce in the State of Karnataka. The object of the Act is to provide for better regulation of marketing of agricultural produce and establishment as well as administration of markets for agricultural produce and matters connected therewith in the State of Karnataka. Chapter 11 of the Act deals with the establishment of markets, Chapter III refers to constitution of Market Committees, Chapter IV refers to conduct of business, Chapter V refers to the staff of the Market Committee, Chapter VI relates to power and duties of Market Committee, Chapter VII pertains to regulation of trading, Chapter VIII deals with the market fund, Chapter IX is concerned with special commodity markets, Chapter X relates to Mandal Panchayats as agents of Market Committees, Chapter XI relates to State Agricultural Marketing Board, Chapter XII relates to penalties, Chapter XIII pertains to control and finally Chapter XIV comprises the miscellaneous provisions.

17. Under sub-section (1) of S. 3 of the Act, apart from publication of the notification in the official Gazette, the legislative intention is publication of the intention by a notification in Kannada in a newspaper circulating in such area. In short, the publication in Kannada is meant for local communication through the medium of the official language of the State. The publication in Kannada is also for the purpose of enabling the concerned trading community of the area to prefer objections and offer suggestions. Such a publication in Kannada is also to enable the authorities to consider the objections and suggestions so offered and to take a decision to issue a final notification under Sec. 4 of the Act. In the decision making process is accommodated the legal obligation to disseminate the intention of regulating the marketing of specific agricultural produce in the area, the right to information of the persons concerned, and their right to be heard. This is a special enactment catering to legislative measures affecting the trading community in the matter of regulation of marketing of specified agricultural produce in the area. Special safeguard is made so that the persons concerned are not deprived of information regarding the intention of the State Government. The special safeguard is publication in the Kannada newspaper circulating in such area. It cannot be construed that such a publication is permissive and not obligatory. The legislative intention for communication of intention in the spoken

language of the masses which is Kannada and which is also the official language of the State cannot be ignored. What the Legislature has intended is not only communication of the intention, but also decision after receiving the objections and suggestions by taking into confidence the members who are likely to be affected and this is characteristic of participatory democracy in a welfare State. I am of the opinion that the Legislature intended that by notifying in Kannada both under Sections 3 and 4 of the Act, the purpose would be better achieved and the Legislature did not leave any freedom of choice to the authority. What is engrafted in the special enactment cannot be regarded by the use of the word "may" as so superficial as to mean a wasteful verbiage, pandered to the sweet will and pleasure of the authority. Appropriate in this regard is to quote the often repeated phrase of Justice Holmes:--

"A word is not a crystal holding its form and its substance through the ages; it is the skin of a living thought".

18. What is material is whether the provisions seek to achieve the declared objective as the prime consideration in a democratic, consultative system.

19. In my opinion, the publication envisaged by the Act in Kannada is intended to achieve a meaningful and effective circulation of the intention to fulfil the purpose of the Act. It is not intended to be an empty ritual. Indeed the tenor of the language is not ritualistic, but it is a recognition of the fact that language is not only the vehicle of thought, but also intention. The word "may" in the context is mandatory consistent with the rigidity of the need. The special act has introduced special words manifesting the purpose. In the context, the word "may" cannot be construed as may not. Communication of intention, inviting objections and suggestions and consideration of the objections and suggestions are the constituents of the principles of natural justice. Both Ss. 3 and 4 of the Act radiate the above principles and it is not permissible to put the words in a straight-jacket, for such an endeavour would stultify the intention of the Legislature. I am, therefore, of the opinion that, the word "may" in sub-section (1) of Section 3 in regard to the publications of the notification in Kannada has to be construed as "shall" and, therefore, mandatory in consonance with the word "may" to be found in Section 4 of the Act where a similar provision is made for notification to be published in Kannada.

