

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27<sup>TH</sup> DAY OF FEBRUARY 2013

PRESENT

**THE HON'BLE MR. JUSTICE DILIP B BHOSALE**

AND

**THE HON'BLE MR. JUSTICE B MANOHAR**

**W.A.NO.3339/2012 C/W W.A.NOS.3035/2012,  
3340/2012, 3341/2012, 3342/2012, 3343/2012,  
3344/2012 (LB-BMP)**

BETWEEN

1. BRUHATH BENGALURU MAHANAGARA PALIKE  
N R SQUARE, BANGALORE 560 002  
REP BY ITS COMMISSIONER
2. HEALTH OFFICER (SOUTH)  
BRUHATH BANGALORE MAHANAGARA PALIKE  
N R SQUARE  
BANGALORE - 560 002 ... APPELLANTS

(APPELLANTS ARE COMMON IN ALL THE APPEALS)

(BY SRI B V SHANKARANARAYANA RAO, ADV.,)

AND

**IN W.A.NO.3339/2012**

M/S MAHTANI VENTURES  
A REGISTERED PARTNERSHIP FIRM  
OWNER OF RESTAURANT/CAFE  
SOUL AT THE COURTYARD  
NO.40, 4TH B CROSS, KORAMANGALA

BANGALORE-560095  
 REPRESENTED BY ITS PARTNER  
 SRI SUNEEL MAHTANI  
 AGED ABOUT 37 YEARS ... RESPONDENT

(BY SRI ADITYA SONDHI & B V NIDHISHREE, ADVS FOR C/R1)

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT  
 ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT  
 PETITION NOS.16819/2011(LB-BMP) DATED 08/03/2012.

**IN W.A.NO.3035/2012**

M/S CONCEPTS AND MORE  
 A REGISTERED PARTNERSHIP  
 OWNER OF RESTAURANT / CAFE: JUST FOR  
 COFF, #26, SHANKAR MUTT ROAD  
 BASAVANAGUDI, BANGALORE 560 004  
 REPRESENTED BY ITS PARTNER  
 MR ASHISH BOTHRA ... RESPONDENT

(BY SRI ADITYA SONDHI, ADV., FOR R1)

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT  
 ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT  
 PETITION NOS.16820/2011(LB-BMP) DATED 08/03/2012.

**IN W.A.NO.3340/2012**

SRI MOHTESHIM SHADAB  
 S/O NISHAT ALI KHAN, AGED ABOUT 23 YRS  
 PROPRIETOR OF RESTAURANT/CAFE  
 KARGEENS HOUSE OF SHEESHA  
 NO.65, 80 FEET ROAD, OPP. M S RAMAIAH  
 HOSPITAL, RMV 2ND STAGE  
 BANGALORE-560094 ... RESPONDENT

(BY SRI ADITYA SONDHI, ADV.,)

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 08/03/2012 PASSED BY THE LEARNED SINGLE JUDGE IN THE WRIT PETITION NOS.17276/2011(LB-BMP) AND DISMISS THE WRIT PETITION, IN THE INTEREST OF JUSTICE AND EQUITY, IN SO FAR AS IT RELATES TO POWER OF THE 2ND APPELLANT IN EXERCISING THE POWER OF CANCELLATION CONFERRED UPON HIM BY LAW.

**IN W.A.NO.3341/2012**

M/S KAIPIROSHKA  
A REGD. PARTNERSHIP FIRM  
FRANCHINSEE OF RESTAURANT / CAFE MACHA  
NO.25/2, LAVELLE ROAD  
BANGALORE -01  
REP BY ITS PARTNER  
SRI VISHAL RAHEJA

... RESPONDENT

(BY SRI ADITYA SONDHI, ADV.,)

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NOS.16823/2011(LB-BMP) DATED 08/03/2012.

**IN W.A.NO.3342/2012**

SRI PREM KUMAR V  
S/O K VASU  
AGED ABOUT 24 YEARS  
PROPRIETOR OF RESTAURANT/CAFE  
"MOHAA", NO.15  
JALADARSHINI LAYOUT, PARALLEL TO  
NEW BEL ROAD, BANGALORE-560054

... RESPONDENT

(BY SRI ADITYA SONDHI, ADV., )

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT  
ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT  
PETITION 17277/2011 DATED 8/3/12

**IN W.A.NO.3343/2012**

M/S ONE WORLD IMPEX PVT LTD  
FRANCHISEE OF RESTUARANT/CAFE  
MOCHA, NO 577 F F 80 FEET ROAD  
KML 8 BLOCK  
BANGALORE 560093  
REP BY KUNDAN KUMAR

... RESPONDENT

(BY SRI ADITYA SONDHI, ADV.,)

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT  
ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT  
PETITION 16821/2011 DATED 8/3/12

**IN W.A.NO.3344/2012**

M/S MAHTANI ENTERPRISES  
OWNER OF RESTAURANT/CAFE SOUL  
# 65, M G ROAD, BANGALORE 560 001  
REP BY ITS PARTNER, MR SUNEEL  
MAHTANI AGED ABOUT 37 YEARS

... RESPONDENT

(BY SRI ADITYA SONDHI, ADV.,)

THIS W.A. FILED U/S 4 OF THE KARNATAKA HIGH COURT  
ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT  
PETITION 16822/2011 DATED 8/3/12

THESE W.As. COMING ON FOR PRELIMINARY HEARING,  
THIS DAY, DELIVERED THE FOLLOWING:

**(JUDGMENT - DILIP B. BHOSALE J. )**

The question that falls for our consideration in these appeals is whether the 'power' to cancel a trade licence certificate issued under the provisions of Karnataka Municipal Corporations Act, 1976, being a quasi judicial in nature, could be delegated by the Commissioner, to the Health Officer, in exercise of the powers of delegation vested in him under section 66 of the said Act?

