PETITIONER:
GVINDLAL CHHAGGAN LAL PATEL

Vs.

RESPONDENT:
THE AGRICULTURAL PRODUCE MARKET COMMITTEE, GODHRA AND OTHERS

DATE OF JUDGMENT27/08/1975

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
BHAGWATI, P.N.
SARKARIA, RANJIT SINGH

CITATION:
1976 AIR 263 1976 SCR (1) 451
1975 SCC (2) 482
CITATOR INFO :
F 1985 SC 964 (9)
RF 1986 SC1499 (16)
RF 1986 SC1518 (8)
R 1987 SC1010 (14)
R 1989 SC2206 (21)

ACT:
Mandatory and Directory Provision-Bombay Agricultural Produce Markets Act, 1939-Section 4 Gujarat Agricultural Produce Markets Act, 1961, ss. 5 and 6, 36-When 'shall' means 'may'-Principles of constitution of a Statute- If language Plain and unambiguous, whether aid of artificial guidelines to interpretation possible.

HEADNOTE:
The appellant was prosecuted for having purchased a certain quantity of ginger without obtaining a licence as required by the Gujarat Agricultural Produce Markets Act. 1964. The trial court accepted the factum of purchase but it acquitted the appellant on the ground that the relevant notification in regard to the inclusion of ginger was not shown to have been promulgated and published as required by the Act.

On appeal, the High Court reversed the acquittal and sentenced the appellant to a fine of Rs. 10/-. The High Court proceeded on the assumption that the notifications were property made. In the erstwhile composite State of Bombay there was in operation The Bombay Agricultural Produce Markets Act of 1939. On the bifurcation of the State in 1960 the said 1939 Act was extended by an appropriate order to the State of Gujarat. That Act remained in operation in Gujarat till the year 1964 in which year the present Act came into force. Section 5 of the Act requires the Director to notify in the Official Gazette his intention to regulate the purchase and sale of agricultural produce. The section also requires the publication in Gujarati in a newspaper having circulation in the area. The section further requires that the objections should be invited from the public. Section 6(1) provides that after the expiry of the period for making objections and after considering the objections and suggestions received and after holding

necessary inquiry, the Director may, by notification in the Official Gazette, declare the area specified in the said notification to be a market area in respect of the agricultural produce to be specified in the notification. Sub-section (1) of s. 6 further requires that the notification under the said section shall be published in Gujarati in a newspaper having circulation in the said area. Sub s. (5) of s. 6 provides that the Director may, at any time by notification in the official gazette, exclude any area from a market area specified in a notification issued under sub-s. (1) or include any area therein and exclude from or add to the kinds of agricultural produce so specified. The sale or purchase of the agricultural produce concerned without a licence is made an offence by s. 36 of the Act.

On appeal by special leave, the appellant contended that the notification under s. 6(5) of the Act, covering additional varieties of agricultural produce, must not only be published in the Official gazette but must also be published in Gujarati in a newspaper.

The respondent contended that (1) the procedure in regard to the publication which is laid down in sub-s. (1) of s. 6 must be restricted to notifications issued under that sub-section and cannot be extended to those issued under sub-section (5) of s. 6; (2) Assuming that the words "this section" are wide enough to cover every sub-section of s. 6. the word 'shall' ought to be read as 'may'.

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HELD: (1) Section 6(1) means what it says. That is the normal rule of construction of statutes, a rule not certainly absolute and unqualified, but the conditions which bring into play the exceptions to that rule did not exist. It is not reasonable to assume in the legislature an ignorance of the distinction between a "section" of the statute and the "sub-section" of that section. The requirement

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laid down by s. 6(1) that a notification under "this section" shall also be published in Gujarati in a newspaper would govern any and every notification issued under any par of s. 6, that is to say, under any of the sub-sections of s. 6. [455E-G]

(2) Sometimes the legislature does not say what it means. That has given rise to a series of technical rules of interpretation devised or designed to unraval the mind of the law-makers. The words of the concluding portion of s. 6(1) are plain and unambiguous rendering superfluous the aid of artificial guide-lines to interpretation. [455H-456A]