20. It would be appropriate to observe that it is the spirit and not the form of law that keeps justice alive.

21. As observed by Cardozo :--

"The more we study law in its making, atleast in present stages of development the more we gain the sense of a gradual striving toward an end shaped by a logier which, eschewing the quest for certainty, must be satisfied if its conclusions are rooted in the probable."

The learned Counsel appearing for the petitioners relied upon the decisions in

Baldev Singh and Others Vs. State of Himachal Pradesh and Others, for the proposition that the petitioners have a right to be heard before the issue of the impugned notification and that the right is affected is as much as the petitioners did not have knowledge of the intention of the State Government for want of publication of Section 3(1) notification in Kannada. The Supreme Court observed in para 4 of the said decision as follows:

"..... Citizens of India have a right to decide, what should be the nature of their society in which they live - agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidences of tax and the like."

Again in para 5, it was observed : -

"..... It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of S. 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way."

In the instant case, in the absence of publication in Kannada though contemplated under the Act. it can be fairly said that the petitioners did not have the opportunity of having a knowledge of the notification and, therefore, they could not prefer their objections or offer suggestions and the consequences resulting from such a denial did have adverse effect on the rights of the petitioners of being heard in the matter.

22. Reliance also was placed on Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, , for the proposition that the word "may" should be construed as mandatory in the circumstances and facts of the instant cases. The Court held in para 16 as follows :-

"The object of these requirements is quite clear. The fresh notification can be issued only after considering the objections and suggestions which the Director receives within the specified time. In fact, the initial notification has to state expressly that the Director shall consider the objections and suggestions received

by him within the stated period. Publication of the notification in the Official Gazette was evidently thought by the legislature not an adequate means of communicating the Director's intention to those who would be vitally affected by the proposed declaration and who would therefore be interested in offering their objections and suggestions. It is a matter of common knowledge that publication in a newspaper attracts greater public attention than publication in the Official Gazette. That is why the legislature has taken care to direct that the notification shall also be published in Gujarati in a newspaper. A violation of this requirement is likely to affect valuable rights of traders and agriculturists because in the absence of proper and adequate publicity, their right of trade and business shall have been hampered without affording to them an opportunity to offer objections and suggestions, an opportunity which the statute clearly deems so desirable. By Section 6(2), once an area is declared to be a market area, no place in the said area can be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act. By S. 8 no person can operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. A violation of these provisions attracts penal consequences u/s 36 of the Act. It is therefore vital from the point of view of the citizens' right to carry on trade or business, no less than for the consideration that violation of the Act leads to penal consequences, that the notification must receive due publicity. As the statute itself has devised an adequate means of such publicity, there is no reason to permit a departure from that mode. There is something in the very nature of the duty imposed by Sections 5 and 6, something in the very object for which that duty is cast, that the duty must be performed. "Some Rules", as said in *Thakur Pratap Singh Vs. Shri Krishna Gupta and Others*, are vital and go to the root of the matter; they cannot be broken. "The words of the statute here must therefore be followed punctiliously."

Again in para 18, the Court observed :--

"We are therefore of the opinion that the notification issued u/s 6(3) of the Act, like that u/s 6(1), must also be published in Gujarati in a newspaper having circulation in the particular area. This requirement is mandatory and must be fulfilled. Admittedly, the notification (Ex. 10) issued u/s 6(5) on February 16, 1968 was not published in a newspaper at all, much less in Gujarati. Accordingly, the inclusion of new varieties of agricultural produce in that notification lacks legal validity and no prosecution can be founded upon its breach."

