(1980) 07 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1346 of 1979

G.D. Mehta APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 15-07-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Income Tax Act, 1961 — Section 127

Citation : (1980) WLN 301

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—In this writ petition filed under Article 226 of the Constitution of India, the petitioner, G. D. Mehta has challenged the validity of the notification dated 12th May 1979, issued by the Government of Rajasthan, where by the revenue village Rawat Bhata in District Chittorgarh has been declared a notified area and a notified area committee has been constituted for the said notified area.

2. The facts giving rise to this writ petition are, as under. The petitioner is employed as Upper Division Clerk in the Rajasthan of the Atomic Power Project at Rawatbhata in District Chittorgarh. Section 313 of the Rajasthan Municipalities Act, 1959, (hereinafter referred to as the Act'') empowers the State Government to declare a specified area or any part thereof to be a notified area. Section 314 empowers the State Government to constitute a notified area. committee for the notified area Section 315 empowers the Sate Government or the notified area committee with the sanction of the State Government, to impose in any such notified area any tax which could have been imposed therein if such area were a Municipality. The said Section further empowers the State Government to apply or adopt to a notified area any of the provisions of the Act or of any other enactment for the time being in force which may be applied to a Municipality.

Section 316 empowers the State Government to cancel or modify any notification u/s 313 or any order made u/s 215. In exercise of the power conferred on it u/s 313 of the Act, the State Government issued a notification dated 28th February, 1975 whereby it signified its intention to declare revenue village Rawatbhata as a notified area In response to the said notification objection were preferred against the declaration of revenue village Rawatbhata as notified area and after considering the said objections, the State Government issued a notification dated 22nd July 1975 whereby it declared revenue village Rawatbhata as a notified area, and constituted a notified area committee consisting of 12 nominated members, for the said notified area. Subsequently, by notification dated 23rd November 1976 issued in exercise of the powers .conferred on is u/s 316 of the Act, the State Government cancelled the notification whereby the revenue village Rawatbhata was declared as a notified area, and a No(sic)tied-Area Committee constituted for the said notified area. The State Government issued another notification dated 29th December, 1977 (published in the Rajasthan Gazette dated January 5, 1978 in exercise or the powers conferred on it u/s 313 of the Act, whereby it again signified its intention to declare revenue village Rawatbhata as a notified area and in the said notification it was stated that any inhabitant of revenue village Rawatbhata, is he desires to object to the above intended declaration, may submit his objections in writing within six weeks from the date of publication of the said notification in the official Gazette. In response to the said notification objections were submitted by various individuls and organisations including RPS. Power Station Workers Union, Rawatbhata Traders Board, Rawatbhata, President of the Shramik Sangh, Rajasthan State karamchari Sangh, Rajasthah State Electricity Board Employees Union. The petitioner as General Secretary of the Rajasthan Anushakti Karamchari Sangarash Samti, Rawatbhata, also submitted his objections dated 30.h January, 1978 against tue declaration of revenue village Rawatbhata as a notified area. By notification dated 12th May, 1979 (published in the Rajasthan Gazette dated August 30, 1979) the State Government declared revenue village Rawat Bhata as a notified are a, and constituted a notified area committee and declared that the Chairman, Vice Chairman and member of the Notified Area Committee would be nominated by the State Government .for a term of three years. In the raid notification it was further declared that the Notified Area Committee would consist of 14 members out of whom two members were to be persons belonging to a scheduled caste and a scheduled tribe mho reside in the same area. By the notification aforesaid the Seats Government nominated the Assistant Collector and Magistrate as the Chairman of the Notified Area Committee and also nominated 12 members of the Notified Area Committee Rawatbhata. By the Notification aforesaid, the State Government has applied all the provisions of the Act to the Notified Area Committee, Rawatbhata. Being aggrieved by the aforesaid notification dated 12th May, 1979, the petitioner has filed this writ petition.

3. In the writ petition the petitioner was impleaded the Commercial Taxes Officer, Chittorgarh, as Respondent No. 16 and has prayed that an appropriate writ,

order or direction may be issued directing the Commercial Taxes Officer not to collect entertainment tax from Mabaiaxmi Talkies by taking the area to be Notified Area. But during the course of hearing Shri Mridu'', the learned Counsel for the petitioner, slated that the petitioner did not wish to claim any relief against Respondent No. 16.

