

(1961) 03 OHC CK 0010
In the Orissa High Court
Case No : O.J.C.No. 149 of 1960

Dandapani Patnaik and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-03-1961

Acts Referred:

Constitution of India, 1950 — Article 245

Orissa Municipal Act, 1950 — Section 4, 417B, 5

Citation : AIR 1962 Ori 17

Hon'ble Judges : R.L. Narasimham, C.J; R.K. Das, J

Bench : Division Bench

Advocate : Ranjit Mohanty and S.C. Ghose, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C. J.

1. In this application under Art. 226 of the Constitution the validity of the notification of the Government of Orissa in the Health (L. S. G.) Department No. 3223 L. S. G. dated the 6th May, 1960 issued in exercise of the powers conferred by Clauses (a) and (c) of Section 417B of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) is under challenge.

2. The Orissa Municipal Act, 1950 consolidated and amended the laws relating to Municipalities in the different parts of Orissa and came into force on the 11th November 1950. Prior to that date the law in force relating to Municipalities in Orissa was the Bihar and Orissa Municipal Act, 1922. In that Act there were distinct provisions (sections 388, 389 and 390 of Chapter XIV) dealing with, the Municipal administration of small areas known as "notified areas". Section 389 of that Act empowered the State Government to apply or adapt to a notified area any of the provisions of the Bihar and Orissa Municipal Act and to appoint a Committee to carry out the purposes of that Act in the notified area.

When the Orissa Municipal Act was passed in 1950 statutory provisions dealing with notified areas were completely omitted. In 1951 the omission was discovered and the Orissa Legislature passed an amending Act known as the Orissa Municipal (Amendment) Act, 1951 (Orissa Act 19 of 1951) by inserting a new chapter, Chapter XXX-A consisting of Sections 417-A and 417-B and 417-C providing for the constitution of notified areas by the State Government and conferring powers on the State Government to apply or adapt to a notified area any of the provisions of the Orissa Municipal Act and also to provide for the appointment or election of a Council to carry out the purposes of the Act in the Notified area. Sections 417-A, 417-B and 417-C of the Orissa Municipal Act 1950 are very similar to sections 388, 389 and 390 of the Bihar and Orissa Municipal Act.

3. The policy of the Orissa Legislature in thus inserting Chapter XXX-A in the Orissa Municipal Act, by the Amending Act (Orissa Act 19) of 1951 will be clear from the statement of objects and reasons to the Bill reproduced below:

"STATEMENT OF OBJECTS AND REASONS.

The Orissa Municipal Act of 1950 has repealed the Bihar and Orissa Municipal Act 1922 and does not contain any provisions about notified areas. Hence, the notified area committee at Bhubaneswar will cease to function as soon as the Orissa Municipal Act is extended. It is, therefore considered necessary to have in the Orissa Municipal Act 1950 provisions like these notified areas in the Bihar and Orissa Municipal Act, to deal with new townships like Bhubaneswar and other small urban areas which do not possess population of 10,000, to be constituted into municipalities under the Orissa Municipal Act but which require amenities and control as in a municipality and a modified form of administrative agency like a nominated notified area committee in the interest of efficiency....."

Under the proviso to Sub-section (1) of Section 4 of the Orissa Municipal Act the State Government can constitute an area into a municipality only if it contains a population of not less than 10,000 and the density of population is 1000 per square mile. That section further requires the State Government to issue a preliminary notification calling for objections from the inhabitants and for consideration of objection, if any, before constituting a municipality, This section also is very similar to Section 4 of the Bihar and Orissa Municipal Act, the only difference being that under the Bihar and Orissa Act the minimum population required for constituting a municipality was only 5000.

This provision was obviously enacted by the Legislature with a view to confer on the residents of a locality the right to be heard before a municipality is thrust on them, with their consequential liability to any municipal tax and, bear other burdens. But the, Legislature seems to, have felt that there may be smaller areas with lesser population which may also require amenities and control as a regular municipal area, but whose administrative agency should be of a modified form in the interests of efficiency. Hence, Chapter XXX-A was inserted in the Orissa

Municipal Act and the State Government was given wide discretionary powers to pick and choose these sections of the Municipal Act which, according to them, should be applied in a notified area, and also to provide for a simplified form of Municipal administration for that area. Purporting to act in exercise of the powers thus conferred by Section 417-B, the Government of Orissa by the impugned notification applied some of the, sections of the Orissa Municipal Act to a notified area known as Beyarani Notified Area in the district of Ganjam, completely omitted Sections 4 and 5 of the Orissa Municipal Act and gave further directions to the effect that a nominated council shall administer the said notified area.

