Bhausaheb Tavnappa Mahajan and Others Vs State of Maharashtra and Others

Court: Bombay High Court

Date of Decision: Sept. 1, 1981

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 11
Constitution of India, 1950 â€" Article 226
Evidence Act, 1872 â€" Section 114
Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 â€" Rule 3
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 â€" Section 3(1), 4

Citation: AIR 1982 Bom 284 : (1981) 83 BOMLR 586 : (1982) MhLj 229

Hon'ble Judges: Madon, J

Bench: Single Bench

Advocate: A.M. Setalvad and G.R. Rege, for the Appellant; A.B. Nalik, Asstt. Govt. Pleader and K.J. Abhyankar, for the Respondent

Judgement

1. The appellants are members of an unregistered association known as the Kolhapur Grain merchants Association, and had filed the suit, out of

which this second Appeal arises in a representative capacity under R.8 of O.1 of the civil P.C. 1908. The said suit was tried by the joint civil

judge, senior Division, Kolhapur. In the suit the Appellants challenged certain notifications issued under the maharashtra Agricultural produce

marketing (Regulation) Act, 1963. (Maharashtra Act No XX of 1964). The Appellants" challenge succeeded, and the trial court declared the said

notifications to be null and void, and restrained the Respondents from enforcing the said notifications. The trial court also directed the parties to

bear their own costs of the suit. Though he Appellants" challenge on certain grounds succeeded, their challenge on the ground that these

notifications infringed the provisions of Arts. 14 and 19(1)(1)(g) of the constitution of India was negatived. Against the said judgment and decree of

the trial court not only Respondents Nos.1 and 2, namely, the state and the Rural Finance, Government of Maharashtra, filed an appeal but

Respondents Nos.3 to 5 namely, the kolhapur Agricultural produce market committee and the president ad the secretary of the said committee,

also filed an appeal. The Appellants also appealed against that part of the judgment which negative their constitutional challenge to the validity of

the said notifications. All these appeals were heard together by the court of the Assistant judge at kolhaput, and by a common judgment the lower

appellate court allowed the appeals filed by the Respondents and dismissed the Appellants'' appeal. The lower appellate court directed the

Appellants to pay the costs of the suit and the appeals. It is against this appellate decree that the Appellants have preferred second Appeal.

2.It will be now convenient to set out in some detail the facts which have given rise to this litigation. By a notification dt mar.1.1949 issued under

the Bombay Agricultural produce markets Act. 1939 (bom XXIII of 1939) , an Agricultural produce market committee was established to

regulate the marketing of groundnut (shelled and unshelled) and gur in the area of Karvir, Radhanagari and Bhudarged Talukas and panhala mahal

of the kolhapur District. By another notification dt. Mar 8, 1959 issued under the said Bombay Agricultural produce markets Act the market area

of the said committee was extended so as to include shanuwadi Taluka of kolhapur District, and is operation was also extended to regulate the

marketing of groundnut (shelled and unshelled) and gur in the said extended area. By another notification dt. Oct.6, 1963, also issued under the

said 1939 Act, the market area of the said committee was further extended so as to include the area of 43 villages mentioned in the said

notification situate on the north of Vedganga river from kagal Taluka, and its operation was equally extended to regulate the marketing of

groundnut (shelled and unshelled) and gur in the extended area. Thereafter the Director of Agricultural marketing and Rural Finance, Maharashtra

state, intended to extend the market area of the said committee so as to include in it the area of Gagan-Bawada mahal of the kolhapur District as

also to extend its operations to regulate the marketing of paddy (husked the unhusked), jowar, bajari, wheat, tobacco, cotton (ginned and

unginned), chillies turmeric, gram, gram-dal, tur tur-dal, udid, udid-dal, masur , masur-dal mug, mug-dal onion, peas ,val, chola, kulthi, cattle ,

sheep and goats in attrition to groundnut (shelled and unshelled) and gur in the whole of the market area as extended by the said committee. There

does not appear to be any particular dispute that while groundnut and gur grow in kolhapur District, the other grain seeds which were intended to

be got regulated by the said committee are brought into kolhapur from other places. A notification, namely, NotificationNo.APMC/Kolhapur/67

dt. Feb.3, 1968 was published in the maharashtra Government Gazette. Part I. Poona, dt. Mar.3, 1968 was published in the maharashtra