4. Before dealing with the submlssions urged by Shri Mridul, the learned Counsel for the petitioner, it would be necessary to deal with the preliminary objection raised by the learned Addl. Government Advocate with regard to the maintainability of the writ petition. The submission of the learned Addl. Government Advocate is that the petitioner has no locus standi to maintain this writ petition in as much as there is nothing on the record to show that the petitioner is resident of revenue village Rawatbhata. to my opinion there is no merit in this preliminary objection. In the affidavit filed in support of the writ petition, the petitioner has stated that he is a resident of Rawatbhata, and is working in the office of Rajasthan Atomic Power Project. During the course of the hearing of the writ petition an affidavit has been filed by Shri G M, Gupta, a close friend of the petitioner, wherein it has been staled that the petitioner has been allotted Quarter No. NT.G. 74 in Rana Par(sic)tip Sagar Colony and, is residing there for the past 8 years. It is also not disputed that in response to the notification crated 29th December, 1977 the petitioner had submitted objections against the declaration of revenue village Rawatbhata as a notified area. In the circumstances, it cannot be said that the petitioner is not a person aggrieved b(sic) the impugned notification and that be has no locus standi to maintain the writ petition The preliminary objection raised by the learned Addl. Government Advocate I(sic), therefore, rejected.

5. For a proper appreciation of the submissions urged by Shri Mridul, the learned Counsel for the petitioner, in support of the writ petition it would be necessary to set out the provisions contained in Sections 313, 314, 315, and 316 of the Act:

313. Declaration of notified areas:

(1) The State Government may, by notification in the official Gazette, signify its intention to declare ''bat, with respect to all or any of the purpose of this Act, improved arrangements are required within a specified area which nevertheless, it is not expedient to declare to be a Municipality

(2) A copy of the notification under Sub-section (1) shall be published in such places and in such manner as the State Government may by general or special order direct

(3) Should any inhabitant of such specified area desire to object to the notification issued under Sub Section (1), he may within six weeks from the date of publication, submit his objection in writing to the State Government and the State Government shall take the same into consideration.

(4) When six weeks from the date of such publication have e expired and the

State Government has considered and passed orders on such objections as may have been submitted to its the State Government may, by notification in the official Gazette, declare the specified, area or portion thereof to be a notified area.

(5) The specified area or portion thereof in respect of which a notification has been made under Sub-section (4) is hereinafter called a notified area.

814. Constitution of notified area committee:

(1) There shall be established for each notified area a committee consisting of such number of members as may be fixed by the State Government and such members shall, for the first term be appointed, and, for the subsequent terms, be elected or partly elected and partly appointed, as the State Government may direct:

Provided that at least two members shall be appointed in each case by the State Government to represent the scheduled castes and scheduled tribes residing within the notified area,

(2) The State Government may appoint any person whether a member of the notified area committee or not, to be its Chairman or may authorise any notified area committee to elect its Chairman or Vice Chairman or both and may fix the term of office of the members, the Chairman and Vice--Chairman of the committee.

315. Power of State Government to impose tax and to extend provisions of the Act (1).

(1) The State Government or the notified area committee with the sanction of the State Government may impose in such area any tax which could have been imposed there in if such area were a municipality.

(2) The proceeds of any tax levied in any notified area under Sub-section (1) shall be expended only in the manner in which if the notified area were a municipality, the Municipality, the municipal fund might be expended.

(3) The State Government may apply or adopt to a notified area any of the provisions of this Act or of any other for the time being in force which may be applied to municipality or any rule or bye-law in force in any municipality under the provisions of this or any other Act. Subject to such restrictions & notifications, if any, as it may think fit.

(4) For the purpose of any provision of this Act, which may be extended to a notified area, the Committee established for such area shall be deemed to be a board under this Act and, the area to be a municipality.

316 Discontinuance of notified areas;

(1) The Government may at any time cancel or modify any notification u/s 313 or any order made u/s 315.

