

(1989) 09 RAJ CK 0048
In the Rajasthan High Court
Case No : Special Appeal No. 84 of 1987

J.K. Synthetics Ltd.

APPELLANT

Vs

The Municipal Board of Nimbahera and Another

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan General Clauses Act, 1955 — Section 32(48)
Rajasthan Municipalities Act, 1959 — Section 104, 4, 4(7), 4(8), 6(2)

Citation : AIR 1991 Raj 1 : (1990) 1 WLN 689

Hon'ble Judges : M.C. Jain, Acting C.J.; J.R. Chopra, J

Bench : Division Bench

Advocate : L.R. Mehta, for the Appellant; M. Mridul, for the Respondent

Judgement

1. This appeal is directed against the order of the learned single Judge dated 9-1-87 whereby, the writ petition was dismissed.
2. The appellant M/s. J. K. Synthetics Limited challenged the notification dated 13-2-84 (Annex. 8) published in the Rajasthan Gazette dated 15-3-84 issued u/s 4(1)(b), (c) and (d) of the Rajasthan Municipalities Act, 1950, whereby, the Municipal Area of the Nimbahera Municipality was extended. The petitioner sought a declaration that the said notification is illegal and without authority of law and be quashed and octroi realised by the Municipal Board, Nimbahera be ordered to be refunded and the Municipal Board be restrained from realising any octroi duty from the petitioner company. The petitioner challenged the aforesaid notification on the ground that the objections filed by the petitioner-company were not considered properly and were disposed of without application of mind in utter disregard of the principles of natural justice inasmuch as no speaking order was passed by the State Government whether in its opinion the objections are insufficient or invalid, as required under Sub-sec. (2) of Section 6 of the Act. The learned single Judge found no substance in this contention. It was also contended before the learned single Judge that even if the notification extending

the Municipal Board is found to be valid, still over the extended area, the old notification imposing octroi duty would not be applicable. The notification dated 10-2-72 (Annex. 9) will have no application to the extended area and on the strength of that notification, the octroi is not leviable over the area included in the Municipality. The learned single Judge has wrongly applied Sub-sec. (8) of Section 4 of the Act. According to the petitioner-company, Sub-section (7) of Section 4 would apply and, so the old notification is not applicable to the extended area and the octroi can only be imposed and levied by fresh notification to the area included in the Municipality. The learned single Judge, according to the appellant erred in holding that the area sought to be included is not local area but it is a part of the Panchayat Samiti.

3. We have heard Mr. L.R. Mehta, learned counsel for the appellant company and Mr. M. Mridul, learned counsel for the Municipal Board and Dr. S.S. Bhandawat, learned Addl. Government Advocate.

4. For proper appreciation of the rival contentions raised in the present appeal, it is essential to read Section 6 and the relevant provisions of Section 4 of the Act. The relevant provisions of Sections 4 and 6 of the Act reads as under:--

Section 4. Delimitation of Municipalities :--(1) Subject to the provisions of Sections 5 and 6, the State Government may, from time to time, by notification in the official Gazette --

- (a) declare any local area to be a municipality;
- (b) define the limits of any municipality;
- (c) include or exclude any area in or from any municipality;
- (d) otherwise alter the limits of any municipality;
- (e) declare that any local area shall, from a date to be specified in the notification, cease to be a municipality.

Provided that for including in any municipality the whole or a part of a Panchayat Circle or for declaring the whole or part of a Panchayat Circle as a municipality, it shall not be necessary to observe and follow the procedure laid down in the Rajasthan Panchayat Act, 1953 (Rajasthan Act XXI of 1953), for excluding the whole or part of any Panchayat Circle from any Panchayat or for declaring that any such Panchayat Circle has ceased to be a Panchayat, notwithstanding anything contained in any judgment or order of any court.

(7) When any local area is included in a municipality all rules and bye-law is made, orders, directions and notices issued and powers conferred and in force throughout such municipality at the time when the said area is so included, shall apply thereto, unless the State Government otherwise directs from the date of such inclusion.

(8) Upon the exclusion of any area" of Panchayat Circle and its inclusion in a

municipality or upon its declaration as a municipality under Sub-section (1).

(d) until new rules, notifications, order, and bye-laws are made or issued under this Act, the rules, notifications, orders and bye-laws applicable to the municipality, in which any such area is included shall continue to apply to the area so included.

Section 6. Procedure preliminary to notification u/s :---

(1) Not less than two months before the issue of any notification u/s 4 the State Government shall cause to be published in the official Gazette, and to be posted in conspicuous spots or proclaimed by beat of drum in the area concerned, a proclamation announcing that it is proposed to constitute such local area to be a municipality, or to include or exclude it in or from any municipality, or to alter the limits of any municipality in a specified manner or to declare that such local area shall cease to be a municipality, as the case may be, and requiring all persons who entertain any objection to the said proposal to submit the same, with reasons there for in writing, to the State Government within (thirty days) from the date of the said proclamation.