Government Gazette. Part I Poona, dt. Mar.14, 1968. The said notification was issued us/3 of the Maharashtra Agricultural produce marketing

(Regulation) Act, 1963 (hereinafter referred to as ""the said Act"") which had repealed and replaced the said 1939 Act. By the said notification,

objections and suggestions were invited by the Director of Agricultural marketing and Rural Finance, Maharashtra state, Poona within a period of

one month from the date of the said notification. Accordingly, the said kolhapur Grain Association submitted its representation dt. Apr.11. 1968.

By the telegram dt. Apr.25, 1968 representatives of the said Association were asked to meet the said Director on Apr,30 1968. The said meeting

took place, and the representatives of the said Association put forward their point of view before the said Director, apparently without any

success, because a notification, namely notification No.APMC/Kolhapur /68 dt. May 16, 1968. Issued by the said Director u/s. 4 of the said Act

was published in the Maharashtra Government Gazette. Part I, Poona Division, dt. June 13, 1968. It is these two notifications which were

challenged by the Appellants in their suit.

3. In order to understand the contentions of the Appellants with respect to the said notifications advanced before me at the hearing of this second

Appeal, it is necessary now to refer to certain provisions of the said Act. Sections 3 and 4 of the said Act provide as follows :

3. Notification of intention of regulating marketing of agricultural produce in specified area.

(1) The state Government may, b y notification in the official Gazette, 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 the language of the area in any newspaper circulating

therein, and shall also be published in such other manner as in the opinion of the state Government is best calculated to ring to the notice of persons

in the area, the intention aforesaid.

(2) The notification shall state that any objections or suggestions which may be received by the state Government within a period of not less than

one month to be specified in the notification will be considered by the state Government.

4. Declaration of regulation of marketing of specified agricultural produce in market area.

(I) On the expiry of the period specified in the notification issued u/s 3, the state Government shall consider the objections and suggestions, if any,

received before the expiry of such period and may, if it considers necessary, hold an inquiry in the manner prescribed.

Thereafter, the state Government may, by another notification in the official Gazette, declare that the marketing of the agricultural produce specified

in the notification shall be regulated under this Act, in the area, specified in the notification. The area so specified shall be the market area. A

notification under this section may also be published in the language of the area in a newspaper circulating therein , and shall also be published in

such other manner as in the opinion of the state Government is best calculated to bring to the notice of persons in the area the declaration

aforesaid.

(2) On any declaration being made under sub-section (1) no local authority shall thereafter. Notwithstanding anything contained in any law for the

time being in force, establish, authorize or continue or allow to be established or continued any place in the market area for the marketing of that

agricultural produce.

(3) Subject to the provisions of section 3, the state Government may, at any time by notification in the official Gazette, exclude from a market area

any area, or include therein an additional area, or may direct that the regulation of the marketing of any agricultural produce in any market area shall

cease, or that the marketing of agricultural produce (hitherto not regulated) shall be regulated in the market area.

Section 58 confers upon the state Government the power to delegate interlace to the Director of Agricultural marketing all or any of the powers

conferred upon it by the said Act. It was in pursuance of such delegated authority that the said Director issued the said two notifications. Section

60 confers upon the state Government the power to make rules for carrying into effect the purposes of the said Act, including prescribing the

manner of holding an inquiry. In pursuance of this rule-making power the state Govt. Has enacted the Maharashtra Agricultural produce marketing

(Regulation) Rules, 1967 (hereinafter referred to as ""the said Rules"") Rule 3 of the said Rules is important and requires to be reproduced in

extensor. It is as follows :