(2) When by reason of any order of cancellation under Sub-section (1) any notified area cease to be a notified area, the unexpended proceeds of any taxes lived therein u/s 315 shall be applied for the benefit of the inhabitant of such area in such manner as the State Government may think fit.

6. The first submission urged by Shri Mridul is that Section 313 of the Act is unconstitutional and void being voilative of the provisions of Article 14 of the Constitution of India in as much as it confers unguided powers on the State Government to declare any area as a notified area and it does not lay down the criteria which should be followed for the purpose of declaring an area as a notified area In this connection Shri Mridul has referred to Section 5 of the Act which makes provision for a local area being declared to be a municipality, and to Section 10 of the Act, which makes provision for composition of Municipal Boards in certain exceptional cases The submission of Shri Mridul is that in the aforesaid provisions the legislature has laid down the necessary guide lines, and that similar guide lines have not been laid down in Section 313 of the Act. In my opinion, the aforesaid contention urged by Shri Mridul cannot be accepted. Section 313 postulates that the power to declare a specified area as a notified area would be exercised in cases where improved arrangements are required within a specified area which, never the less, it is not expedident to be a municipality. Section 313 also contemplates that after publication of the Notification under Sub Section (1) whereby the State Government signifies its intention to declare specified area as a notified area, objections can be submitted by the inhabitants of the said area specified in the aforesaid Sub-section (l), and that the State Government shall take the said objections into consideration and pass orders on those objections before issuing the notification declaring a particular area as a notified area. In my opinion, the requirement that declaration with regard to a particular area to be a notified area would be made in cases where improved arrangements are required within the specified area, and the further requirement with regard to submissions of objections by the inhabitant of the area and consideration of the said objections by the State Government before issuing the notification declaring a particular area to be notified area, provides sufficient safeguards against an arbitrary exercise of power by the State Government in the matter of declaration of an area to be notified area and the provisions contained in Section 313 are, therefore, not open to challenge on the ground that they are violative of the provisions of Article 14 of the Constitution or that they involve an abdication of essential legislative function. The first contention urged by Shri Mridul is, therefore, rejected.

7. The second contention urged by Shri Mridul is that the power conferred on the State Government u/s 313 of the Act can be exercised only once, and it is not open to the State Government to exercise the said power in respect of a particular area, if the said area had earlier been declared to be a notified area u/ s 313 of the Act and the said notification u/s 313 of the Act has been cancelled by the State Government, In this context, Shri Mridul has pointed out that in Section 314 of the Act, it is provided that members of the notified area

committee for the Grit term be appointed by the State Government and for the subsequent terms, they would be elected or partly elected and partly appointed as the State Government may direct. The submission of Shri Mridul is that if the provisions of Section 313 are so construed as to empower the State Government to issue successive notifications declaring a particular area as a notified area the result would be that it would beopen to the State Government to cancel the notification u/s 313 of the Act. Just before the expiry of first term of the Notified Area Committee constituted under the saldnotification and issue a fresh notification u/s 313 of the Act nominating the members of the Notified Area Committee constituted under the said notification and thus deny the right of franchise conferred on the inhabitants of the notified area and thereby frustrate the object of the legislation contained in Section 314 of the Act. In my view, the said contention urged by Shri Mridul cannot be accepted Section 15 of the Rajasthan General Clauses Act, lays down that where, by any Rajasthan Law any power is conferred then, unless a different intention appears, that power may be exercised from time to time as occasion arises. There is nothing in Section 313 on the Act to indicate a contrary intention to exclude the applicability of Section 15 of the Rajasthan General Clauses Act. The provision contained in Section 314 of the Act with regard to composition of the Notified Area Committee cannot be construed to contain such a contrary intention. The argument advanced by Shri Mridul, that unless the provisions of Section 313 of the Act are construed in a restricted manner, it would be open to the State Government to exercise the said power in a manner as to deny the right of franchise to She inhabitants of a notified area and thus frustrate the intention of the legislature contained in Section 314 of the Act, is based on the premise that if the provisions of Section 313 are not construed in the restricted sence, there was a likelihood of the said power being absued. It is, however, settled law that mere possibility of abuse of a power cannot be a ground for denying the existence of that power and that would be open to the Court to strike down a malafide exercise of the power on extranceous and irrelevant considerations. It is therefore, not possible to hold that Section 313 cannot be invoked by the State Government in cases where an earlier notification declaring a particular area as a notified area issued u/s 313 of the Act has been cancelled u/s 316 of the Act, it is possible to visualise cases where it may became necessary to cancel a notification declaring a particular area as a notified area u/s 313 of the Act and to issue fresh notification in relation to the same area or part of that area. Such a necessity would arises in cases where the limits of a notified area are to be changed so as to exclude a part of the notified area or to include some other area in the notified area or when a notified area is divided into two separate notified areas, or when two notified areas are to be merged in one notified area. If the construction placed by Shri Mridul on the provisions of Sections 313 of the Act is accepted it would not be possible to do so. In my view therefore, the construction placed by Shri Mridul on the provisions of Section 313 cannot be accepted and the notification dated 12th May, 1979 cannot be held to be bad merely because an earlier notification had been issued u/s 313 of the Act declaring village Rawatbhata as a notified area and the notification was cancelled u/s 316 of the Act. It is not the contention of Shri Mridul that in issuing the notification dated 12th May, 1979 the Stale Government was actuated by malafides. The second contention urged by Shri Mridul is therefore, rejected.