(2) No notification u/s 4 shall be issued by the State Government, unless the objections, if any, so submitted are, in its opinion insufficient or invalid".

5. Section 4 makes a provision for delimitation of Municipalities. Under Sub-section (1) of Section 4, the State Government has power to declare any local area to be a Municipality, define the limits of any Municipality, include or exclude any area in or from any Municipality, alter the limits of any Municipality and declare that any local area cease to be Municipality by notification from time to time subject to the provisions of Sections 5 and 6 of the Act. Section 6 lays down the procedure preliminary to notification u/s 4. A proclamation is required to be announced, with regard to the proposed constitution of any local area of the Municipality or inclusion or exclusion of any local area in or from any Municipality or to alter its limits, not less than 30 days before issuance of any notification u/s 4. The proclamation requires all persons to submit any objections, against the said proposal, with reasons there for in writing to the State Government within 30 days from the date of the said proclamation. Thus, Section 6 makes a provision inviting objections with reasons against the proposal of constitution of any local area to be a Municipality or inclusion or exclusion of any local area in or from any Municipality. Sub-section (2) of Section 6 provides that no notification u/s 4 shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid. It would appear from this provision that this provision debars issuance of notification u/s 4 unless the objections are found to be insufficient and invalid by the State Government. It is only when they are so found that notification u/s 4 can be issued.

6. Mr. L.R. Mehta, learned counsel for the appellant in view of the decisions of the Supreme Court cited by Mr. Mridul, conceded that the notification u/s 4 is a conditional legislation and the principle of audi alteram partem will not be

applicable to it but he vehemently urged that when the statute itself makes a provision, how the conditional legislation is to be made, then the statutory provision laying down the procedure for issuance of conditional legislation i.e. notification, has to be observed and observance of that procedure provided in the statute, if it is in conformity with the principles of natural justice is not made, then the notification is liable to be struck down on account of non-observance of the statutory provision itself.

7. Mr. L. R. Mehta, learned counsel for the appellant submitted that in pursuance of the proclamation issued under Sub-section (1) of Section 6, the objections were submitted by the appellant-company but the objections were not decided in the manner stated in Sub-sec. (2) inasmuch as no opinion was formed regarding the insufficiency or invalidity of the objections.

8. In the present case, we may first state the facts leading to the issuance of notification (Annx. 8) u/s 4 on 9-3-83. With reference to the letter dated 28-12-82 of the Collector, Chittorgarh a letter was addressed by the Director Local Bodies to the Collector Chittorgarh that no comments have been sent on the objections filed against the proclamation dated 30-11-82. The Collector was requested to send his comments. The Collector Chittorgarh in reply to the said letter sent his comments vide letter dated 19-4-83. It was informed that the original objections were already sent to the Director, Local Bodies along with letter dated 28-12-82. The Collector further expressed his opinions on the objections of the appellant-company to the effect that the objections did not appear to be proper and it was so found after perusal of the objections. It was also expressed that the proposed extension of the Municipal area is justified. It was also stated that compliance of the provisions of Section 6 has already been made. The respondent's case is that after the proposal was made for the expansion of the area of the Municipality on 16-10-76, the matter engaged the attention of the State Government. It was decided to call the executive officer of the Municipal Board to take the proceedings in accordance with the Notification dated 7-12-76 and then sent a proposal all over again through the Collector. The Executive Officer was called for discussion and one Shri Jagdish Lal Lahadiya, Chairman of the State Youth Congress, Nimbahera demanded expansion of the area of the Municipal Board. The Chairman of the Municipal Board also requested for expansion of the area. These were noted in the note sheet. A plan was also sent along with proposal for perusal. The Collector, Chittorgarh expressed his agreement with the proposal and order was sought that a notification u/s 6 may be issued. The note-sheet further stated that after issuance of the notification, the objections were submitted by M/s. J. K. Cement Works and the same may be perused. A photostat copy of the note sheet submitted is Annx. R. 1/4.