(3) "Shall" must normally be construed to mean "shall" and not "may", for the distinction between the two is fundamental. The use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or directory. 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. It is the duty of courts to get at the real intention of the legislature by carefully attending to the whole scope of the provision to be construed. The amendment to s. 6(1) notification in regard to matters described therein is equated with a fresh declaration of intention in regard to those matters, rendering it obligatory to follow afresh the whole of the procedure prescribed by s. 5. 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. The 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. 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 without the necessary licence. A violation of the said provisions attracts penal consequences under s. 36. 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. There is something in the very nature of the duty imposed by ss. 5 and 6. something in the very object for which the duty is cast. that the duty must be performed. [456C, 458B, F-H, 459A-B]

(4) The legislative history of the Act reinforces this conclusion. In the Bombay Act, which was made applicable to Gujarat till 1964, it was not necessary to publish in the newspaper notifications corresponding to s. 6(5) notifications under the new Act. The Gujarat Legislature, having before it the model of the Bombay Act. made a conscious departure from it by providing for the publication of the notification in a newspaper and by substituting the word 'shall' for the word 'may'. [459D-F]

(5) A notification under s. 6 must be published in Gujarati in a newspaper. This requirement is mandatory and must be fulfilled. Admittedly, the notification in question 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. [459E-H]

(6) The High Court took into consideration a wrong notification. Reliance on the earlier judgment of Gujarat High Court on the construction of the Bombay Act was also wrong since the language there was wholly different. [460E-G]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 158 of 1972.

Appeal by special leave from the Judgment and order dated the 12th November, 1971 of the Gujarat High Court at Ahmedabad in Criminal Appeal No. 219 of 1970.

H.S. Patel, S.S. Khanduja and Lalita Kohli, for the

appellant.

S. K. Zauri, Amaresh Kumar and M. V. Goswami, for the respondents 1-2.

H. R. Khanna and M. N. Shroff, for respondent no. 3.

The Judgment of the Court was delivered by

CHANDRACHUD, J. This is an appeal by special leave from the judgment of the Gujarat High Court convicting the appellant under section 36 read with section 8 of the Gujarat Agricultural Produce Markets Act, 20 of 1964 (referred to herein as "the Act"), and sentencing him to pay a fine of Rs. 10/-. The judgment of conviction was recorded by the High Court in an appeal from an order of acquittal passed by the learned Judicial Magistrate, First Class, Godhra.

An Inspector of Godhra Agricultural Produce Market Committee filed a complaint against the appellant charging him with having purchased a certain quantity of ginger in January and February, 1969 without obtaining a licence as required by the Act. The learned Magistrate accepted the factum of purchase but he acquitted the appellant on the ground that the relevant notification in regard to the inclusion of ginger was not shown to have been promulgated and published as required by the Act.

The case was tried by the learned Magistrate by the application of procedure appointed for summary trials. That circumstance together with the token sentence of fine imposed by the High Court gives to the case a petty appearance. But occasionally, matters apparently petty seem on closer thought to contain points of importance though, regretfully, such importance comes to be realized by stages as the matter travels slowly from one court to another. As before the Magistrate so in the High Court, the matter failed to receive due attention: a fundamental premise on which the judgment of the High Court is based contains an assumption contrary to the record. Evidently, the attention of the High Court was not drawn either to the error of that assumption or to some of the more important aspects of the case which the parties have now perceived.

It is necessary, in order to understand the controversy, to notice some of the relevant statutory provisions.

In the erstwhile composite State of Bombay there was in operation an Act called the Bombay Agricultural Produce Markets Act, 22 of 1939. On the bifurcation of that State on May 1, 1960 the new State of Gujarat was formed. The Bombay Act of 1939 was extended by

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an appropriate order to the State of Gujarat by the Government of that State. That Act remained in operation in Gujarat till September 1, 1964 on which date the Gujarat Agricultural Produce Markets Act, 20 of 1964, came into force.