3. Additional mode of publication of notification under sections 3 and 4 - A notification u/s 3 declaring the intentions of the state Government of

regulating he marketing of any agricultural produce in any area specified in such notification and the notification u/s 4 regulating the marketing of

agricultural produce in any area shall, in addition to their publication in any newspaper circulating in any such area as required by that section, also

be published by affixing copies there of at the chavdi of each village included in such area and by exhibiting them on the notice board in the office of

the mamlatdar, Tahsildar, mahalkari or Naib-Tahsildar and of the panchayat samiti within whose jurisdiction such area is situated. The state

Government shall also require a revenue officer specified in this behalf to give wide publicity to the notification by beat of drums in any such area.

Rule 4 of the said Rules prescribes the procedure for holding inquiry for considering objections and suggestions. Under that rule the Inquiry officer

is by notice to require the persons making the objections and suggestions to appear before him not earlier than fifteen days from the date of the

notice. From the dates set out above, it will be apparent that a much shorter time than the prescribed period of fifteen days was given to the said

Association. Since however, no point has been made with respect thereto before me, I do not propose to express any opinion about it.

Before me Mr. Settled. Learned counsel for the Appellants, has confined himself to raising two points :

(1) The said Act, having been enacted to regulate the marketing of agricultural produce, can only permit the regulation of the first marketing of the

product in question. Once the product is marketed, it enters the stream of commerce and becomes a commercial commodity like any other

commercial commodity . The application of the provisions of the said Act to such products is not permissible under the said Act and that in

permissible under the said Act and that in permissible under the said Act and that in any event is not a reasonable restriction on the fundamental

rights of the Appellations to carry on trade and business guaranteed to them by Article 19(1)(g) of the consent.

(2) The provisions of Rule 3 of the said Rules relating to the additional modes of publication are mandatory, and they not having been complied

with, the said notifications are invalid and inoperative.

5. So far as the first point is concerned, Mr.setalvad frankly stated that in view of the judgment of the supreme court in Ram Chandra Kailash

Kumar and Company and Others Vs. State of U.P. and Another, it was not open to him to urge this point before me. So far as the second point

before me. So far as the second point is concerned, mr.setalvad confined his challenge only to the said notification Dt.February 3, 1968, it being an

accepted position that the notification u/s 3 of the said Act is a condition precedent to the issuance of a notification sec. 4 of the said Act. And that

if a notification u/s 3 of the said Act has not seen validly or duly published , it would not be operative and would not entitle the state Government to

issue a notification u/s 4. The said notification dated February 3, 1968 is expressly stated to be issued u/s 3of the said Act. Surprisingly enough ,

though the said notification Dt.may 16, 1968 is also expressly stated to have been issued u/s 3 of the said Act, However, before the trial court the

position was conceded by the Appellants that the said notification dated may 16, 1968 should be treated having been issued under the said S.4.

Turning now to S.3 it prescribes three modes of publication :

(1) publication in the official Gazette.

(2) publication in the language of the concerned area in any newspaper circulating in such area.

(3) Publication in such other manner as in the opinion of the state Government is best calculated to bring to the notice of persons in the concerned

area the fact that certain agricultural produce specified in the notification are intended to be regulated under the said Act in the said area. There is

no dispute, as indeed there cannot be any, that the said notification under S.3 was published in the official Gazette. The word "may" is used in the

opening words of section 3 not with respect to the publication of a notification under S.3 in the official Gazette but with respect to the declaration

of Government"s intention, because the Government may or may not want to regulate the marketing of certain agricultural produce. So far as the

second mode, namely, publication in the language of the concerned area in a newspaper circulating in such area, is concerned, the fact established

on the evidence is that the said notification u/s 3 was not at any time published in any vernacular newspaper circulating in the concerned areas, but

what had happened was t hat the gist of the said notifications was published in the 9th March, 1968, issue of a Marathi newspaper "satyavadi".