8. The third contention of Shri Mridul is that in Sub Sections (3) and (4) of the Section 313 of the Act, it is provided that the State Government shall consider the objections submitted by the inhabitants of the specified area against the declaration of the said area as a notified area and shall pass an order on the said objection before declaring a particular area as a notified area, The submission of Shri Mridul is that the consideration under Sub-section (3) and (4) of Section 313 of the Act implies an objective determination of the various objections submitted in response to the notification issued under Sub-section (1) and for that purpose, it is necessary for the State Government to pass a speaking order giving reasons for rejecting the said objections. Shri Mridul has submitted that in the present case, ever though a number of objections had been submitted by various persons and organisations against the declaration of revenue village Rawatbhata as a notified area, no order was passed by the State Government on the said objections and the impugned notification dated 12sh May, 1979 also does not contain any reasons for rejection of the said objections which shows that the objections have not been duly considered by the State Government and the notification dated 12th May, 1979 has been passed in contravention of the provisions contained in Sub-sections (3) and (4) of the Act.

9. In Kuldeep Singh v. Union of India 1974 RLW 171, a Division Bench of this court had the occasion to construe the word "consider" used in Rule 1719 of the Railway Establishment Code and this Court has laid down the word "consider" or the process of consideration has within its ambit an examination of circumstances with objectivity rather than a mere subjective conclusion and that essentially it implies the duty to act judicially. In the said case this Court has further observed that it is necessary to pass a speaking order containing reasons which could be communicated to the railway servant against whom action is being taken.

10. In Kuldeep Singh v. Union of India (Supra) this Court has referred to the decision of the Supreme Court in M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, wherein the Supreme Court, while dealing with the provisions contained in Rule 54 of the Fundamental Rules was observed that an order that may be passed by the Government in exercise of the power conferred by the said Rule might result in pecuniary loss to the Government servant and fair consideration under the said Rules was an objective function arrived at from the facts and circumstances in their entirety.

11. The consequence of declaration of a particular area as a notified area u/s 313 of the Act is that the provisions of the Act can be made applicable to the said area. In other words the inhabitants of the area which is declared notified are liable to the imposition of the various taxes which can be imposed by a Municipal

Board under the provisions of the Act. The declaration of a particular area as a notified area thus prejudicially affects the rights of the inhabitants of the area which is declared as a notified area. Taking note the prejudicial effects of a declaration of an area as a notified area legislature has made provision for the issue of a preliminary notification by the State Government signifying its intention to declare a particular area as a notified area so to enable the inhabitants of the area specified in the preliminary notification, to submit their objection to the State Government and the legislature has cast an obligation on the State Government to consider and pass orders on the objection submitted to it before declaring the specified area or a part there by to be a notified area. In view of the consequences which flow from a declaration of a particular area as a notified area u/s 313 of the Act, I am of the opinion that the principles laid down by this court in Kuldeep Singh V. Union of India (Supra) would govern she exercise of the power conferred on the State Government u/s 313 of the Act and that it is necessary that the State Government, while considering that the objection received by it under Sub-section (3) of Section 313 of the Act, must piss a speaking order indicating an objective examination of the facts and circumstances.