1.1. These appeals are directed against the judgment and order dated 8<sup>th</sup> of March, 2012 rendered by learned single judge in writ petitions filed by respondents against the order dated 30.4.2011, whereby appellant no.2-Health Officer has cancelled their trade licences for carrying on business at different places in the city of Bangalore.

2. It would suffice to state the common facts of all cases to have a glimpse of the backdrop events in which

the question has emerged for decision. The appellant Bruhath Bengaluru Mahanagara Palike (for short 'the Corporation'), was established under the provisions of the Karnataka Municipal Corporations Act, 1976, (for short 'the KMC Act'). Appellant no.2 – Health Officer (South) is an officer of the Corporation. The respondents, who were petitioners in the writ petitions, are the owners of restaurants / cafes. They were carrying on the business under trade license certificates issued by Health Department of the Corporation. Their licences have been cancelled by the impugned order, since they were found serving hookah in their restaurants / cafes allegedly in contravention of the terms and conditions of the trade licence certificates.

2.1 The business premises of the respondents were raided by the officials of the Corporation, when it was found that they were serving hookah to the customers. The officials of the Corporation seized the hookah

apparatus / instruments. The respondents requested the concerned officer of the Corporation to return the seized hookah instruments and since there was no positive response, they filed writ petitions in this Court bearing W.P. Nos.15435-15445/11 seeking direction to the Corporation and its officers restraining them from interfering with their business except in accordance with law. The writ petitions were disposed of vide order dated 21.4.2011 permitting the respondents to make representations to the Commissioner for appropriate relief including return of the seized hookah apparatus. The representations were accordingly made by the respondents to the Commissioner. The representations were, however, considered by respondent no.2 – Health Officer and vide order dated 30.4.2011, he cancelled the trade licences issued in their favour. The hookah apparatus, however, were directed to be returned to the respondents subject to their filing an undertaking that they shall not put them to use within the limits of the Corporation, in any manner. It

is in this backdrop, the order cancelling the trade licences were challenged in the writ petitions.

3. The learned single Judge, while dealing with the writ petitions on merits, considered two questions as formulated and reproduced in paragraph 13 of the impugned order. The first question was whether the Commissioner is authorized to delegate the power to cancel the licences when he alone is vested with the said power under the Act?; and second was Whether the second respondent (Health Officer) has authority to cancel the licence as he had issued the licence having regard to section 21 of the Karnataka General Clauses Act, 1899?

3.1 While answering the first question the learned Judge also considered whether the power to cancel trade licences is in the nature of quasi judicial. He answered this question in the affirmative holding that the cancellation of licence could be exercised by the Commissioner alone and



this power, being quasi judicial in nature, cannot be delegated either to health officer or any other municipal officer.

3.2 The learned single Judge after recording his findings on both the questions in the negative in paragraph 27 of the order observed thus:

“Having regard to the conclusions arrived at by me as above, it is unnecessary to decide the other contention of the learned counsel for the petitioners with regard to the jurisdiction or authority of the Corporation to take action insofar as hookah service is concerned, having regard to the different provisions of the Tobacco Act, 2003. This question is kept open.”

3.3 Thus the learned Judge did not enter into merits of the case. In view thereof, learned counsel for the parties before us confined their arguments only on the question framed by us for consideration. It was mentioned by learned counsel for the respondents, subject to their right to challenge our order, if we answer the question in

the affirmative, the matters may be remanded to the learned single Judge for deciding them on merits. Learned counsel for the appellants also joined him in making such request. In the circumstances, without entering into merits of the case and keeping all contentions on merits open, we proceed to examine the question raised for our consideration.

4. Before we make any reference to the contentions urged by learned counsel for the parties in support of their case and referring to the Judgments relied upon in support thereof, we would like to have a close look at the provisions of the KMC Act, we are concerned with in these appeals, to which our attention was specifically invited to by learned counsel for the parties. It would be advantageous to re-produce relevant provisions, based on which the arguments were advanced before us. Sections 64, 66 and 67 of the KMC Act read thus:

**"64: Functions of the Commissioner**

- (1) Subject, whenever it is in this Act

expressly so directed, to the approval or sanction of the Corporation or the Standing Committee concerned and subject also to all other restrictions, limitations and conditions imposed by this Act or by any other law for the time being in force, the executive power for the purpose of carrying out the provisions of this Act and of any other law for the time being in force which imposes any duty or confers any power on the Corporation shall vest in the Commissioner, who shall also-

- (a) perform all the duties and exercise all the powers specifically imposed or conferred upon him by or under this Act or by any other law for the time being in force;
- (b) in any emergency take such immediate action for the service or safety of the public or the protection of the property of the Corporation as the emergency shall appear to him to justify or to require, notwithstanding that such action cannot be taken under this Act without the sanction, approval or authority of some other Municipal Authority or of the Government:

Provided that the Commissioner shall report forthwith to the Standing Committee concerned and to the Corporation the action he has taken and the reasons for taking the same and the amount of cost, if any, incurred or likely to be incurred in consequence of such

action which is not covered by a current budget grant under the provisions of this Act.

