**(1961) 01 OHC CK 0006**

**In the Orissa High Court**

**Case No :** O.J.C. No. 138 of 1960

Harihar Bahini Pati and Others APPELLANT

Vs

Municipal Council and Others RESPONDENT

**Date of Decision :** 11-01-1961

**Acts Referred:**

Constitution of India, 1950 — Article 226
Orissa General Clauses Act, 1937 — Section 22
Orissa Municipal Act, 1950 — Section 176(2)

**Citation :** (1961) 27 CLT 199

**Hon'ble Judges :** Narasimham, C.J;Barman, J

**Bench :** Division Bench

**Advocate :** Srinivas Misra, R.S. Sahoo and B.P. Patnaik, for the Appellant; G.K. Misra and S.C. Mohapatra, for the Respondent

**Final Decision :** Allowed

## Judgement

Narasimham, C.J.—This is a petition under Article 226 of the Constitution challenging the validity of a notification issued by the Puri Municipality on 18th March 1960 imposing enhanced taxes on bullock carts and bullocks within the said Municipality. The Petition was filed on behalf of the President, Vice-President and Secretary of the Sakata Bahak Sangh (Craftsmen''s Association) Puri.

2. It is admitted that during 1956-5 the tax on bullock carts and bullocks was Rs. 4/-percent per annum and Rs. 2/per pair of bullocks per annum. But on 11-3-1960 the Puri Municipality by resolution decided to increase the tax to Rs. 8/-per bullocks cart and to Re. 1/-per bullocks per half year. This resolution was given effect to for the year 1956-57. The Publication of the resolution enhancing the taxes as aforesaid was made on 18-3-1960 and it was expressly stated that the enhanced taxes shall take, effect from the 1st April, 1960.

3. Mr. Srinivas Misra on behalf of the Petitioners challenged the validity of the said enhancement mainly on the ground that u/s 176(2) of the Orissa Municipal Act the order of enhancement should have been published at least one month

before the beginning of the half year for which such tax was intended to take effect. Admittedly the publication was made on the 18th March 1960 and the tax was intended to take effect from 1st April 1960. Thus the period of one month statutorily required u/s 176(2) of the Act was curtailed. In the counter, affidavit filed on behalf of the Municipality, the aforesaid dates given in the writ petition were admitted but it was urged as a point of law that the period of one month prescribed u/s 176(2) of the Act would only apply when the tax was levied for the first time and not when the tax was enhanced or altered on subsequent occasions. This agreement is clearly unsound. u/s 22 of the Orissa General Clauses Act when a statutory power is given to pass an order, that power included the power "exercisable in the like manner and subject to the like sanctions and conditions, (if any), to add to amend, or vary" the said Order. Here also when it was decided by the Municipality, by an order, to alter the previous taxes on bullocks and bullock arts, the condition about the period required for the publication of the said order, as fixed in Section 176(2) of the Orissa Municipal Act, should also be complied with. We must accordingly hold that the notification of the Puri Municipality dated 18th March 1960 enhancing the taxes as mentioned above, without complying with the requirements of Section 176(2) is invalid and in operative.

4. In the counter affidavit filed on behalf of the Municipality it was further stated that by way of abundant caution the Municipality issued a subsequent order on the 26th August 1960 levying the enhanced taxes from 1st October 1960 thereby fully complying with the requirements of Section 176(2). The validity of this latter notification was not challenge 1 by the other side in this writ application. Our order, relating to the impugned notification dated 18th March 1960 must not therefore be construed as in any way affecting the validity of the subsequent notification dated the 26th August 1960.

5. In view of our decision on the main question it is unnecessary to discuss the other points raised in the writ application.

6. The petition is therefore, allowed and the notification issued by the Puri Municipality on 18th March 1960 enhancing the taxes on bullocks and bullock carts from 1st April, 1960 is declared invalid and inoperative. If any tax has been collected at the enhanced rates, for the first half of 1960, i.e. from 1st April 1960 to 30th September 1960, on the basis of the aforesaid notification the excess amount (over the rates previously levied) shall be refunded to he Petitioners. There will be no order for costs.

Barman, J.

7. I agree.