In para 13, the Supreme Court postulated :--

"Crawford on 'Statutory Construction' (Edn. 1940, Art. 261, p. 516) sets out the following passage from an American case approvingly: 'The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by

considering its nature, its design, and the consequences which would follow from construing it the one way or the other". Thus, the governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and consideration. In other words the use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. *Shriram and Others Vs. The State of Bombay*, Sec. 6(1) of the Act provides in terms, plain and precise, that a notification issued under the section "shall also" be published in Gujarati in a newspaper. The word "also" provides an important clue to the intention of the legislature because having provided that the notification shall be published in the Official Gazette, Sec. 6(1) goes on to say that the notification shall also be published in Gujarati in a newspaper. The additional mode of publication prescribed by law must in the absence of anything to the contrary appearing from the context of the provision or its object, be assumed to have a meaning and a purpose. In *Khub Chand and Others Vs. State of Rajasthan and Others*, it was observed that "The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the fraudulent of the legislature, to be collected from other parts of the Act, The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations". The same principle was expressed thus in *Haridwar Singh Vs. Bagun Sumbrui and Others*, "Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured."

The above decision is a direct authority on the point in issue in these cases and applying the ratio of the above decision, it has to be held that the word "may" found in sub-section (1) of Section 3 of the Act is mandatory and not directory.

23. On the other hand, the learned Government Pleader relied upon AIR 1981 1127 (SC) . The learned Government Pleader relied upon a particular passage in para 17 of the above decision which reads as follows:--

".....We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice....."

I am afraid, the decision is not applicable to the facts of the instant cases for the reasons that what we are concerned with in the instant cases is whether the word "may" shall be construed as "shall" and whether there is due compliance with the requirement of the statute.

24. The learned Counsel appearing for the A. P.M.C. relied on the decision in T.R.N. Swamy Vs. Director of Mines and Geology, I have gone through the decision and I am constrained to observe that this decision has no bearing on the cases which are under consideration.

25. The learned counsel appearing for the A. P. M.C. submitted that the principle of res judicata operates against the petitioners and therefore the writ petitions are liable to be dismissed. Reliance was placed on a decision of the Supreme Court in Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, . As pointed out by me in the early part of the order, the question whether the publication contemplated under sub-section (1) of Section 3 of the Act in Kannada did not come in for real controversy in the earlier writ petitions for the reason that false affidavits and fraudulent representations were made by the officials of the State Government and the A. P. M. C. to the effect that the notification u/s 3(1) of the Act had been published in Kannada. But it is now confirmed that no such publication was made and therefore it cannot be said that the principle of res judicata operates and is a bar for the consideration of the question whether non-publication of Section 3(1) notification in Kannada vitiates the impugned notifications. In the earlier decision, the point had become a non issue on account of the fraudulent submission made by the respondents. The decision relied upon by the learned Counsel is of no assistance to the respondents.

26. It was further contended by the learned counsel for the respondents that the "writ petitions deserve to be dismissed for laches. I do not think that the contention is based on facts. Demand notices which are now questioned in these writ petitions emanated from 3-9-1987 notification earmarking a separate sub-yard for jaggery marketing. In contrast, earlier, the impugned demand notices under the disposed of writ petitions were in execution prior to issue of notification dated 3-9-1987. Further, the process is incomplete on account of non-

compliance with the requirement of the provisions of Sections 7 and 8 of the Act. In so far as the petitioners are concerned, it has to be held that there is no delay and the petitioners have acquired the right to sue by virtue of Continuing cause of action in the absence of publication of Section 3(1) notification in Kannada. Though it was contended by the learned Counsel for the respondents that some objections had been received in response to the notification published in the Gazette, it does not mean that the petitioners were aware of the notification and that their grievance is not bona fide and further that they have approached the Court belatedly. There is no material on record to hold that the petitioners were aware of the notification. It is not possible to accept the plea of laches.

27. In the result, for the reasons stated above, rule is issued and made absolute. The writ petitions are allowed and the impugned notifications as well as the impugned demand notices are quashed. In the circumstances of the cases, there will be no order as to costs.

28. However, it is open to the authorities to follow the procedure prescribed under the Act for the purpose of establishing a market and on establishing the same, the respondents are at liberty to demand the market fee from the date of such establishment of the market.

It is further directed that the State Government shall take appropriate action in accordance with law against the officials who swore to false affidavits.

29. Petitions allowed.