9. In support of the above facts and affidavit of Shri Ahsan Ahmed, Assistant Director Original, Local Bodies, Udaipur dated 5-10-85 has been placed on record. A further affidavit has been placed on record by him to the effect that the matter of inclusion of the areas in question in the municipality commenced long

back on a proposal in this behalf being made by the municipality on 16-10-76 and on that proceedings were drawn and the matter was discussed at several levels and comments were invited from all concerned. Eventually proclamation u/s 6 was issued. Objections were received and the Collector sent his comments. Thereafter a notesheet was prepared on 19-11-83 wherein while referring to the issuance of notification and submission of objections and also to the comments of the Collector, it was noted that the expansion of the area was necessary with a view to give effect to residential schemes. This note was prepared by the Director, Local Bodies. A copy whereof was filed along with the affidavit. The matter that remained under consideration till it was approved by the Commissioner, Local Self Government and the Minister in-charge then approved it. It was only thereafter that the final notification u/s 4 was issued. The note of the Director, Local Bodies was put up for consideration of the Secretary, Local Self Government and the State Minister, Local Self Government. The Secretary, Local Self Government after putting up his note on 12-1-84 submitted the same to the State Minister, Local Self Government. The Secretary, Local Self Government referred to the notification dated 3-11-82 published in the Gazette and also to the view of the Collector, Chittorgarh and further referred to the proposal at point number 81-N. Then he submitted the proposal for approval at point No. 81-N, in view of the note at point No. 81-N, 99 and 100/N. The State Minister then signed the note in approval of the proposal for issuance of notification u/s 4 on 1-2-84.

10. It is to be seen as to whether opinion regarding insufficiency or invalidity has been formed in the manner in which the objections have been dealt with and whether compliance of Sub-section (2) of Section 6 has been made. But before that, it would be proper to refer to the case law cited at the Bar as to what is the nature of the notification u/s 4 and whether requirements of principles of natural justice are required to be fulfilled in connection with such a notification although a concession was made by Shri L. R. Mehta but still he referred to some decisions so we consider it proper to refer to case law cited by the parties in order to have a proper perspective of the matter.

11. Shri L. R. Mehta, learned counsel for the appellant referred to a decision of the Supreme Court in *The Government of Mysore and Others Vs. J.V. Bhat and Others*, . In that case the validity of the provisions contained in Sections 3, 9 and 12(1)(a) and (b) of Mysore Slum Areas (Improvement and Clearance) Act were challenged but the provisions were held to be valid. It was held that the notifications are bad as the affected persons were not given an opportunity of making representations against them. Sections provided for declaration of slum area and Section 9 enables an area to be declared a clearance area of any slum area. There were three notifications one u/s 3, another u/s 9 and the third one u/s 12 for acquiring certain lands. It was observed that it is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram

partem" rule could be imported. The nature of the hearing would of course vary according to the nature of the function and that its just and fair exercise required in the context of the rights affected. It was also observed that there can be no two opinions about the need to hear the affected persons before declaring an area to be slum area u/s 3, or an area as a clearance area u/s 9 or before taking action u/s 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action proposed.

12. Mr. Mehta, further referred to State of Orissa Vs. Sridhar Kumar Mallik and Others, . In that case the notification issued u/s 417-A(l-a) of the Orissa Municipal Act, 1950 was under challenge. It was provided in that section that the State Government may by notification declare that it is necessary to make administrative provision for all or any of the purposes of the Act in any area, specified in the notification, other than a municipality. Before publication of the notification a proclamation was to be issued inviting objections. The District Magistrate was required to forward all the objections with his views and the State Government is required to take into consideration the objections and the views forwarded by the District Magistrate before publication of notification under Sub-section (1). Their Lordships of the Supreme Court observed that proclamation of the State Government that it intends to issue a notification under Sub-section (1) of Section 417-A, does not satisfy the statutory requirements because a notification under that Sub-section may either be for all the purposes of the Act or for any of them. The proclamation was held to be ambiguous and incomplete and it is not the kind of notification which will ensure that the intention behind making it and calling for objections will be served. It may be stated that looking to the nature of the power conferred on the State Government, it was held to be essential to make mention in the proclamation whether administrative provision needs to be made "for all or any of the purposes" of the Act in the area proposed to be notified,

13. Reference was also made to Baldev Singh and Others Vs. State of Himachal Pradesh and Others, . In this case as well constitution of notified areas u/s 256 of the Himachal Pradesh Municipal Act, 1968 was under consideration. It was observed in para 2 of the judgment that there cannot be any serious dispute to the proposition that whether a particular area would be declared as notified area or not under the Act is ultimately an administrative decision. Their Lordships considered the effect of the constitution of the notified area as the area would necessarily be taken out from the jurisdiction of the Gram Panchayats. It was held that "before the notified area is constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the rule of law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way." Mr. Mehta submitted that issuance of notification was considered to be an

administrative decision of the State Government but before issuing of any such notification constituting any notified area, an opportunity of hearing has to be afforded to the residents of the locality. By referring to the above cases Mr. Mehta tried to submit that it is an administrative act of the State Government.

