A RAJENDRA AGRICULTURAL UNIVERSITY

v.

ASHOK KUMAR PRASAD AND ORS.

(Civil Appeal No. 6937 of 2004)

B NOVEMBER 30, 2009

[R.V. RAVEENDRAN AND G.S. SINGHVI, JJ.]

Service Law:

C *Bihar Agricultural Universities Act, 1987 – s.36 – Statute made under – Provided for time bound promotion scheme for teachers – Statute assented to, by the Chancellor, but not published in the Official Gazette – Held: The statute did not come into effect and was not enforceable in absence of its* D *publication in the Official Gazette, which was mandatorily required in terms of s.36(4) – Moreso, the Chancellor withdrew his assent in respect of the said statute by a reasoned order – Consequently, respondents-teachers not entitled to benefit of time-bound promotion scheme under the statute.*

E **Appellant university was governed by the Bihar Agricultural Universities Act, 1987. The Board of Management of the University framed Statute providing for time bound promotion Scheme for its teachers. The Chancellor of the University gave his assent in respect** F **of the said Statute under section 36(2) of the Act. However, the statute was not published in the Official Gazette, as the matter was under reconsideration. Later, on reconsideration, the Chancellor withdrew his assent in respect of the said statute holding that it was still-born,** G **non-est and never came into force for want of publication in the official Gazette.**

The respondents-teachers filed writ petitions challenging the order passed by the Chancellor which

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was allowed by the High Court on the ground that once the Chancellor gave his assent to a statute under section 36 of the Act, he did not have any power to recall the assent. It also held that publication of the new statute in the official Gazette was only a formality, and when the Chancellor gave his assent to the statute framed by the Board of Management, a vested right was created in the teachers employed by the appellant-University to receive time bound promotion in terms of the said statute and it could not be denied to them.

The questions which thus arose for consideration in the present appeals were: (i) whether, in absence of publication of the statute in the Official Gazette, as required by section 36 (4) of the Act, a statute made under section 36(1) and assented under section 36(2), came into effect and became enforceable and (ii) whether the respondents were entitled to the benefit of Time-Bound Promotion Scheme.

Allowing the appeals, the Court

HELD:1.1. Section 35 of the Bihar Agricultural Universities Act, 1987 deals with and enumerates the topics on which statutes can be framed by the University. Section 35(25) provides that subject to the provisions of the Act, the Statutes may provide for the conditions of service, remuneration and allowances to be paid to teachers employed under the University. Section 36 of the Act, on the other hand, provides how statutes are to be made. Section 36 lays down three steps for making or amending a Statute. They are: (a) the Statute should be made by the Board of Management in the manner specified in sub-section (1); (b) the Statute should be approved and assented by the Chancellor and (c) the Statute so made and assented, shall be published in the official Gazette. [Paras 8 and 9] [1176-E-F; 1177-G-H; 1178-A-B]

A **1.2. When the Act lays down the manner in which a statute under the Act should be made, it shall have to be made in that manner and no other. The requirement that the statute should be published in the official Gazette, is an integral part of the process of 'statute making' under** B **section 36 of the Act. It is mandatory and not directory. Until publication in the official Gazette, the statute will be considered as still being in the process of being made, even if it had received the assent of the Chancellor. A 'statute in the making' or a 'statute-in-process' is** C **incomplete and is neither valid nor effective as a statute. So long as the statute is not completely made, but is still in the process of being made, it can be cancelled or withdrawn or modified, without the need for 'publication' of such cancellation, withdrawal or modification. [Para 9]** D **[1178-B-F]**

1.3. Many of the statutes which the Appellant-University is empowered to frame deal with topics which fall in public domain, affecting or relevant to general public. If the Statutes made on these topics are not E **published in the Official Gazette, the concerned persons may never come to know about them. Therefore, the provision contained in Section 36(4) requiring publication of Statutes in the Official Gazette, which applies to all statutes framed by the University, has to be treated** F **mandatory. The fact that a particular statute may not concern the general public, but may affect only a specified class of employees, is not a ground to exclude the applicability of the mandatory requirement of publication in the Official Gazette, to that statute in the** G **absence of an exception in Section 36(4) of the Act. [Para 12] [1180-C, G-H; 1181-A-B]**