The Act was passed "to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat". Section 4 of the Act empowers the State Government to appoint an officer to be the Director of Agricultural Marketing and Rural Finance. Sections 5, 6(1) and 6(5) of the Act read thus:-

> "5. Declaration of intention of regulating purchase and sale of agricultural produce in specified area.-(1) The Director may, by notification in the Official Gazette, declare his intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified therein. Such

notification shall also be published in Gujarati in a newspaper having circulation in the area and in such other manner as may be prescribed.

(2) Such notification shall state that any objection or suggestion received by the Director within the period specified in the notification which shall not be less than one month from the date of the publication of the notification, shall be considered by the Director.

(3) The Director shall also send a copy of the notification to each of the local authorities functioning in the area specified in the notification with a request to submit its objections and suggestions if any, in writing to the Director within the period specified in the notification.

6. Declaration of market areas.-(1) After the expiry of the period specified in the notification issued under section 5 (hereinafter referred to in this section as 'the said notification'), and after considering the objections and suggestions received before its expiry and holding such inquiry as may be necessary, the Director may, by notification in the Official Gazette, declare the area specified in the said notification or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this section shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner, as may be prescribed.

6. (5) After declaring in the manner specified in section 5 his intention of so doing, and following the procedure there in, the Director may, at any time by notification in the Official Gazette. exclude any area from a market area specified in a notification issued under sub-section (1), or include any area therein and exclude from or add to the kinds of agricultural produce so specified any kind of agricultural produce."

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By section 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. Section 36 of the Act provides, to the extent material, that whoever without holding a licence uses any place in a market area for the purchase or sale of any agricultural produce and thereby contravenes section 8 shall on conviction be punished with the sentence mentioned therein.

Rule 3 of the Gujarat Agricultural Produce Markets Rules, 1965 provides that a notification under section 5 (1) or section 6(1) shall also be published by affixing a copy thereof at some conspicuous place in the office of each of the local authorities functioning in the area specified in the notification.

The simple question, though important, is whether the notification issued under section 6(5) of the Act, covering additional varieties of agricultural produce like ginger and onion, must not only be published in the official gazette but must also be published in Gujarati in a newspaper. The concluding sentence of section 6(1) says that a notification under "this section" "shall also be published in Gujarati in a newspaper" having circulation in the particular area. The argument of the appellant is twofold: Firstly, that "this section" means this subsection so that the procedure in regard to publication which is laid down in subsection (1) of section 6 must be restricted to notifications issued

under that subsection and cannot be extended to those issued under subsection (5) of section 6; and secondly, assuming that the words "this section" are wide enough to cover every sub-section of section 6 the word "shall" ought to be read as "may".

First, as to the meaning of the provision contained in section 6 (1) of the Act. It means what it says. That is the normal rule of construction of statutes, a rule not certainly absolute and unqualified, but the conditions which bring into play the exceptions to that rule do not exist here. Far from it; because, the scheme of the Act and the purpose of the particular provision in section 6(1) underline the need to give to the provision its plain, natural meaning. It is not reasonable to assume in the legislature an ignorance of the distinction between a "section" of the statute and the "subsections" of that section. Therefore, the requirement laid down by section 6(1) that a notification under "this section" shall also be published in Gujarati in a newspaper would govern any and every notification issued under any part of section 6, that is to say, under any of the sub-sections of section 6. If this requirement was to govern notifications issued under sub-section (1) of section 6 only. the legislature would have said so.

But the little complexity that there is in this matter arises out of a known phenomenon, judicially noticed but otherwise disputed, that sometimes the legislature does not say what it means. That has given rise to a series of technical rules of interpretation devised or designed to unravel the mind of the law-makers. If the words used in a statute are ambiguous, it is said, consider the object of the statute, have regard to the purpose for which the particular provision is put on the statute-book
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and then decide what interpretation best carries out that object and purpose. The words of the concluding portion of section 6(1) are plain and unambiguous rendering superfluous the aid of artificial guide-lines to interpretation. But the matter does not rest there. The appellant has made an alternative argument that the requirement regarding the publication in Gujarati in a newspaper is directory and not mandatory, despite the use of the word "shall". That word, according to the appellant, really means "may".