4. Mr. R. Mohanty, appearing for the petitioners who claim to be some of the rate payers of Beyarani, has challenged the validity of the notification on the ground that the complete omission of Section 4 in the impugned notification, thereby depriving the residents of the locality of the opportunity of being heard before they are brought under the notified area and thereby subjected to taxation, amounted to excessive delegation of legislative authority by the Legislature, and that consequently, the notification was invalid. According to him, the right of the inhabitants of a specified area to be heard before they are subjected to taxation is a very valuable right safeguarded by Section 4 of the Orissa Municipal Act and the power conferred on the State Government by Section 417-B of that Act to apply or adapt to a notified area some , of the sections of the Act should be so construed as not to include the power to omit Section 4 altogether. In support of this contention he relied on the decision of the Supreme Court in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, where the principles laid down in the well known *Delhi Laws Act in Art. 132 Constitution of India and Delhi Laws Act (1912) etc.*, In re AIR 1951 SC 332 were reiterated and clarified.

5. As the entire argument of Mr. Mohanty turns on a proper construction of the aforesaid decision of the Supreme Court, it is necessary to examine it carefully. In that case their Lordships of the Supreme Court were mainly concerned with the validity of a notification issued by the Government of Bihar, on the 23rd April, 1951 after applying Section 104 of the Bihar and Orissa Municipal Act to a small area which was added to the Patna Administration Area and made subject to payment of tax. The entire legislative history dealing with the applicability of the Municipal laws to the area has been fully discussed in that judgment.

For the purpose of this application: it is sufficient to say that the Patna Administration Area (where the headquarters of the Government of Bihar is located) was being administered under the provisions of the Patna Administration Act, 1915. Section 3 (k) (f) of that Act authorised the State Government "to extend to Patna the provisions of any section of the said Act (meaning the Municipal Act in force in Bihar) subject to such restrictions and modifications as the State Government may think fit". In 1931 many of the provisions of the Bihar and Orissa Municipal Act were thus extended to the Patna Administration Area by an appropriate notification of Government, but subject to some restrictions and

modifications. Section 4 of the Bihar and Orissa Municipal Act (which corresponds to Section 4 of the Orissa Municipal Act was completely omitted) from the notification thereby depriving the residents of an area which might be subsequently included in the Patna administration area of their right of being heard.

Their Lordships of the Supreme Court however declined to express any opinion as to whether this notification of 1931 was valid or not. In 1951 a new area which was adjacent to the Patna Administration area, was included within the latter and the State Government, purporting to act u/s 3(1) (f) of the Act applied to the notified area Section 104 of the Bihar and Orissa Municipal Act, with some modifications. That section deals with the assessment of taxes. Their Lordships of the Supreme Court held that Section 3 (1) (f) of the Patna Administration Act was not unconstitutional, but the power to extend the Act with such restrictions and modifications as the State Government may think fit, must as a matter of construction, be limited to the power to make only minor modifications and not to make any essential change in the Act or any alteration in the policy as a whole. They further observed that Section 4 of the Bihar and Orissa Municipal Act laid down a very important question of policy, namely the right of the inhabitants to be heard before a Municipality is thrust upon them, and that it cannot be left to an executive authority to tear up this guarantee in disregard of the Legislature's solemnly expressed mandate.

Hence they hold that the notification modifying and applying Section 104 of the Bihar and Orissa Municipal Act to the new area was ultra vires inasmuch as the residents of the new area were made subject to taxation (by the Patna Administration area without being given an opportunity to be heard.