1.4. The respondents cannot by importing the reasons for making a statutory provision, or the object of making a statutory provision, attempt to defeat the H

specific and unambiguous mandatory requirements of that statutory provision. Several reasons might have contributed to making of a statutory provision providing for publication of all statutes in the official Gazette. All those reasons may not apply or exist in regard to making of an individual statute. But once the law lays down that publication of a statute in the Official Gazette is a part of the process of making a statute, the object of making such a provision for publication recedes into the background and becomes irrelevant, and on the other hand, fulfilment of the requirement to make public the statute by publication in the Official Gazette becomes mandatory and binding. [Para 13] [1181-D-G]

1.5. It is not possible to accept the contention that the statute in question came into effect or became enforceable even in the absence of publication in the official Gazette. The High Court committed an error in holding that the teachers became entitled to the benefit of the statute relating to time-bound promotion scheme, when the said statute made by the Board of Management was assented to by the Chancellor even though it was not published in the Gazette. The High Court also committed an error in observing that the non-publication was unreasonable and arbitrary, as it ignored the valid reasons assigned by the Chancellor for withdrawing his assent to the incomplete statute, in his order. [Para 16] [1186-D-G]

B.K. Srinivasan v. State of Karnataka **1987 (1) SCC 658 and** *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer, AP* **1996 (6) SCC 634, relied on.**

Case Law Reference :

1987 (1) SCC 658	relied on	Para 14
1996 (6) SCC 634	relied on	Para 15

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6937 of 2004.

From the Judgment & Order dated 18.7.2003 of the High Court of Judicature at Patna in C.W.J.C. No. 1007 of 1998.

B WITH

C.A. Nos. 6933, 6934, 6935, 6936, 6938 of 2004.

K.K. Rai, Ambhoj Kumar Sinha for the Appellant.

C P.S. Mishra, M.K. Choudhary, Namita Choudhary, Dr. S.K. Verma, Manish Kumar, Gopal Singh, B.B. Singh for the Respondents.

The Judgment of the Court was delivered by

D **R.V. RAVEENDRAN, J.** 1. The issue involved in these appeals is whether a statute made under section 36 of the Bihar Agricultural Universities Act, 1987, providing for a benefit to the teaching staff, for which assent has been given by the Chancellor can be enforced in the absence of publication in the E official Gazette.

2. The appellant is an agricultural university governed by the Bihar Agricultural Universities Act, 1987 (for short 'Act'). To provide relief to its teaching staff who were facing stagnation F in service, the Board of Management of the Appellant University at its meeting dated 22.7.1989 framed a Statute providing for a Time Bound Promotion Scheme. The proposed Statute was placed before the Chancellor of the University for his assent under section 36(2) of the Act and such assent was given on G 17.8.1991. In pursuance of it, the university issued a notification (N.No.106/RAU) dated 4.9.1991, making an addition in Statute 14.1 in chapter XIV of the Statutes of the Rajendra Agricultural University providing for a time bound promotion of (i) Assistant Professors/Junior Scientists to the post of Associate Professor/ H Senior Scientist and (ii) Associate Professor/Senior Scientist

to the post of University Professor/Chief Scientist. The said addition in Statute 14.1 was not published in the Official Gazette, as the matter was under reconsideration in view of the decision taken by the state government to implement the pay scales of University Grants Commission (for short 'UGC') in regard to the teachers of the agricultural universities. The Chancellor also passed an order, which was communicated to the Vice-Chancellors of the Agricultural Universities vide letter dated 6.2.1992, that the operation of the said statute be kept pending till further orders as the whole issue was under review and further consideration.

3. Feeling aggrieved, the Rajendra Agricultural University Shikshak Manch, an association of teachers, filed a writ petition (CWJC No.9622/1992) challenging the said order dated 6.2.1992 of the Chancellor. and seeking directions to the University to consider the cases of its members for promotion in terms of the additional statute as per Notification dated 4.9.1991. A learned Single Judge of the Patna High Court by order dated 17.3.1994 held that the notification dated 4.9.1991 relating to the additional statute did not come into effect as it was not published in the official gazette and therefore, no right could be claimed on the basis of such unpublished statute. The writ petition was therefore dismissed with a clarification that the impugned order dated 6.2.1992 being an interim order, the dismissal of the writ petition would not come in the way of the Chancellor taking appropriate final decision on the issue in accordance with law. Two writ petitions filed before the Ranchi Bench of the High Court [CWJC No.3096 of 1992 (R) and CWJC No.2740/1995 (R)] were disposed of with a direction that the issue raised by the writ petitioners may be considered and decided by the Chancellor after hearing the parties.