12. In the present case it is not disputed that a number of objections had been submitted against the declaration of revenue village Rawatbhata as a notified area by various individuals as well as various organisations. The pensioner has placed on record a copy if the objection dated 30th January, 1978, submitted by him in his capacity as General Secretary of the Rajasthan Anushakti Karamchari Sangharash Samiti, Rawatbhata. The petitioner has also placed on record a copy of objections dated 6tb February, 1978 submitted by the Secretary, Rajasthan Anushakti Pariyojana Karmachari Sangh. From perusal of the aforesaid objection petitions, it appears that the objectors had raised a number of objection against village Rawatbhata being declared a notified area. The respondents have not produced any order passed by the State Government rejecting the aforesaid objections. In the impugned notification dated 12th Maym,1979 except, for the statement that the objection submitted had been considered by the State Government, there is nothing to show as to why the aforesaid objections were rejected by the State Government. The learned Addl. Government Advocate has tried to show from the notings on the original office file that the objections submitted by the various inhabitants were duly considered by the State Government. Shri Mridul has raised an objection to the Addl. Government Advocate relying upon the noting on the file for the purpose of showing that the objections were duly considered by the Statement Government. In Pragdas Kumar Vaihya v. Union of India 1967 M.P.L.J. 868, in context of an order passed by the Central Government under Rule 55 of the Mineral Concession Rules, 1960 the Supreme Court has laid down that the reason for the order could not be gathered from the notings in the files of the Central Government. The aforesaid decision has been followed by the Supreme Court in Ajanta Industries v. Central Board of Taxes (4), wherein it has been held that the requirement of recording

the reasons for ordering transfer of a case u/s 127(1) of She Income Tax Act, 1961 is a mandatory direction under the law and that non - communication thereof is not saved by showing that the reasons existing in the file, although not communicated to the assessee. In view of the aforsaid decisions, it was incumben upon the State Government to set out the reasons for rejecting the objections submitted by the inhabitans of revenue village Rawatbhata in a separate order duly communicated to the objections or at least in the notification dated 12th May, 1979 and the reasons for rejection of the objections cannot be gathered from the notings on the file of the State Government.

13. Moreover, from a perusal of the notings in the file of the State Government, I find that only one of the objections raised by the objectors with regard to the imposition of taxes on account of declaration of revenue village Rawatbhata as a notified area has been considered by the authorities and there is nothing to show that the various other objections which were raised by the objectors, including the petitioner, were given due consideration by the State Government. In the objections aforesaid it was pointed out that in Rawatbhata two projects of the Central Government are under construction, viz, Rajasthan Atomic Power Project and Heavy Water Project in which about 3200 employees and 2,000 labourers of the contractors are employed and in addition, there are about 700 employees of the Rana Pratap Sagar Dam, Rajasthan State Electricity Board and Irrigation Department and that the said employees are residing in the labour colonies and other colonies maintained by their respective departments and that the workers would not in any way be benefited by declaring village Rawatbhata as a notified area. Another objection that was raised was that the entire area of Rawatbhata has been declared as protected area for reasons of security and, there can be no interference by local bodies in the development of that area and it was pointed out that in the past when Rawatbhata wag declared a notified area a sum of Rs. 3 lakhs had been collected as taxes or the development of that area but the said money hid remained untilised because practically there was no land under the Notified Area Committee. There is nothing to show that the said objections were given due consideration by the State Government. In the circumstances it is not possible to hold that before issuing the notification dated 12th May, 1979 the State Government had duly considered the objections which were submitted by the inhabitants of the area sought to be declared as a notified area and it must be held that the notification dated 12th May, 1979, declaring revenue village Rawatbhata as a notified area has been issued without complying with the provisions of subsections (l) and (4) of Section 313 of the Act.