Since, however, the word "may" is used in section 3 with reference to this particular mode of publication, prima facie, it would be that this

requirement is directory. In Yadaorao Ramchandra Rao Majarkhede and Others Vs. Agricultural Produce Market Committee, Arvi and Others, a

Division Bench of this High court has held that the publication of a notification under S.3 of the said Act in the newspaper is not obligatory and the

failure of the state Government or of the Director to publish the notification in the newspaper does not vitiate the notification in any way. This

judgment is binding upon me, and, therefore the fact that only the gist of the said notification was published in a local vernacular newspaper cannot

in any manner as in the opinion of the state Government is best calculated to bring to the notice of the persons in the concerned area its intention to

regulate the marketing of certain agricultural produce. This part of the section confers powers upon the Government to select particular modes in

order or meet different situations and local conditions. The state Government has, however, instead of leaving it to the discretion of its executive

officers to select such mode as appears to them to be the best in the circumstances of a particular case in which such publication is to be made,

itself prescription of this mode is to be found in Rule 3 of the said Rules which has been set out earlier. Under Rule 3 in addition to publication in

the newspaper required by section 3 the notification is also be published (1) by affixing copies there of at the chavdi of each village included in the

concerned area, (2) by exhibiting copies of the notification on the notice-board in the office of the Mamlatdar. Tahsildar, Mahalkari, or Naib-

Tehsildar and of panchayat Samiti within whose jurisdiction such area is situated, and (3) by requiring a revenue officer specified in that behalf to

give wide publicity to the notification by beat of drums in the concerned area. It is the contention of the Appellants that the modes of publication

prescribed by the said Rule 3 are mandatory and that in the present case the requirements of Rule 3 are mandatory and that in the present case the

requirements of Rule 3 have not been complied with. Mr.Naik, learned counsel for Respondents Nos.1 and 2, submitted that just as in the case of

publication in the manner required by the said R.3 was directory and not mandatory , and if one of the three modes prescribed by the said Rule 3

had not been complied with or not complied with fully, it did not in any manner affect the validity of the notification mr.Abhyankar, learned counsel

for Respondents Nos.3 to 5, conceded that the requirements of the modes of publication as found in the said Rule 3 are mandatory and not

directory, but in his submission Illus. (E) to section 114 of the Indian Evidence Act, 1872, applied to the case and the court must, therefore

presume that the publication of the notification being an official act such act had been regularly performed.

6. Before examining the legal aspects of these contentions it will be convenient to set out the facts which have been established on the record.

Neither the Appellants nor the Respondents led any oral evidence, but both sides produced certain documents which were exhibited. Three out of

these documents are relevant for the present purpose They are :

(1) The copy of the said notification dated February 3, 1968 sent by the Director of Agriculture Marketing and Rural Finance, Maharashtra state,

to the chairman of the Agricultural produce market, Kolhapur (Exhibit 133):

(2) a letter in march bearing Number 670 dated March 21, 1968 from the secretary of the Agricultural produce market, committee, kolhapur, to

the mamlatdar, Taluka Karveer in the District of Kolhapur, (Exhibit 95);

(3) a letter in Marathi dated march 26, 1968 from the Tahsildar, Bhudargad, to the secretary of the Agricultural produce market committee

(Exhibit 96) Apart from the above three documents , there is no other evidence whatever with respect to the publication of the said notification

under Sec.3 in any of the modes prescribed by the said R.3 The said copy of the notification shows that copy of the notification shows that copies

thereof were forwarded to the manager, Yeraoda prison press Poona, for the purpose of publishing the said notification in the maharashtra

Government Gazette. They were also sent to the chairman of the Agricultural produce market committee, kolhapur, the Divisional Joint Registrar,