4. Thereafter, the Chancellor considered the representations, gave a hearing and made an order dated 19.3.1996 holding that the Statute was still-born, *non est* and never came into force for want of publication in the official

A Gazette required under section 36 of the Act. The said order noted that several universities had earlier adopted time bound promotion schemes, but subsequently abandoned the schemes as they were found to be anomalous *vis a vis* the UGC scheme of career advancement and the UGC scheme of placement of B lecturers in the senior scales of pay; and that in their place, schemes/statutes in conformity with the UGC schemes, were framed on the recommendations of the State Government. He also gave the following reasons as to why the time bound promotion scheme under the proposed Statute could not be C implemented in the agricultural universities of Bihar :

> "It was brought to my notice that ICAR sent a directive to the Vice-Chancellors of the Agricultural Universities that the ICAR can bear the cost on account of promotion under Career Advancement Scheme in built in new UGC scale D but beyond that, the ICAR will not entertain any request for fund for any other kind of promotion or selection. In the ICAR Scheme also there are in built provisions for promotion. Therefore, introduction of the Time Bound Promotion Scheme along with ICAR scheme may E (amount) to double benefits.
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> It may be pointed out that there is no provisions for Time Bound Promotion under the UGC scheme nor ICAR. envisaged each scheme. The Agricultural Universities and F the State Government have accepted the terms and conditions of the UGC/ICAR while implementing the revised UGC scale of pay for Agricultural Universities, and in the terms and conditions of the Government orders time to time issued by the department of Agriculture of the G State Govt., it has been the consistent policy that ICAR guidelines will be followed. Further ICAR has clearly directed the Agricultural Universities that it will not bear any burden on account of Time Bound Promotion to the teachers appointed/deputed even for ICAR funded Schemes."

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The said order dated 19.3.1996 of the Chancellor also recorded that it was subject to the decision in the Appeal (LPA No.35/94) pending against the order of the learned Single Judge dated 17.3.1994. The said Letters Patent Appeal was subsequently dismissed by a Division Bench of the High Court on 11.9.1997, holding that the Teachers association was not entitled to maintain a writ petition relating to a service dispute of the university employees. Liberty was however reserved to the individual teachers to seek relief, if they were aggrieved.

5. Thereafter, several individual teachers filed writ petitions challenging the order dated 19.3.1996 passed by the Chancellor, and seeking relief in terms of the notification dated 4.9.1991. A Division Bench of the High Court allowed the batch of writ petitions filed by the respondents – teachers. It held that once the chancellor gave his assent to a statute under section 36 of the Act, he did not have any power to recall the assent. It held that issuing a notification but refusing to publish the notification in the Gazette was improper and violative of the rule of law. The High Court also held that publication of the new statute in the official Gazette was only a formality, and when the Chancellor gave his assent to the statute framed by the Board of Management, a vested right was created in the teachers employed by the University to receive time bound promotions in terms of the said statute and it could not be denied to them. The High Court therefore declared that even though the notification dated 4.9.1991 containing the amendment to the statute, was not published in the official Gazette, the teachers are entitled to the benefit under the notification, with effect from 1.4.1987, as per the notification.

6. The said order is challenged in these appeals. It is contended by the appellant University that a resolution of the Board of Management to make a statute, even if assented to by the Chancellor, would not be a 'statute' made under the Act, unless it was notified in the official gazette. Further, as the assent had been withdrawn by the Chancellor by a reasoned

A order dated 19.3.1996, there was no 'statute' at all. It was also contended that a new Career Advancement Scheme for promotion of teachers had been implemented by making amendments in the relevant statutes of the university in accordance with the revised UGC pay scales; and the B respondents having already opted for the UGC scheme of pay scale which was introduced on 30.3.1990, the proposed Time Bound Promotion Scheme would be inapplicable, even if the statute had been notified.

C 7. On the contentions urged, the following question arises for consideration:

(i) In the absence of publication of the statute in the Official Gazette, as required by section 36 (4) of the Act, whether a statute made under section 36(1) D and assented under section 36(2), came into effect and became enforceable?