14. Mr. Mridul has next contended that the notification dated 12th May, 1979, is liable to be struck down for the reason that in pursuance of the said notification, the State Government has nominated a number of officers in their officiating capacity as members of the notified area committee and that under the provisious of the Act which had been made applicable to the notified area, it is not permissible for the State Government to aominate a person as a member by virtue of the office held by him. In support of the aforesaid submission Mr. Mridul

his placed reliance on the provisions of Section 26 of the Act to show that the persons who have been nominated as members of the Notified Area Committee by virtue of the office held by them were disqualified for being so nominated under Clause (8) of Section 26 in as much as they are holding a salaried appointment under the State Government. The learned Addl. Government Advocate has placed reliance on a decision of this Court in Dr. Badri Lai v. The State of Rajasthan and Ors. S B Civil Writ petition No. 418 of 1979 decided on 21st December, 1979, wherein a learned Judge of this Court (Kasliwal J.), while dealing with a case relating to the nomination of the members of a Municipal Board u/s 10 of the Act, has held that the provisions of Section 26 of the Act are not applicable to cases where members are nominated by the State Government u/s 10(1) of the Act, and further that it is within the competence of the State Government to nominate ex officio members to become members of the Municipal Board Shri Mirdul has submitted that the aforesaid decision does not lay down the correct law and needs reconsideration. As I am of the view that the notification dated 12th May,1979, is liable to be struck down on the ground that it was pasted in contravention of Sub-sections (3) and (4) of Section 313 of the Act, I do not consider it necessary to deal with the aforesaid submission of Shri Mridul.

15. Shri Mridul has lastly contended that in Sub-section (10) (1) of Section 61 of the Act it is laid down that every member shall, before entering-upon his duties as such, make and subscribe before the Collector or his nominee for the purpose an oath or affirmation in the prescribed form and that in Sub-section (2) it is provided that any member who fails to comply with the provisions of Sub-section (1) within a period of three months from the date of the first meeting of the Board shall be deemed to have vacated his seat. Shri Mridul has submitted that the aforesaid provisions of Section 61 have been made applicable to the Notified Area Committee by the State Government by its notification dated 12th May 1979, and, therefore, it was incumbent upon the members of the Notified Area Committee to have taken oath of office and that the failure on their part to take the said oath within the period of three months has resulted in their having ceased to be members of the Notified Area Committee, In the reply, that has been filed on behalf of the respondents, it has been submitted that the provisions of Section 61 are applicable only to elected member and the said provisions do not apply to nominated members of the Notified Area Committee and, therefore, there was no need for the members of the Notified Area Committee to have subscribed to any oath of affirmation u/s 61 of the Act. The learned Addl. Government Advocate has also submitted that the provisions of Section 61 would not be applicable to nominated members because, no form for oath or affirmation has been prescribed in relation to nominated members and the only form of oath or affirmation that has been prescribed is that under Clause 60 of the Rajasthan Municipalities Election? Order 1960 in relation to the elected members of Municipal Boards. Shri Mridul, on the other hand, has submitted that the use of the expression "every member" in Section 61 of the Act includes the

elected as well as nominated members and, that the provisions of Section 61 of the Act with regard to making or subscribing of the oath or affirmation are also applicable to nominated members. Shri Mridul has also submitted that there is nothing in the form that has been prescribed by clause 60 of the Rajasthan Municipalities Election Order, 1960 to show that it cannot be applied to nominated members and that the provision of Section 61 can be given effect to in relation to nominated members also. Shri Mridul has further submitted that in case it be held that no form has been prescribed for, oath or affirmation in relation to nominated members then it is not permissible for the Slate Government to nominate a member as it is not possible for a nominated member to discharge duties as a member. The submission of Shri Mridul is that the mandate contain in Section 61 of the Act cannot be rendered nugatory by the failure on the part of the State Government to prescribe the form and that the consequences of the failure on the part of the State Government to prescribe the form would be that it is not, open to the State Government to nominate a person as a member of a Municipal Board or a Notified Area Committee. In my opinion, it is not necessary to deal with the aforesaid contentions in as much as in my view, the notification dated 12th May, 1979 is liable to be struck down fox other reasons referred 40 above.

16. In the result, the writ petition is allowed, and the notification dated 12th May, 1979 issued by the State Government declaring revenue village Rawatbhata as a notified area is quashed. But in the facts and circumstances of the case, there would be no order as to costs.