(2) Any powers, duties and functions conferred or imposed upon or vested in the Corporation by any other law for the time being in force shall, subject to the provisions of such law, be exercised, performed or discharged by the Commissioner.

(3) The Commissioner may, with the approval of the Standing Committee concerned, by order in writing empower any Corporation Officer to exercise, perform or discharge any such power, duty or function under his control and subject to his revision and to such conditions and limitation, if any, as he shall think fit to specify.

**66. Delegation of Commissioner's ordinary powers:** Subject to the rules made by the State Government, the Commissioner may delegate to "any officer" of the Corporation subordinate to him, any of his ordinary powers, duties and functions including the powers specified in Schedule III.

**67. Delegation of Commissioner's extraordinary powers** - The Commissioner may on his own responsibility and by order in writing authorize the Health Officer, the engineer, the revenue officer or any other officer who is the head of a department working under the Commissioner, or any person in

temporary charge of the duties of any of the officers aforesaid to exercise the extraordinary powers conferred on him by clause (b) of sub-section (1) of Section 64.

4.1 Chapter V of the KMC Act, consisting of sections 57 to 70, deals with powers and functions of the Corporation and other authorities. The other authorities are Mayor, Deputy Mayor, Standing Committee and Commissioner. We are not concerned with the powers and functions of all the authorities except the Commissioner and hence we are not making reference to all the provisions in this Chapter. Section 64 states about functions of the Commissioner subject to some restrictions as are seen from the language of sub-section (1). It appears that the executive powers for the purpose of carrying out the provisions of the KMC Act and of any other law for the time being in force which imposes any duty or confers any power on the Corporation vest in the Commissioner and he performs all the duties and exercise

all the powers specifically imposed or conferred upon him by or under this Act or by any other law for the time being in force.

4.2 Insofar as Section 64 is concerned the provisions contained in clause (b) with the proviso of subsection (1) of section 64 are relevant. Under this provision the Commissioner is vested with the power in "any emergency" to take such immediate action for the service or safety of the public or the protection of the property of the Corporation as the emergency shall appear to him to justify or to require, notwithstanding that such action cannot be taken under this Act without the sanction, approval or authority of some other Municipal Authority or of the Government and if any such action is taken by the Commissioner he should report forthwith to the Standing Committee concerned and to the Corporation the action he has taken and the reasons for taking such action, etc. We

are not concerned with the powers, duties and functions under sub-sections (2) & (3) of section 64 of the KMC Act.

4.3 Section 64 of the KMC Act, thus states about the powers, duties and functions of the Commissioner. The powers and functions conferred or imposed upon or vested in the Corporation by the KMC Act or any other law for the time being in force can be exercised, performed or discharged by the Commissioner, as contemplated by section 64.

5. Sections 66 & 67 of the KMC Act authorise the Commissioner to delegate his "ordinary" and "extraordinary" powers. Insofar as section 66 is concerned, the Commissioner is allowed to delegate his "ordinary" powers, duties and functions to any officer of the Corporation subordinate to him. Under section 67 the Commissioner may on his own responsibility or by order in writing authorizes the officers named in the section to

perform "extraordinary" powers conferred on him under clause (b) of sub-section (1) of section 64. From bare look at this provision it is clear that "extraordinary powers" are as defined or reflected in clause (b) of sub-section (1) of section 64. The scope of delegation under section 67, thus, is limited to the extent of the powers conferred on the Commissioner by clause (b) of sub-section (1) of section 64. Apart from these two provisions, viz. section 66 and section 67 there is no other provisions in the KMC Act under which the Commissioner can delegate his powers, duties or functions either extraordinary or ordinary to any other officer of the Corporation.

5.1. Section 66 of the KMC Act was amended and the expression "including the powers specified in Schedule III" was inserted by Act No.35/1994 and it was brought into force from 1.6.1994 (for short "the 1994 amendment"). It would be necessary to see to background facts against which Section 66 was amended



in 1994. Section 66 before its amendment in 1990 and after the amendment in 1996 fell for the consideration of this Court in **SHAILAJA UPPUND vs. COMMISSIONER, CORPORATION OF THE CITY OF BANGALORE – 1990 (3) KLJ (Suppl.) 506** and in **M/S. PEPSICO RESTAURANTS INTERNATIONAL (INDIA) PVT. LTD. vs. CORPORATION OF THE CITY OF BANGALORE – 1LR 1996 KAR. 1357.**

5.2 In **SHAILAJA UPPAND**, the question that was considered and decided was whether the Commissioner can delegate his powers of adjudication under rule 11 and 17 (2) of the Taxation Rules? The learned single Judge after considering the relevant provisions and the scheme of Taxation Rules including schedule III to the KMC Act and considering the Judgment of this Court in **CITIZENS FORUM AND OTHERS vs. STATE OF KARNATAKA & ANOTHER– 1986 (2) BLJ. 240** held that the power specified in schedule III, being quasi-judicial in nature, is

vested only in the Commissioner and no other officer, and in the result, set aside the order passed by the Commissioner's delegatee, i.e. the Deputy Revenue Officer, who was delegated the said power by the Commissioner under section 66 of the KMC Act.