Maxwell, Crawford and Craies abound in illustrations where the words "shall" and "may" are treated as interchangeable, "Shall be liable to pay interest" does not mean "must be made liable to pay interest", and "may not drive on the wrong side of the road" must mean "shall not drive on the wrong side of the road". But the problem which the use of the language of command poses is: Does the legislature intend that its command shall at all events be performed ? Or is it enough to comply with the command in substance ? In other words, the question is : is the provision mandatory or directory ?

Plainly, "shall" must normally be construed to mean "shall" and not "may", for the distinction between the two is fundamental. Granting the application of mind, there is little or no chance that one who intends to leave a lee-way will use the language of command in the performance of an act. But since, even lesser directions are occasionally clothed in words of authority, it becomes necessary to delve deeper and ascertain the true meaning lying behind mere words.

Crawford on 'Statutory Construction' (Ed. 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 considerations. 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 pre-emptory. 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(1). Section 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
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important clue to the intention of the legislature because having provided that the notification shall be published in the Official Gazette, section 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 v. State of Rajasthan, 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 intent 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 v. Begum Sumbrui. "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." Recently in the Presidential Election Case(3), the learned Chief Justice speaking on behalf of a seven Judge Bench observed: "In determining the question whether a provision is mandatory or directory, the subject-matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get at the real intention of the legislature by carefully attending to the whole scope of

the provision to be construed. 'The Key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole'."

The scheme of the Act is like this: Under section 5(1) the Director of Marketing and Rural Finance may by a notification in the Official Gazette declare his intention of regulating purchase and sale of agricultural produce in the specified area. Such notification is also required to be published in Gujarati in a newspaper having circulation in the particular area. By the notification, the Director under section 5(2) has to invite objections and suggestions and the notification has to be stated that any such objections or suggestions received by the Director within the specified period, which shall not be less than one month from the date of the publication of the notification, shall be considered by the Director. After the expiry of the aforesaid period the Director, under section 6(1), has the power to declare an area as the market area in respect of the particular kinds of agricultural produce. This power is not absolute because by the terms of section 6(1) it can only be exercised after considering the objections and suggestions received by the Director within the stipulated period. The notification under section 6(1) is also required to be published in Gujarati in a newspaper. The
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power conferred by section 5(1) or 6(1) is not exhausted by the issuance of the initial notification covering a particular area or relating to a particular agricultural produce. An area initially included in the market area may later be excluded, a new area may be added and likewise an agricultural produce included in the notification may be excluded or a new variety of agricultural produce may be added. This is a salutary power because experience gained by working the Act may show the necessity for amending the notification issued under section 6(1). This power is conferred by section 6(5).

By section 6(5), if the Director intends to add or exclude an area or an agricultural produce, he is to declare his intention of doing so in the manner specified in section 5 and after following the procedure prescribed therein. Thus, an amendment to the section 6(1) notification in regard to matters described therein is equated with a fresh declaration of intention in regard to those matters, rendering it obligatory to follow afresh the whole of the procedure prescribed by section 5. That is to say, if the Director intends to add or exclude an area or an agricultural produce, he must declare his intention by notification in the Official Gazette and such notification must also be published in Gujarati in a newspaper. Secondly, the Director must invite objections or suggestions by such notification and the notification must state that any objections or suggestions received within the stipulated time shall be considered by him. The Director must also comply with the requirement of sub-section (5) of section 3 by sending a copy of the notification to each of the local authorities functioning in the particular area with a request that they may submit their objections and suggestions within the specified period. After the expiry of the period aforesaid and after considering the objections or suggestions received within that period, the Director may declare that the particular area or agricultural produce be added or excluded to or from the previous notification. This declaration has to be by a notification in the Official Gazette and the notification has to be published in Gujarati

in a newspaper having circulation in the particular area. The last of these obligations arises out of the mandate contained in the concluding sentence of section 6(1).

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
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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 section 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 under section 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 v. Sri Krishna, "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.