Co-operative societies, Poona, the Regional publicity officer, Kolhapur, the chief Executive officer, zilla parishad, kolhabur, the president municipal

council, kolhapur, as also to the District Deputy Registrar, Co-operative societies, kolhapur, the District Agricultural officer, kolhapur, and the co-

operation and Industries officer, zilla parishad, kolhapur. At the end of this list of officials to whom the copies were to be sent appears an

endorsement containing the request to give wide publicity to the said notification as required by Rr.3 and 4 of the said Rules ""by pasting the

notification on the market yard as well as in the village panchyat office etc ""I will take it that though the said endorsement in terms specifically

requires that copy of the said notification is to be pasted on the market yard and in the village panchayat office, the abbreviation "etc" . refers to the

other modes of publication provided for in the said Rule 3. What happened thereafter is shown only by the two letters referred above. In the said

letter dated march 21, 1968 the secretary of the Agricultural produce market committee, kolhapur, intimated to the mamlatdar of Taluka Karveer

about the publication of the said notification in the Gazette. He further stated that objections and suggestions had been called for by the said

notification and asked the Mamlatdar to affix the copy of the said notification annexed to his said letter on the notice board of his office and publish

it. In the margin of the said letter is written in ink in Marathi ""and give wide publicity by beat of drums"". These words do not appear in the body of

the said letter, and the trial court held that they were subsequently interpolated. The lower Appellate court, however, did not accept this finding,

but held that they were contended in the original letter when dispatched. I shall, therefore, proceed upon the basis of this finding of the lower

Appellate court. This letter, however, does not show that a similar request was made by the secretary of the Agricultural produce market

committee, kolhapur, to any mamlatdar other than the mamlatdar of Taluka other than the mamlatdar of Taluka karveer. Nor does it show that any

such similar request was made to any Tahsildar, mahalkari or Naib-Tehsildar, or to any official of any panchyat samiti. The letter Dt. March 26,

1968 from the Tahsildar of Bhudargad is, however, a reply to the said letter dated march 21, 1968. It may show that a similar letter had been

addressed by the secretary of the said committee to the other mamlatdars and Tahsildars. What is significant about the said letter dt. March 21,

1968 are its contents. The said reply states that the notification sent to the said Tahsildar had been published by affixing it on the notice board.

There is no mention whatever about the said notification having been published anywhere by beat of drums. From this it would follow that though in

the letter to the mamlatdar of Taluka karveer the direction was contained in the letter to the Tahsildar of Bhudargad, and in the absence of any

other evidence to show that any such request was made to any other official, it is not possible to assume that such a request had been contained in

all the letters written by this behalf. On the contrary, the said reply of the Tahsildar of Bhudargad is a clear indication to the contrary. What is

strange is that nowhere on the record is there any compliance report showing that the publication in the modes required by the said R.3 had been

effected.

7. Mr. Abhyankar, learned counsel for respondents Nos.3 to 5, however, submitted that even though there may be no evidence with respect to

such publication, the court should proceed to apply the presumption laid down in Illys. (E) to S. 114 of the I.E. Act, 1872, and draw a

presumption that the said notification had been regularly published as required by the said S.3 and the said R.3 .It is not possible to accept this

submission for two reasons; (1) Illus (e) to S. 114 cannot and does not apply where the point at issue is not whether an official act was properly

performed, but the point at issue is whether such an act was in fact performed, and (2) where evidence has been led on behalf of the Government

or the concerned authority to prove that a particular official act had been regularly performed and that evidence clearly shows that such

performance had not taken place. In either of these cases, there is no place or scope for drawing any presumption u/s. 114.

8. Section 114 of the I.E. Act provides as follows :

114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural

events, human conduct and public and private business, in their relation to the facts of the particular case.

Then follow certain Illustrations as to the cases in which the court may draw such a presumption. Illus. (E) being that the court may presume that

judicial and official acts have been regularly performed. The first point to notice about S. 114 is that it uses the words ""may presume"" in

contradistinction to the words ""shall presume"". Under S. 4 of the I.E. Act whenever it is provided by that Act that the court may presume a fact, it

may either regard such fact as proved, unless and until it is disproved, or may call for proof of it, and when ever, it is directed by that the court shall

presume a fact, it shall regard such facts as proved. Unless and until it is disproved. Therefore, it is open to a court either to draw or nt to draw a

presumption u/s. 114. Normally, the courts would draw such a presumption when the actual performance of the act is not in dispute in order not to

waste public time on the leading of formal proof with respect to the regularity of its performance , but the position is entirely different where the

entire issue which the court has to decide is as to the performance of that official act itself . In Emperor Vs. Leslie Gwilt, a Division of this court

held that the meaning of illus . (e) to S. 114 is that if an official act is proved to have been done, it would presumed to have been regularly done ,

but this illustration does not raise a presumption that an act was done of which there is no evidence and the proof of which is essential to the case.