5.3 In **PEPSICO** the learned single Judge was dealing with the question whether the Commissioner has legal authority to delegate his quasi judicial power to the health officer? While answering the question in the negative, the learned Judge observed that the expression "including the powers specified in Schedule III" as used by the 1994 amendment does not refer to the power of the Commissioner as a whole but refers only to the power of the Commissioner specified in Schedule III. He then, proceeded to consider the provisions contained in section 66, section 147 read with Schedule III of the KMC Act and so also the relevant rules of the Taxation Rules and held that prior to the 1994 amendment (Act 35/1994) the

Commissioner used to delegate his power to the revenue officers and such delegation was held to be without authority of law by this Court in **SHAILAJA UPPUND**. In other words it was held that the un-amended section 66 did not provide for delegation of quasi judicial functions specified in Schedule III by the Commissioner to any of his officers. It appears that before the learned Judge in **PEPSICO**, the learned counsel appearing for the Corporation had argued that section 66 was amended in 1994 in view of the observations made by the learned single Judge in **SHAILAJA UPPUND**. In view thereof, the learned single Judge in **PEPSICO** further observed that in order to include the power of the Commissioner specified in schedule III, which was held to be a quasi judicial act, the legislature amended section 66 of the KMC Act by adding the expression "including the powers specified in Schedule III". He further observed "that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the

legislature itself. If the words used are capable of one construction, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.” (Also see **RAJATHA ENTERPRISES vs. COMMISSIONER OF CORPORATION OF THE CITY OF BANGALORE (1996) 6 KLJ 1**).

6. It is in this backdrop Mr. Soundhi, learned counsel for the respondents submitted that section 66 of the KMC Act refers only to the “ordinary powers” of the Commissioner, which cannot be held to include “quasi judicial” powers which are wider and of much graver consequences. After making reference to the provisions contained in section 67 of the KMC Act, he submitted that the Commissioner can delegate his extraordinary powers only in situations contemplated by section 64 (1) (b). The powers or the situations contemplated by section 64

(1) (b), he submitted, cannot be equated with the quasi judicial power exercised by the Commissioner which is to be exercised in the interest of justice. Then, after making reference to the Judgments of this Court in **CITIZENS FORUM** and **SHAILAJA UPPUND** he submitted that had the legislature intended other quasi judicial powers to be delegated, the provisions of law would / could have been amended to expressly provide for delegation of all quasi judicial powers. Not having done so, he submitted, clearly indicates legislative intent to save other quasi judicial powers from delegation. He then submitted that the Corporation having accepted the ratio laid down by this Court in **PEPSICO** r/w the ratio laid down in **CITIZENS FORUM** and **SHAILAJA UPPUND** and the legal position that emerges in these Judgments remained in force for over 17 years, they cannot be permitted to change their stand and allowed to challenge those Judgments collaterally in these appeals. He also invited our attention to the concession made by

the Corporation in **PEPSICO** that section 66 did not contain the power to delegate the quasi judicial powers prior to the 1994 Amendment. The concession made by learned counsel for the Corporation in **PEPSICO** is binding on them and they are estopped from contending otherwise.

7. On the other hand, learned counsel for the Corporation invited our attention to several other provisions of the Act and the bye-law No. 35 to contend that they were not taken into account by learned single Judges in **CITIZENS FORUM, SHAILAJA UPPUND** and **PEPSICO** while interpreting the provisions contained in sections 66 & 67 of the KMC Act, and therefore, the law laid down by those Judgments needs to be re-visited and the relevant provisions need to be interpreted afresh. Though he conceded that the power to cancel trade licence is in the nature of quasi judicial, it was submitted that the Commissioner under section 66 has power to

delegate his quasi judicial function of cancelling the licence also to the health officer. He submitted that the expression that was inserted in section 66 of the KMC Act in 1994 is a clear indication whereby the legislature made it clear by using the word "including" that even quasi judicial function is an ordinary power of the Commissioner, and that can also be delegated under section 66 of the KMC Act. He submitted that the legislature, by the 1994 amendment made it clear that ordinary powers include quasi judicial power also and that it cannot be restricted only to the quasi judicial power as specified in Schedule III. Lastly, he submitted that section 66 expressly confers power on the Commissioner to delegate his power for cancellation of licence to Health Officer.

8. Power of cancellation of a licence has consistently been held to be a quasi judicial in nature by the Supreme Court as well as High Courts. In **STATE OF HP vs. RAJA**

**MAHENDRA PAI – (1999) 4 SCC** the Supreme Court observed that a quasi judicial function has been termed to be one which stands midway a judicial and an administrative function. The primary test is as to whether the authority alleged to be a quasi judicial, has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in the affirmative the authority would be deemed to be quasi judicial, and if the reply is in the negative, it would not be. The dictionary meaning of the word “quasi” is “not exactly”. It appears therefore, that an authority is described as quasi judicial when it has some of the attributes or trappings of judicial functions, but not all.

8.1 The Supreme Court in **Province of BOMBAY KUSALDAS S. ADVANI & ORS. – AIR 1950 SC 222** observed that the question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the



construction of the particular statute with the assistance of the general principles laid down in the judicial decisions. One of the principles, we are concerned with, deduced by the Supreme Court, is that if statutory authority has power to do any act, which will prejudicially affect the subject, then although there are not two parties, apart from the authority and the contest is between the authority proposing to do the act and the subject passing it, the final determination of the authority will yet be a quasi judicial act provided the authority is required by the statute to act judicially.

8.2 Supreme Court in **STATE OF UTTAR PRADESH vs. MAHARAJA DHARMANDER PRASAD SINGH - (1989) 2 SCC 505** observed that exercise of power of cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of such power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved

party and decide the matter consistent with the principles of natural justice.