6. Though there are many similarities between the aforesaid Supreme Court case and the instant case, there is one important distinguishing feature. Section 417-B of the Orissa Municipal Act does not confer power on the State Government to extend to a notified area any of the provisions of the Orissa Municipal Act "subject to such restrictions and modifications as Government may think fit" as was conferred by Section 3 (1)(f) of the Patna Administration Act, 1915. In fact here the State Government have no right to modify or restrict any section of the Orissa Municipal Act while extending it to a notified area. The only power conferred on them is the power of adaptation which is limited to the making of formal and verbal changes in the Act so as to make it applicable to the new administrative set-up in that area. Under the guise of adaptation no authority can make any essential change in the Act, nor alteration in the policy. Hence the narrow meaning given to "the power to modify and adapt", in the aforesaid Supreme Court decision, does not arise for consideration here.

All that the Orissa Legislature did by section 417-B of the Orissa Municipal Act was to authorise the State Government to pick and choose some of the sections of the Act which they considered to be suitable for application in a small notified area which is otherwise not fit to be constituted into a Municipality. These

provisions of the Orissa Municipal Act which, by their terms, apply only to areas where the population is not less than 10,000) cannot obviously apply to notified areas with lesser population. In the statement of objects and reasons the Legislature made it clear that in the interests of efficiency, a purely nominated body may be constituted for such notified areas. Thus, when the legislative policy in respect of the notified areas has been made absolutely clear in the Statement of Objects and Reasons and when it is admitted that the Beyarani Notified Area contains a population of less than 1000, I do not think the notification can be challenged as ultra vires on the ground that it deprived the residents of that area of their right to be heard before tax is imposed on them.

Section 417-B of the Orissa Municipal Act cannot be held to be ultra vires in any view of the case because it gives lesser powers to the State Government than Section 3 (1) (f) of the Patna Administration Act which was held to be intra vires by their Lordships of the Supreme Court. The impugned notification is undoubtedly within the scope of Section 417-B and even if it does not provide for giving the inhabitants of a notified area the right to be heard before they are brought under the central or Municipal administration, that must be held to be the result of the declaration of policy by the Legislature itself. It is always open to the Legislature whose powers are undoubtedly plenary, to say that in a particular area all the provisions of the Orissa Municipal Act need not be applied and that a simplified form of municipal administration is desirable in the interests of efficiency. Having thus declared their policy the Legislature may leave it to the State Government to pick and choose these provisions of the Act which should be applied to the area, bearing in mind the policy mentioned above. This is exactly what the State Government have done in the impugned notification.

7. The Supreme Court decision on which Mr. Ranjit Mahanty relied would have been of home help to the petitioners if their Lordships had held that the notification dated 25th April 1931 applying the provisions of the Bihar and Orissa Municipal Act to the Patna Administration Area but omitting altogether sections 4 and 5 of that Act, was ultra vires on the ground that it was opposed to the policy of the Legislature of giving the inhabitants of the notified area the right to be heard. But as pointed out, already, their Lordships have not given any opinion on the validity of that notification.

8. I may, also in, tin's connection refer to a recent decision of the Supreme Court reported in Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, where the Delhi Laws case reported in AIR 1951 SO 332 and Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, have both been analysed and explained. Their Lordships reiterated the view that while the Legislature may lay down the Legislative policy and principle and afford guidance for carrying out the said policy before it delegates its subsidiary powers, it may nevertheless delegate to the Executive subsidiary and ancillary powers for that purpose. Doubtless such declaration must not lead to self-effacement of the Legislature. The question for consideration before their

Lordships of the Supreme Court was the validity of Section 6(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 which conferred powers on the State Government to fix a lower rate of rent payable by tenants on lands situated in a particular area, and also to fix such rate of rent on any other suitable basis as Government may think fit.

The Supreme Court held, by a majority that such wide powers of delegation were not unconstitutional inasmuch, as the main policy had been laid down in the preamble and the other provisions of the impugned Act. In the present case the State Government are in a stronger position than in the Bombay case which went up on appeal before the Supreme Court. Here the only power delegated to the State Government by Section 417-B of the Orissa Municipal Act is the power to pick out those sections of the Act which the Government may consider suitable for being extended to "notified areas" and to make such adaptation to those sections as may be necessary. The power conferred on the State Government is thus very much restricted and cannot amount to self-effacement by the Legislature.

9. For the aforesaid reasons this application is rejected. But there will be no order for costs.

R.K. Das, J.

10. I agree.