(ii) Whether the respondents are entitled to the benefit of Time-Bound Promotion Scheme under the notification dated 4.9.1991. E

8. Section 35 of the Act deals with and enumerates the topics on which statutes can be framed by the University. Section 35(25) provides that subject to the provisions of the Act, the Statutes may provide for the conditions of service, F remuneration and allowances to be paid to teachers employed under the University. Section 36 of the Act provides how statutes are to be made. It is extracted below:

"36. *Statutes how made :* (1) the Board of Management G may, from time to time, make new or additional statutes or may amend or repeal the statutes in the manner hereinafter provided in this section.

Provided that the Board of Management shall not make any Statute or any amendment to a Statute affecting the H statutes, powers or constitution of any existing authority until

such authority has been given an opportunity of expression on opinion on the proposal and any opinion so expressed shall be in writing and shall be considered by the Board of Management;

Provided further that no Statute shall be made by the Board of Management affecting the discipline of instruction education and examination except after consultation with the Academic Council.

(2) Every new Statute or addition to the Statute or any amendment or repeal of a Statute shall require the approval of the Chancellor, who may assent thereto or withhold assent or remit the same to the hoard of Management for reconsideration.

(3) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented by the Chancellor.

(4) All Statutes made under this Act shall be published in the official Gazette."

The Bihar and Orissa General Clauses Act, 1917, defines a notification as "a notification in the Gazette." [Vide clause (36) of section 2]. Section 28 of the said General Clauses Act provides :

"28. Publication of orders and notifications in the Gazette : Where in any Bihar and Orissa Act or Bihar Act or any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Gazette."

9. Section 36 lays down three steps for making or amending a Statute. They are:

A (a) The Statute should be made by the Board of Management in the manner specified in sub-section (1);

(b) The Statute should be approved and assented by the Chancellor;
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(c) The Statute so made and assented, shall be published in the official Gazette.

When the Act lays down the manner in which a statute under
C the Act should be made, it shall have to be made in that manner and no other. The requirement that the statute should be published in the official Gazette, is an integral part of the process of 'statute making' under section 36 of the Act. It is mandatory and not directory. Until publication in the official
D Gazette, the statute will be considered as still being in the process of being made, even if had received the assent of the Chancellor. A 'statute in the making' or a 'statute-in-process' is incomplete and is neither valid nor effective as a statute. So long as the statute is not completely made, but is still in the
E process of being made, it can be cancelled or withdrawn or modified, without the need for 'publication' of such cancellation, withdrawal or modification. The Chancellor kept the 'statute-in-process' pending and later reconsidered it and held that the Statute proposing the time-bound promotion scheme was still-
F born and non-est.

10. The learned counsel for the respondent contended that the requirement in section 36 of the Act relating to publication in the official Gazette should, contextually be considered as directory and not mandatory. He submitted that there was a
G significant difference between the requirement of assent of the Chancellor for a statute under sub- section (2) of section 36 and the requirement relating to publication of the statute in the official Gazette under sub-section (4) of section 36. He pointed out that sub-section (3) made it clear that in the absence of
H assent by the Chancellor under sub-section (2), the Statute was

not valid. Thus, the consequence of non-compliance with the requirement relating to assent of the Chancellor was specified in the section itself. On the other hand, though sub-section (4) of section 36 requires that the statute should be published in the official gazette, there is no provision similar to sub-section (3) providing that the statute will not be valid unless it is published in the official Gazette. He therefore contended that the requirement relating to assent of the Vice-Chancellor to the statute was mandatory, but publication in the official Gazette was only directory.

11. The learned counsel for the respondents admitted that the purpose of publication of a sub-ordinate legislation in the official gazette is to give publicity to the notification and to provide authenticity to the contents of that notification in case some dispute arises with regard to its contents. But he submitted that if a sub-ordinate legislation imposed obligations, or created liabilities, or required performance of duties, and provided for penalties for non-performance, its publication in the Gazette will have to be considered to be mandatory, as no one can be expected to perform duties and obligations nor be subjected to punishments, unless they had knowledge of such provisions; and therefore, there was a mandatory need to notify such sub-ordinate legislation to the public and publication in the Gazette is deemed to be notice to all concerned. But on the other hand, if the order or notification is intended to benefit only a specific and limited class of persons, say employees of a particular organisation, it may be sufficient to inform or notify the beneficiaries by other modes, such as displaying the order on the notice board or by circulating it among the intended beneficiaries; and in such cases of sub-ordinate legislations of limited application, if there is a provision requiring publication in the official Gazette, such requirement will have to be considered directory and as a mere formality. He therefore submitted that the principle that a sub-ordinate legislation which is not published cannot come into effect nor enforced *against* any member of the public, for want of knowledge to the public,