8.3 In **STATE OF PUNJAB vs. MULK RAJ & CO. – AIR 1977 SC 1550** the Supreme Court while dealing with the provisions contained in section 36 of the Punjab Excise Act held that cancellation of licence is a quasi judicial function. Licence under this provision has to take place quasi judicially after due service of the notice on the licensee to show cause why it should not be cancelled.

8.4. Since learned counsel for the parties, in particular counsel for the Corporation, before us did not dispute this proposition, we would not like to delve on the question any further and we affirm the finding recorded by the learned single Judge that the power of cancellation of a licence is quasi judicial in nature. We, therefore, proceed to examine whether the commissioner is authorized to

delegate the power of cancellation of trade licence to any other officer of the Corporation.

9. It is true and by now it is well settled that quasi judicial power cannot be delegated unless the law expressly or by clear or necessary implications provide for it. The Supreme Court so stated in **BOMBAY MUNICIPAL CORPORATION VS. DHONDU NARAYAN CHOWDHARY – AIR 1965 SC 1486**. In this case the Supreme Court was dealing with the question whether the delegation by the Commissioner, Municipal Corporation of his functions under section 105-B to 105-E of the Bombay Municipal Corporation Act, to certain officers of Corporation was valid and proper. Considering the relevant provisions and before answering the question in the affirmative, the Supreme Court in paragraph 3 of the Judgment observed that **“it goes without saying that judicial power cannot ordinarily**

**be delegated unless the law expressly or by clear implication permit it.”**

9.1 The Supreme Court in **SAHNI SILK MILLS (P) LTD. & ANR. vs. EMPLOYEES’ STATE INSURANCE CORPORATION – (1994) 5 SCC 346** while dealing with the provisions of section 85-B(1) (as it then stood) and section 94-A of Employees’ State Insurance Corporation Act, 1948 held that the power under section 85-B(1) is quasi judicial in nature. While so holding, what Supreme Court observed further in paragraph 12 may be relevant for our purpose. The relevant observations read thus:

“ The maxim ***delegatus non potest delegare*** was originally invoked in the context of delegation of judicial powers saying that in the entire process of adjudication a judge must act personally except insofar as he is expressly absolved from his duty by a statute. **The basic principle behind the aforesaid maxim is that “a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language,**

**scope or object of the statute".** (Vide John Willis, "*Delegatus non potest delegare*, (1943) 21 Can. Bar Rev.257, 259)".  
(emphasis supplied)

9.2 In the backdrop of the Judgment of the Supreme Court referred to hereinabove and the submissions of learned counsel for the parties, we would now examine whether the KMC Act expressly or by clear implication permits the Commissioner to delegate his power to cancel a trade licence as contemplated by sub-section (2) of section 343 of the KMC Act.

10. We have already noticed that Sections 66 and 67 of the KMC Act authorise the Commissioner to delegate his "ordinary" and "extraordinary" powers. Before we proceed further we would like to look into some other provisions, reference to which would be useful, for deciding the question and so also to know the powers, duties and functions of the Commissioner in respect of granting, refusing, suspending, modifying, revoking and cancelling

the trade license certificate. Section 343 which is relevant, reads thus:

**343: Prohibition in respect of lodging houses** – (1) No person shall, without or otherwise, than in conformity with the terms of a licence granted by the Commissioner in this behalf, keep any lodging house, eating-house, tea-shop, coffee-house, café, restaurant, refreshment room, or any place, where the public are admitted for repose or for the consumption of any food or drink or any place where food is sold or prepared for sale.

**Explanation-** In this sub-section "lodging house" means a hotel, boarding-house, choultry or rest-house other than a choultry or rest-house maintained by the Government or a local authority, or any place where casual visitors are received and provided with sleeping accommodation, with or without food, on payment but does not include a student's hostel under public or recognized control.

(2) The Commissioner may at any time cancel or suspend any licence granted under sub-section (1) if he is of opinion that the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any bye-law made under Section 423 relating to such premises

whether or not the licensee is prosecuted under this Act.”

10.1 From the language of sub-section (2) it is clear that the Commissioner may at any time “cancel” or “suspend” any licence granted under sub-section (1) if the licence holder commits breach of the conditions of such licence or with the provisions of any bye-law made under section 423 of the KMC Act relating to such premises whether or not the licensee is prosecuted under this Act. The use of word “suspend” in sub-section (2) is an another indication that the power to cancel is quasi-judicial in nature and that before canceling the licence the principles of natural justice need to be followed. The power to suspend clearly indicates that it is interim in nature. In other words the Commissioner before canceling the licence has power to suspend the licence, if he finds that even during pendency of the proceedings for cancellation of licence it is not in the interest of the public health to allow to continue to run the business.

10.2 Next, we would like to have a glance at sections 443 & 444, only to know what are the powers of commissioner in relation to different licences under the KMC Act. Section 443 is a general provision regarding licences, registrations and permissions. The relevant portion of Section 443 reads thus:

**"443. General provisions regarding licences, registrations and permissions.-**

(1) Every licence or permission granted under this Act or any rule or bye-law made under it shall specify the period, if any, for which and the restrictions, limitations and conditions subject to which the same is granted and shall be signed by the Commissioner.

(2) (a).....

(b).....

(c) **Every order of the Commissioner** or other municipal authority **granting** or **refusing** a licence or permission shall be published on the notice board of the Corporation.

(3) **Every order of the Commissioner** or other municipal authority **refusing, suspending, cancelling** or **modifying a licence** or permission shall be writing and shall state the grounds on which it proceeds

(4) Notwithstanding anything contained in this Act **any licence** or permission granted under this Act or any rule or bye-law made under it, may at any time be **suspended** or **revoked by the Commissioner**, if any of its



restrictions or conditions is evaded or infringed by the grantee or if the grantee is convicted of a breach of any of the provisions of this Act or of any rule, bye-law or regulation made under it, in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud.