In this context the observations of the Supreme Court in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, are pertinent . The court

observed (at p. 51) : (at pp. 1415, 1416).

Even if the burden of proof does not lie on a party the Court may draw an adverse inference; if he withholds important documents in his

possession which can throw light on the facts at issue . It is not, in our opinion , a sound practice for those deciding to rely upon a certain state of

facts to with hold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely

upon the abstract doctrine of onus of proof"" .

It is strange that those desiring to prove that the said notification had properly published should not have cared to produce any evidence other than

the said two letters referred to above. Either no other documentary evidence at all existed, or if it existed and was not produced , the Court would

be entitled to presume that such evidence if produced would have been unfavorable to the person with holding it. This is a presumption which the

Court could have legitimately drawn u/s 114 of the I.E. Act read with Illus (g) thereto.

9.Further it must be borne in mind that by the very terms of the section a presumption u/s 114 is to be drawn in relation to the facts of the particular

case. Here the facts which constituted the evidence of the respondents were on record, and the question of drawing any such presumption in

relation thereto could not have arisen . I therefore, hold that the Lower Appellate Court was in error in drawing a presumption u/s 114 and in

holding that the said notification had been duly published as required by the relevant statutory provisions.

10. The question which now arises is whether by reason of the non-compliance of the statutory provisions the said notification is rendered invalid .

The answer to this question depends upon whether the provisions of the last part of S. 3 of the said Act and of the said R. 3 are directory or

mandatory . With respect to the other modes of publication , which in the opinion of the State Government are best calculated to bring to the

notice of the concerned persons in the area the intention to regulate the marketing of any agricultural produce , the word used in S. 3(1) is "shall"

makes a particular requirement mandatory and not directory . There are authorities which have laid down with reference to other statutory

provisions and on the interpretation thereof the word "shall" should be construed as "may" and vice versa . It was the contention of Mr. Naik on

behalf of the State Government and the Director of Agriculture , Forest and Rural Finance , Government of Maharashtra , that the provisions in

question are directory and not mandatory . In The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, , the Supreme Court has held that

when a statute uses the word ''shall'' prima facie it is mandatory , but the court may ascertain the real intention of the legislature by carefully

attending to the scope of the statute and that for ascertaining the real intention of the legislature the court may consider inter alia the nature and the

design of the statute , and the consequences which would flow from construing it one way or the other , the impact of other provisions whereby the

necessity of complying with the provisions in question is avoided , the circumstance that the statute provides for a contingency of the non-

compliance with the provision is or is not visited by some penalty , the serious or trivial consequences that flow therefrom , and, above all , whether

the object of the legislation will be defeated or furthered.

11. Bearing these observations in mind, let us see the intention underlying the various modes of publication prescribed by the said S. 3 (1) and the

said R. 3. The provision with respect to the publication of a notification u/s 3 in a newspaper published in the local language and of its publication in

such other manner as in the opinion of the State Government is best calculated to bring the intention in such other manner as in the opinion of the