A in the absence of publication, cannot apply where a statute is made, as in this case, for the benefit of a specific and small class of persons, that is the teaching faculty of University, and the making of the said statute is otherwise known to all the teaching faculty, and when the teachers for whose benefit it is
B made seek implementation of the Statute. It was contended that in such a case, the non-publication of the Statute in the official Gazette cannot be put forth as an objection for its implementation.

C 12. We have carefully considered the contention of the respondents. Many of the statutes which the University is empowered to frame deal with topics which fall in public domain, affecting or relevant to general public. For example, Item (4) of Section 35 relates to classification, qualification and manner of appointment of teachers and other non-teaching staff.
D Item (9) relates to the manner of appointment and selection of officers other than Vice-Chancellor, and their powers, terms and conditions of service. Item (16) relates to entrance or admission of students to a University and their enrolment and continuance as such and the conditions and procedure for dropping student
E from enrolment. Item (17) relates to fees which may be charged by a University. Item (21) relates to maintenance of discipline among students of a University. Item (26) relates to conditions and mode of appointment and the duties of examining bodies and examiners. Any person interested in appointment in the
F University service as a teacher or non-teaching staff or officer is entitled to know the qualifications prescribed for the post and the manner/mode of selection and appointment. The students or prospective students are entitled to know the fees which may be charged by the University. The statute made for maintenance
G of discipline amongst the students concerns the large body of the student community which keeps changing periodically. If the Statutes made on these topics are not published in the Official Gazette, the concerned persons may never come to know about them. Therefore, the provision contained in Section 36(4)
H requiring publication of Statutes in the Official Gazette, which

applies to all statutes framed by the University, has to be treated mandatory. The fact that a particular statute may not concern the general public, but may affect only a specified class of employees, is not a ground to exclude the applicability of the mandatory requirement of publication in the Official Gazette, to that statute in the absence of an exception in Section 36(4) of the Act.

13. The question can be looked at from another perspective also. The contentions urged by the respondents may be good grounds for the legislature to conclude that there need not be a provision in the Act for publication in the official Gazette, when they relate to a small section of employees of the University and consequently, amend Section 36(4) providing for a simpler mode of publication in such cases. But the contentions are not relevant grounds for holding that a statutorily enacted mandatory requirement relating to publication in official Gazette, is directory. The respondents cannot by importing the *reasons for making* a statutory provision, or the *object of making* a statutory provision, attempt to defeat the specific and unambiguous mandatory requirements of that statutory provision. As noticed above, several reasons might have contributed to making of a statutory provision providing for publication of all statutes in the official Gazette. All those reasons may not apply or exist in regard to making of an individual statute. But once the law lays down that publication of a statute in the Official Gazette is a part of the process of making a statute, the *object* of making such a provision for publication recedes into the background and becomes irrelevant, and on the other hand, fulfilment of the requirement to make public the statute by publication in the Official Gazette becomes mandatory and binding. We may illustrate the position by an example:

> If a Two-way Street is declared as a One-way Street, the *reason* for such declaration may be that the traffic was heavy and the two-way traffic was causing chaos, creating

A bottlenecks and impeding smooth flow of traffic. The *object* of declaring the street to be a One-way Street may be to ease the traffic and provide road safety and traffic discipline. But once the street is declared to be a one-way, a car driver charged with the offence of driving on the
B wrong way, cannot defend his wrong act by contending that when he was going the wrong way, there was not much traffic on the road, and therefore, there was no need for the street to be a one-way and the declaration of the street as one-way should be treated as directory or optional.
C Once the street is declared to be a one-way street, even if there is no heavy traffic, vehicle drivers should use it as one-way street. The remedy if any is not to treat the requirement as directory or optional, but to require the authority concerned to restrict the declaration to peak
D hours.

14. In *B.K. Srinivasan vs. State of Karnataka* - 1987 (1) SCC 658, this Court explained why publication in the Gazette was mandatory and necessary in regard to sub-ordinate legislations :

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"There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and
F additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'Unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must
G be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. *But unlike Parliamentary Legislation which is*

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publicly made, delegated or subordinate legislation is often made, unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed."