(5) to (10).....

(emphasis supplied)

10.3 Section 444 provides for appeals from Commissioner to Standing Committee. We are concerned with the following portion of section 444 which reads thus:

**"444: Appeal from Commissioner to Standing Committee:**

(1) An appeal shall lie to the Standing Committee from-

(a) .....

(b) .....

(c) .....

(d) .....

(e) **any order of the Commissioner made under sub-section (4) of Section 443 suspending or revoking a licence;**

(emphasis supplied)

10.4 Thus, sub-section (2) of section 343 empowers the Commissioner to "cancel" or "suspend" any licence granted

under sub-section (1) thereof. Sub-section (3) of section 443 states that every order of the "Commissioner" or "other municipal authority" "refusing", "suspending" and then "cancelling" or "modifying" a licence or permission be in writing and shall state the ground on which it proceeds. Sub-section (4) of section 443 which starts with non-abstante clause states that any licence or permission granted under the KMC Act or any rule or bye-law made thereunder, may at any time be "suspended" or "revoked" by the "Commissioner". The words / expressions used in the aforementioned provisions, show that the Commissioner is conferred with all the powers in relation to licences.

10.5 Bye-law No.35 was brought into force vide notification dated 15.2.1954 for the regulation of hotels, boarding houses, rest houses, restaurants, eating houses, cafes, refreshment rooms, coffee houses and any premises to which the public are admitted for the consumption of

any food or drink in the city of Bangalore, was framed under section 367 (13) r/w 369 of the City of Bangalore Municipal Corporation Act, 1949. The Bangalore Municipal Corporation came to be established under the City of Bangalore Municipal Corporation Act, 1949, and Hubli and Dharwad Municipal Corporations, functioning under the Bombay Provisional Municipal Corporation Act, 1949, which was in force, in the Belgaum area, were the only two Municipal Corporations in the State. Therefore, it was considered necessary that there should be a single enactment governing Municipal Corporations in the State and hence the KMC Act was brought into force. Though the bye-law no.35 was notified under the provisions of the City of Bangalore Municipal Corporation Act, 1949, we are informed and it is not disputed by learned counsel for the respondents that same bye-law no.35 operates and is in force till this date. Bye-law No.35 consists of 44 bye-laws and two schedules. Bye law no.35 provides for the procedure for issuance of licences temporary as well as

permanent. Since it is not necessary to make reference to all the bye-laws in Bye-law no.35, we would make reference only to bye-law 42 of bye-law no.35. It states about the power of the Commissioner to suspend or completely revoke any licence.

11. It is in the backdrop of the provisions referred to in the foregoing paragraphs, we proceed to examine the language employed in sections 66 and 67, to appreciate whether these provisions, expressly or by clear implication authorize the Commissioner to delegate his power to cancel the trade licence to any other officer of the corporation. Insofar as the Commissioner's power to delegate his power to issue the trade licence to the Health Officer is concerned, there is no dispute that the Commissioner can delegate this power under section 66 of the KMC Act. The use of language by the legislature in the provisions of the KMC Act and the Rules framed

thereunder, needs to be examined to gather the intent of the legislature.

11.1. In this connection, we would like to make reference to the Judgment of the Supreme Court in **RESERVE BANK OF INDIA vs. PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD. & ORS. - (1987) 1 SCC 424** where the Supreme Court at paragraph no. 33 has stated as to how statute should be construed after ascertaining legislative intent and in the context and scheme of the Act. Paragraph no. 33 reads as under:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of

the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the court's construction." (Also see **JASBIR SINGH v. VIPIN KUMAR JAGGI & ORS. – (2001) 8 SCC 289**).

11.2 In **BHAVNAGAR UNIVERSITY vs. PALITANA SUGAR MILL (P) LTD. & ORS. – (2003) 2 SCC 111** in paragraphs 23, 24 & 25 Supreme Court observed thus:

"23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give

effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.

24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."

11.3. It is thus clear that the provisions need to be looked at as a whole in setting of the entire Act and by reference to what preceded the enactment and the reasons for it.

12. Sections 66 & 67 in the KMC Act are the only two provisions which confer power on the Commissioner to delegate his powers, "ordinary" as well as "extraordinary" to any other officer of the Corporation. Insofar as

delegation of Commissioner's extraordinary powers in section 67 is concerned, we have already noticed that the provisions contained therein further make reference to what extraordinary powers mean. The KMC Act confers innumerable powers, functions and duties on the Commissioner, but when we look at sections 66 & 67, these provisions divide them only in two categories namely "ordinary and "extraordinary". No direct reference is made to the powers in the nature of quasi-judicial, such as the powers conferred under section 321, 343 (2), Schedule III, etc.

13. Section 321 of the KMC Act provides for demolition or alterations of buildings or well-work unlawfully commenced or carried on or completed. On the face of it, the power under this provision is wider and of much graver consequences. This provision confers power on the Commissioner even to order demolition of a building which is more grave in nature. The powers conferred



under this provision are indubitably quasi-judicial in nature. From the procedure contemplated by section 321, which also provides for show cause notice, it is clear that an enquiry under this provision has some of the attributes or trappings of judicial functions, but not all, and therefore, the principles of natural justice need to be observed / followed by the enquiring authority. The power to take action under this provision is conferred on the Commissioner.