The legislative history of the Act reinforces this conclusion. As stated before, the Bombay Agricultural Produce Markets Act, 1939 was in force in Gujarat till September 1, 1964 on which date the present Act replaced it. Section 3(1) of the Bombay Act corresponding to section 5(1) of the Act provided that the notification 'may' also be published in the regional languages of the area. Section 4(1) of the Bombay Act which corresponds to section 6(1) of the Act provided that "A notification under this section may also be published in the regional languages of the area in a newspaper circulated in the said area". Section 4(4) of the Bombay Act corresponding to section 6(5) of the Act provided that exclusion or inclusion of an area of an agricultural produce may be made by the Commissioner by notification in the Official Gazette, "subject to the provisions of section 3". Section 4(4) did not provide in terms as section 6(5)

does, that the procedure prescribed in regard to the original notification shall be followed if an area or an agricultural produce is to be excluded or included. The Gujarat legislature, having before it the model of the Bombay Act, made a conscious departure from it by providing for the publication of the notification in a newspaper and by substituting the word 'shall' for the word 'may'. These are significant modifications in the statute which was in force in Gujarat for over 4 years from the date of reorganisation till September 1, 1964. These modifications bespeak the mind of the legislature that what was optional must be made obligatory.

We are therefore of the opinion that the notification issued under section 6(5) of the Act, like that under section 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 under section 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.

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Rule 3 of the Gujarat Agricultural Produce Markets Rules, 1965 relates specifically and exclusively to notifications "issued under subsection (1) of section 5 or under sub-section (1) of section 6." As we are concerned with a notification issued under sub-section (5) of section 6, we need not go into the question whether Rule 3 is complied with. We may however indicate that the authorities concerned must comply with Rule 3 also in regard to notifications issued under sections 5(1) and 6(1) of the Act. After all, the rule is calculated to cause no inconvenience to the authorities charged with the duty of administering the Act. It only requires publication by affixing a copy of the notification at some conspicuous place in the office of each of the local authorities functioning in the area specified in the notification.

The prosecution was conducted before the learned Magistrate in an indifferent manner. That is not surprising because the beneficent purpose of summary trials is almost always defeated by a summary approach. Bhailalbhai Chaturbhai Patel, an Inspector in the Godhra Agricultural Produce Market Committee, who was a material witness for proving the offence, said in his evidence that he did not know whether or not the notifications were published in any newspaper or on the notice board of the Godhra Municipality. The learned Magistrate acquitted the appellant holding that the prosecution had failed to prove beyond a reasonable doubt that the notifications were published and promulgated as required by law.

In appeal, the High Court of Gujarat began the operative part of its judgment with a wrong assumption that Ex. 9 dated April 19, 1962 was a "notification constituting the Godhra Market area." In fact Ex. 9 was issued under section 4-A(3) of the Bombay Act as amended by Gujarat Act XXXI of 1961 declaring certain areas as "market proper" within the Godhra Market area. The High Court was really concerned with the notification, Ex. 10, dated February 16, 1968 which was issued under section 6(5) of the Act and by which new varieties of agricultural produce like onion, ginger, sunhemp and jowar were added to the old list. The High Court set aside the acquittal by following the judgment dated February 12, 1971 rendered by A. D. Desai, J. in Cr.

Appeal 695 of 1969. That judgment has no application because it arose out of the Bombay Act and the question before Desai, J. was whether section 4(1) of the Bombay Act was mandatory or directory. That section, as noticed earlier, provided that the notification "may" also be published in the regional language of the area in a newspaper circulated in that area. The High Court, in the instant case, was concerned with section 6(5) of the Act which has made a conscious departure from the Bombay Act in important respect. The High Court did not even refer to the provisions of the Act and it is doubtful whether those provisions were at all brought to its notice. Everyone concerned assumed that the matter was concluded by the earlier judgment of Desai, J.

For these reasons we set aside the judgment of the High Court and restore that of the learned Judicial Magistrate, First Class, Godhra. Fine, if paid, shall be refunded to the appellant.

P.H.P. Appeal allowed.

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