(emphasis supplied)

However, if the parent law had been silent about the manner of publishing or notifying the statute, and had not prescribed publication in the official Gazette as the mode of publication, the contentions of respondents might have merited some consideration. But when the Act clearly provided that the statute required publication in the Gazette, the requirement became mandatory. In fact, in *B.K. Srinivasan*, this Court explained the position, if the parent Act was silent about publication in the Gazette :

"Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient."

A 15. The decision of this Court in *I.T.C. Bhadrachalam Paperboards vs. Mandal Revenue Officer, AP* - 1996 (6) SCC 634, also throws considerable light on this issue. In that case, section 11 of the Andhra Pradesh Non-Agricultural Land Assessment Act 1963, conferred upon the government the B power to exempt any class of non-agricultural land from the levy by an order published in the Andhra Pradesh Gazette. The state government issued GOM No.201 dated 17.12.1976, providing certain exemptions including exemption from non-agricultural land assessment, by way of an incentive and concession to C industries to be established in certain schedule areas, the object being to provide rapid industrialisation of those backward areas. The said order was not published in the official gazette. One of the questions considered by this Court was whether the Government Order which did not comply with the mandatory D requirement of publication in the Gazette could be relied on by person who acted upon it, to invoke the principle of promissory estoppel against the government and claim the benefit under the government order on the ground that it contained a promise or representation held out by the government to the members of the public. This Court held that the requirement under section E 11 of the Act relating to publication of the government order in the Gazette, was mandatory and that where an enactment requires an act (making a government order) to be done by the government only in the manner prescribed therein, then non-compliance with the mandatory statutory requirement will make F the act (making of a government order) invalid and consequently, the government order cannot be considered as a valid and binding one, nor as a representation held out by the government, creating any right to seek the benefit of that government order by invoking the principle of promissory G estoppel against the government. This Court held :

> "30. Sri Sorabjee next contended that even if it is held that the publication in the Gazette is mandatory yet G.O.Ms. No. 201 can be treated as a representation and a promise and H inasmuch as the appellant had acted upon such

representation to his detriment, the government should not be allowed to go back upon such representation. It is submitted that by allowing the government to go back on such representation, the appellant will be prejudiced. Learned Counsel also contended that where the government makes a representation, acting within the scope of its ostensible authority, and if another person acts upon such representation, the government must be held to be bound by such representation and that any defect in procedure or irregularity can be waived so as to render valid which would' otherwise be invalid. Counsel further submitted that allowing the government to go back upon its promise contained in G.O.Ms. No. 201 would virtually amount to allowing it to commit a legal fraud. For a proper appreciation of this contention, it is necessary to keep in mind the distinction between an administrative act and an act done under a statute. If the statute requires that a particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done by the government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if it is held that notwithstanding such non-compliance, it yet constitutes a 'promise' or a representation for the purpose of invoking the rule of promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the government or other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and superfluous. Where the field is occupied by an enactment the executive has to act in accordance therewith, particularly where the provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent Legislature, the executive can act in its

A executive capacity since the executive power of the State extends to matters with respect to which the Legislature of a State has the power to make laws (Article 162 of the Constitution). The proposition urged by the learned Counsel for the appellant falls foul of our constitutional B scheme and public interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of law whereas the said rule, it is well settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the C law cannot be allowed to be defeated by resort to rules of estoppel. None of the decisions cited by the learned Counsel say that where an act is done in violation of a mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/ D equitable estoppel. Moreover, when the government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority.

16. In view of the above, it is not possible to accept the contention that the statute contained in the notification dated E 4.9.1991 came into effect or became enforceable even in the absence of publication in the official Gazette. The High Court committed an error in holding that the teachers became entitled to the benefit of the statute relating to time-bound promotion scheme, when the said statute made by the Board of F Management was assented to by the Chancellor even though it was not published in the Gazette. The High Court also committed an error in observing that the non-publication was unreasonable and arbitrary, as it ignored the valid reasons assigned by the Chancellor for withdrawing his assent to the G incomplete statute, in his order dated 19.3.1996.

17. We therefore allow these appeals, set aside the order of the High Court and dismissed the writ petitions filed by the respondents before the High Court.

H B.B.B. Appeals allowed.