13.1 This Court had an occasion to deal with section 321 of the KMC Act in **SMT. AKTHARUNNISA & ORS. Vs. THE CORPORATION OF CITY OF BANGALORE & ORS. – ILR 1997 KAR 2303**. The learned single Judge, in the Judgment held that the power under section 321 of the KMC Act is quasi – judicial in nature. The learned Judge then considered the question whether the power can be delegated under section 66 of the KMC Act to any other officer of the Corporation. After considering the relevant provisions and the Judgments of the Supreme Court

referred to therein held that the power conferred on the Commissioner under section 321 of the KMC Act, is one of the ordinary powers coupled with the duties. It was observed that and the powers which are conferred on the Commissioner, except the extraordinary powers and that all the functions and duties of the Commissioner may be delegated under section 66 of the Act. He further observed that as there is an express provision under the Act, enabling the Commissioner to delegate his powers to his subordinate officers, the order passed by the delegatee by virtue of delegation of power cannot be said to be without any authority of law. The judgment of the learned single Judge was carried in appeal and the Division Bench of this Court in W.A. No.4632/1997 affirmed the view of the learned single Judge and disposed of the writ appeal on 28.10.1997.

14. Section 66 of the KMC Act empowers the Commissioner to delegate his ordinary powers. In view of

the language employed in the section, learned counsel for the respondents vehemently submitted that under any circumstance, quasi judicial power cannot be termed as ordinary power and therefore, quasi judicial power, which is extraordinary in nature cannot be delegated by the Commissioner under section 66 of the KMC Act. It is true that in this section, the legislature has used the expression "ordinary" powers of the Commissioner. Section 67 empowers the Commissioner to delegate his "extraordinary powers" conferred under section 64 (1) (b) of the KMC Act. The legislature has made its intent clear in Section 67, as to what is "extraordinary power", without making reference to the powers in the nature of quasi-judicial in KMC Act. In view thereof, insofar as the KMC Act is concerned, the quasi-judicial powers cannot be termed as "extraordinary".

15. The legislature by using the word "extraordinary" in section 67, has categorized the remaining powers under the KMC Act as ordinary. It is also clear from the 1994 amendment whereby the legislature in view of the Judgments of this Court made it clear that the powers specified in Schedule III, which are quasi judicial in nature, can also be delegated by the Commissioner. In our opinion, having regard to the scheme of Sections 66 and 67, even the quasi judicial power is one of the ordinary powers coupled with the duties and that merely because the word "ordinary" is used in Section 66 does not mean, the powers vested in the Commissioner in the nature of quasi judicial cannot be delegated to any other officer of the Corporation.

16. We have noticed that in view of the Judgments of this Court in **SHAILAJA UPPUND** (supra), **CITIZENS**

**FORUM** (supra) and **PEPSICO** (supra) the legislature amended section 66 in 1994 and inserted the following expression at the end of section 66: "including the powers specified in schedule III". There is no dispute that the powers specified in schedule III are quasi judicial in nature. Therefore, the background against which the expression "including the powers specified in schedule III" was inserted by the 1994 amendment is sufficient to hold that delegation of ordinary powers by the Commissioner would also include powers in the nature of quasi judicial. In other words, the legislature by amending section 66 in 1994, made its intent clear that "ordinary powers" referred to in Section 66 would also include the powers in the nature of "quasi judicial".

17. We would now like to make reference to judgments of the Supreme Court dealing with the words "include" or "including". In **RESERVE BANK OF INDIA vs. PEERLESS CO. – 1987 (1) SCC 424** in paragraph 31

refer to **DILWORTH vs. COMMISSIONER OF STAMPS -- 1899 AC 99** and then in paragraph 32 made certain observations which may be relevant for our purpose.

Paragraph 31, 32 & 33 in DILWORTH reads thus:

31. Much argument was advanced on the significance of the word 'includes' and what an inclusive definition implies. Both sides relied on Dilworth case. Both sides read out the well known passage in that case where it was stated: (AC pp. 105-06)

**The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.** But the word imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

Our attention was also invited to *Ardeshir H. Bhiwandiwalla v. State of Bombay*, *CIT V. Taj Mahal Hotel* and *S.K. Gupta V. K.P. Jain*

32. We do not think it necessary to launch into a discussion of either *Dilworth* case or any of the other cases cited. All that is necessary for us to say is this: **Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive.....**

17.1. The Supreme Court in **SOUTH GUJARAT ROOFING TILES MANUFACTURERS ASSOCIATION & ANR. vs. THE STATE OF GUJARAT AND ANOTHER – (1976) 4 SCC 601** observed that the word “includes” is generally used as a word of expansion, but the meaning or a word or phrase is extended when it is said to include things that would not properly fall within its ordinary

connotation. Supreme Court further observed that there could not be any inflexible rule that the word "include" should be read always as a word of expansion without reference to the context. In paragraph 5 of the Judgment, supreme Court observed that though the word "include" is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention.