State Government is best calculated to bring the intention to regulate the marketing of an agricultural produce to the notice of the concerned person

in the area is contained in one single section. While the work used with respect to the requirement of publication in a local newspaper is ''may'' with

respect to the other mode of publication in a local newspaper is ''may'' with respect to the other mode of publication it is ''shall''. This notification is

issued so as to enable those who may be affected by the declaration of intention were it implemented to submit their objections thereto for the

consideration of the prescribed authority. It is also there for those desiring to make suggestions, some of which may be worthwhile, for the

prescribed authority to take the suggestions into consideration before issuing a final notification u/s. 4. The said Act is a regulatory statute. It affects

the right to carry on trade and business of several persons. It also affects agriculturists. It is, therefore, necessary that the Government''s intention to

issue a notification u/s. 4 of the said Act should be brought to the notice of all persons concerned, not only the wholesale dealers in the particular

agricultural produce but also all agriculturists. Generally, agriculturists are not literate, and even if they can read, they usually do not subscribe to

newspapers. They, however, often have occasion to visit the offices of Mamlatars, Tahsildars. Mahalkaris, Naib-Tahsildar and Panchayat Samitis,

and when they do so, when any notice is put on the notice-board there, either they or someone of them who may be able to read it may come to

know about it and inform the others. For people of this class the bats mode of publication would be by oral proclamation by beat of drums.

Bearing all these factors in mind, though S. 3 left it to the discretion of the State Government to publish a notification u/s. 3 in such manner as in its

opinion was best calculated to bring it to the notice of concerned persons, the State Government instead of leaving such mode of publication to the

individual opinion of different officers, thought it fit to prescribe how such publication should be done, and this it did by making R. 3 of the said

Rules. That rule itself also uses the word ''shall'' because by the uses the word ''shall'' because by the terms of S. 3 (1) of the said Act with respect

to the third mode of publication the word ''shall'' is used. In this connection. I may usefully advert again to the decision of this High Court in

Yadaorao Ramchandra Rao Majarkhede and Others Vs. Agricultural Produce Market Committee, Arvi and Others, In that case the Court

observed (at p. 348) : (at pp 187, 188).

The object of the provision regarding the publication in Ss. 3 and 5 of the Act is that the notifications under Ss. 3 and 4 must come to the notice of

the persons who are going to be affected thereby in the area in which the notifications were to be operative. But it must be noted that in both Ss. 3

and 4 when publication in any newspaper in the area is contemplated, the Legislature had advisedly used the words ''may also be published in the

language of the area in any newspaper circulated therein. In the same provision while the word ''may'' is used while referring to the publication in a

newspaper, the Legislature while providing for additional publication in such other manner as in the opinion of the State Government is best

calculated to bring to the notice of the persons in the area, has used the word ''shall''

A little later the Court observed (at p. 349 : (at p.188):

It is well known that normally a large part of the agricultural population, which is illiterate, does not subscribe or read newspapers. The

newspapers cater to a negligible section of the community who are only literate and if the purpose of publication is to bring to the notice of the

persons affected by the notifications, then that would be best served by adopting the method of publication by which a large section of the village

community can be reached. That is why is appears that it has been mad obligatory on the State Government to find out for itself the best manner of

publication possible and that is also why the provisions of Rs. 3 have been made requiring the State Government to have the copies of the

notification affixed on the notice boards in the offices of the authorities specified under R. 3. Which are many a time visited by the agriculturists.

Best of drama is a known method of publication and that has always been found to carry the matters to be publicized to the villagers positively.

12.The object underlying this provision would clearly show that what was intended by the Legislature in requiring the State Government to publish

a notification in the manner best calculated to bring to the notice of the persons to the area the Government''s intention was to make it was in order

not to leave the compliance of such mandatory requirement to the individual notions of different officers that the State Government made the said

R. 3 making the modes of publication specified therein to be mandatory and obligatory. As pointed out earlier, the very same provision with

respect to one mode of publication namely. Publication in a newspaper uses the word ''may''. While with respect to the additional mode of

publication by the State Government it uses the word ''shall'' In Labour Commr., Madhya Pradesh v. Burhanpur Tapli Mills Ltd. AIR 1964 Sc

1887, where are provision of the c. P. And Berar Industrial Disputed Settlement Act. 1947, which contained in one place the word ''may'' and in

another place the word ''shall'' fell for consideration of the Supreme Court the Supreme Court held (at p. 1689 (1)):

The use of the word ''shall'' in connection with the action to be taken on a reference by the State Government and ''amy'' in connection with the

action on an application by others in the same section compel the conclusion that on an application by anybody other than the State Government.

The State Industrial Court of a District Industrial Court may also refuse to take action.

In substance what the Supreme Court held was that when in the same provision the words ''shall'' and ''may'' occur they have different meanings,

the word ''shall'' is to be construed as being mandatory while the word ''may Is to be constructed as being directory. To hold that these provisions

are directory would be fraught with grave danger, for in would leave it open to executive officers by not complying with any one of them to float

and get at naught the will of the Legislature and the mandatory requirements imposed upon them by the State Government. The provision contain

procedural safeguards, and procedural safe guards are as important as substantive safeguards. In this connection it is worthwhile to bear in mind

the following observations of Danckwerts. L. J., in the English Court of Appeals in the case of Bradbury v. Enfield London Borough Council

(1967) 1 WLR 1511 (C> A>);

..... in cases of this kind, ti is imperative that the procedure laid down in the relevant statutes should be property observed. The

provisions of the statutes to this respect are supposed to provide safeguards for Her Majesty''s subjects. Public bodies and Ministers must be

compelled to observe the law: and it is essential that bureaucracy should be kept in place.

1. Therefore, hold that the provision in question of S. 3 and of the said R. 3 are mandatory and not directory and that they not having been

complied with, the said notification u/s. 3 was inoperative and invalid. As the said notification u/s. A is invade and inoperative, the condition

precedent for the issuing of a notification u/s. 3 is invalid and inoperative, the condition precedent for the issuing of a notification u/s. 4 was not

fulfilled, and, therefore the said notification dr. May 16, 1968 u/s 4 was also invalid and inoperative. In The Municipal Corporation Bhopal, M.P.

Vs. Misbahul Hasan and Others, where the question was whether an amendment to a rule had been duly made, the Supreme Court held that

where a condition precedent for the amendment of the rule had not been followed or complied with, the amendment was inoperative and invalid.

13. Only one point now remain to be dealt with. That is a contention raised by Mr. Abhyankar that the question as to whether the said notifications

were duly published or not is barred by judicata by reason of an unreported decision of a Division Bench of this High Court in Special Civil

Application No. 2363 of 1969 Bajomal Parchomal Gaijwani v. State of Maharashtra - decided by Vaidya and Dudhia. JJ., on July 6, 1973, In

that case the very same notifications were challenged by three firms doing business in onions in Laxmipuri Market at Kolhapur. This being an

application under Art, 226 of the Const., the matter was decided on affidavits. Amongst the various grounds raised to challenge these notifications,

one ground was that the notification, one ground was that the notification u/s. 4 was also invalid. An affidavit in reply was filed to the petition by the

Under Secretary to the Government, Agriculture and Co-operation Department, in which was set out in detail how the said notifications were

published. The Court accepted the statements made in the affidavit of the Under Secretary and held that the notifications had been property

published. It is very difficult to understand how this judgment can ever operate as res judicata or what relevance it has to the question which I have

to decide. The petitioners there were entirely different from the Appellants here. Those petitioners were not even members of the Kothapur Grain

Merchants Association on whose behalf the suit out of which this Second Appeal arises was filed. Secondly, as mentioned earlier, that was a

petition under Art 226 of the Const which was decided on affidavit. Here, there was a suit which had to be decided on evidence and not be

accepting implicitly statements made in the written statement of the Respondents Thirdly. If the said Under Secretary had set out in the said

affidavit the different modes in which the notifications were published, one wonders what prevented the State Government and the concerned

authorities from leading that evidence before the trial Court. 1, therefore, find no substance in this contention raised by Mr. Abhyakar.

14. For the reasons set out above, this Second Appeal must succeed, and I secondly allow this Second Appeal, set aside the decree of the lower

Appellate Court and restore the decree of the trial Court. The Respondents will pay to the Appellants the cost throughout.

15. Appeal allowed.