17.2. In **P. KASILINGAM & ORS. V. P.S.G. COLLEGE OF TECHNOLOGY & ORS. – 1995 Supp. (2) SCC 348** the Supreme Court observed that a particular expression is often defined by the legislature by using the word "means" or the word "include". Sometimes the word "means" and "includes" are used. The use of the word "means" indicates that definition is a hard and fast definition and no such meaning can be assigned to the expression then is put down in definition. (See **PUNJAB LAND DEVELOPMENT AND RECLAMATION CORPN.**



**LTD. v. PRESIDING OFFICER, LABOUR COURT, (1990) 3 SCC 682)** The word "include" when used enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural meaning but also those things, which the clause declares that they shall include. The words "means and includes" on the other hand, indicate an exhaustive expansion of the meaning which, for the purpose of this Act must invariably be attached to these words or expressions (see **MAHALAKSHMI OIL MILLS vs. STATE OF A.P. – (1989) 1 SCC 164**) (also see **BHARAT CO-OP. BANK (MUMBAI) LTD. vs. CO-OP. BANK EMPLOYEES UNION – (2007) 4 SCC 685**).

17.3. In **NDP NAMBOODIRIPAD V. UNION OF INDIA – (2007) 4 SCC 502** the Supreme Court observed that **"The word "includes" has different meanings in different contexts.** Standard dictionaries assign more than one meaning to the word

"include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that **generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive.** But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of"....

18. Now, let us find out what was the intent of the legislature in using the word "including" in the

1994 amendment and that whether the amendment was made in view of the dispute, or to bring under one nomenclature all transactions possessing certain similar features, but going under different names or to enlarge the meaning of words so as to include all similar transactions, possessing similar features, but going under different names, as observed by the Supreme Court in **RESERVE BANK OF INDIA vs. PEERLESS CO.** (supra)

19. In this backdrop once again we would like to have a glance at section 66 of the KMC Act. We have already noticed that Section 66 was amended in 1994 and the expression "including the powers specified in Schedule III" was inserted in the original section. We have also seen the backdrop against which the amendment was made. The word "include" or "including", as is used in Section 66, is very generally used in interpretation clauses in order to enlarge the meaning of the words and phrases

occurring in the body of the statute and when it is used, these words and phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include [see **DILWORTH** (supra)]. The legislatures resort to inclusive definitions to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, to include meanings about which there might be some dispute or to bring under one nomenclature all transactions possessing "certain similar features" but going under different names.

19.1 In the present case, the legislature seem to have, as admitted by learned counsel appearing for the Corporation before this Court in **PEPSICO**, by the 1994 amendment inserted the aforementioned expression in

view of the controversy / dispute that was raised in the said case (**PEPSICO**) whether the powers specified in schedule III were quasi-judicial and whether they could be delegated under section 66 of the KMC Act. Two learned Judges in **SHAILAJA UPPUND (supra)** and **CITIZENS FORUM (supra)** took a view that the powers contemplated by section 66 would not cover quasi-judicial powers and the powers specified in schedule III being quasi-judicial in nature cannot be delegated. In view thereof, the legislature by the 1994 amendment made its intent clear that "ordinary powers" would also include quasi - judicial powers. Insofar as the KMC Act is concerned, the 1994 amendment, would show that the quasi-judicial power is ordinary in nature, and could be delegated by the Commissioner under Section 66. Merely because the expression "including the powers specified in schedule III" was inserted by the 1994 amendment, does not mean that the other quasi-judicial powers stand excluded. By the 1994 amendment, in the backdrop against which it was

introduced, the Legislature included the powers specified in Schedule-III, and thereby simply made it clear, by using the word "including", that even quasi-judicial powers can also be delegated by the Commissioner under Section 66 of the KMC Act. This is also clear from the view taken by this Court in **AKTHARUNNISA** (supra), in respect of the power under Section 320 of the KMC Act.

20. If the language employed in the amended section is seen carefully in the backdrop of the discussion made in the foregoing paragraphs, it would show that the legislature while amending section 66 in 1994, could have used the conjunctive "and" or the phrase "means and includes". The use of the conjunctive "and" certainly would have restricted delegation of the powers specified in schedule III. If that was the intent of the legislature, it could have used the conjunctive "and" and not the word "including" while amending section 66 in 1994. Similarly, the use of the word "means" indicates that the definition is

a hard and fast definition, whereas the word "include" enlarges the meaning of the expression so as to bring under one nomenclature all transactions possessing certain similar features, going under different names. Thus the word "includes" has different meaning than the word "means".

21. In the present case, apart from the construction of the word "include" we cannot overlook the background against which the amendment in 1994 was made. At that point of time, there were Judgments of this Court in the field, wherein while interpreting section 66, as it was then standing, this Court had taken a view that the powers specified under Schedule III cannot be delegated for the reasons recorded in those Judgments. The legislature therefore, amended the section and simply clarified that this power also includes the power specified in schedule III which is quasi – judicial in nature. The legislature in our

opinion therefore, has clearly indicated or made its intent clear that "ordinary powers" also include the powers which are in the nature of quasi – judicial.

21.1. We find no reason as to why the Commissioner cannot delegate his power under sub-section (2) of section 343 of the KMC Act, which is quasi judicial in nature, to any other officer of the Corporation in exercise of his powers of delegation vested in him under section 66 of the KMC Act. We have no hesitation in holding that Section 66 of the KMC Act expressly permit the Commissioner to delegate even quasi-judicial powers, including the power to cancel the trade licence. The question framed by us, accordingly stands answered in the affirmative.

22. In the result, the appeals are allowed and the judgment and order passed by the learned single Judge is set aside. The writ petitions stand restored to file and



remanded to learned single Judge to decide them afresh. We make it clear that we have considered only the question that was framed by us and we have not touched the merits of the case. All contentions of the parties on merits of the case are kept open. We request the learned Judge to decide the writ petitioner expeditiously.

**Sd/**  
JUDGE

**Sd/**  
JUDGE

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