14, As against these decisions Shri Mridul, learned counsel for the Municipal Board, Nimbahera referred to a decision of the Supreme Court in *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, In that case notification dated August 22, 1955 was challenged by the plaintiff whereby the area in which the sugar factory was situated was declared as a town area. Section 3 of the U. P. Town Area Act, 1914 made a provision for declaration and definition of town areas. It was observed that the Act does not provide that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. It was contended that Section 3 of the Act by necessary implication imposes a duty on the State Government to follow the principles of natural justice. Their Lordships observed that this contention is based on the assumption that the duty imposed on the State Government is in the nature of administrative power in the exercise of which the State Government should follow the principles of natural justice. Their Lordships then proceeded to examine the question as to what is the nature of function which is performed by the State Government u/s 3. If that function is judicial or quasi judicial involving adjudication of the rights of any person resulting in civil consequences, it no doubt becomes necessary to follow the maxim "audi alteram partem" before taking a decision. Their Lordships observed that the powers of the State Government to make declaration u/s 3 of the Act is legislative in character because the application of rest of the provisions of the Act to the geographical area which is declared as a town area is dependant upon any such declaration Section 3 of the Act is in the nature of a conditional legislation. Their Lordships extracted the following passage from Prof. Section A. De Smith in *Judicial Review of Administrative Action* (Third Edition):--

"However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice of hearing unless the parent Act so provides".

15. Their Lordships of the Supreme Court then referred to a decision in *Bates v. Lord Hailsham of St. Marylebone* (1972) 1 WLR 1373. In that case Lord Chancellor announced that the scale of fees under Schedule I to the Solicitors' Remuneration Order, 1883 were proposed to be abolished and that for all conveyancing transactions the system of quantum meruit was to be applied. A draft order was sent to the Law Society which was proposed to be made u/s 56(2) of the Solicitors Act, 1957. That draft order was published in the Law Society Gazette, Circulars about the proposed order were sent by the Association then printed submission were sent by the Association to the Statutory Committee

that the order should not be approved and then the Lord Chancellor should seek further consultations with the profession and professional organisations. Lord Chancellor's reply was not to postpone the meeting or for refraining from making the order in such terms as the committee approved. The plaintiff as a member of the national executive committee of the association took out a writ against all members of the statutory committee seeking a declaration and injunction and he moved the court *ex parte* seeking to restrain the committee from holding the meeting. The motion was dismissed by Megarry, J. with the following observations:--

"In the present case, the committee in question has an entirely different function; it is legislative rather than administrative or executive. The function of the committee is to make or refuse to make a legislative instrument under delegated powers. The order, when made, will lay down the remuneration for solicitors generally; and the terms of the order will have to be considered and construed and applied in numberless cases in the future. Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy. Of course the informal consultation of representative bodies by the legislative authority is a common place; but although a few statutes have specifically provided for a general process of publishing draft delegated legislation and considering objections (see for example, the Factories Act 1961, Schedule 4). I do not know of any implied right to be consulted or make objections, or principle upon which the courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not *per se* make it immune from attack, whether by injunction or otherwise; but what is important is not its form but its nature, which is plainly legislative".

16. Their Lordships then observed that the maxim "*audi alteram partem*" does not become applicable to the case. Reference was also made to *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, , and the observations of Mukherjea, J., were extracted which were to the effect that the conditional legislation has all along been treated in judicial pronouncement not to be a species of delegated legislation at all. It comes under a separate category and if in a particular case all the elements of a conditional legislation exist, the question does not arise as to whether in leaving the task of determining the condition to an outside authority, the legislature acted beyond the scope of its powers. In para 18 of the judgment their Lordships concluded that "We are, therefore, of the view that the notification issued u/s 3 of the Act which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and

that it cannot be characterised as a piece of subordinate legislation and in that view of the matter contention of the plaintiff regarding the validity of the declaration made u/s 3 is not tenable.

17. Further reference was made by Shri Mridul to AIR 1981 1127 (SC) . Challenge was to the changing of the place of market area and contention based on principles of natural justice was raised which was turned down and it was observed as under:--

"We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context is certainly an act legislative in character and does not oblige the observance of the rules of actual justice. In *Bates v. Lord Hailsham*, (1972) 1 WLR 1373 , Megarry, J., pointed out that the rules of natural justice do not run in the sphere of legislation, primary or delegated, and in *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur* , our brothers Desai and Venkataramiah, JJ., approved what was said by Megarry, J., and applied it to the field of conditional legislation too. In *Paul Jackson's Natural Justice* (Second Edn.), it has been pointed out (at p. 169) :

"There is no doubt that a Minister, or any other body, in making legislation, for example, by statutory instrument or by-law, is not subject to the rules of natural justice --*Bates v. Lord Hailsham of St. Marylebone* (1972) 1 WLR 1373, any more than is Parliament itself; *Edinburgh and Dalkeith Ry Co. v. Wauchope* (1842) 8 C1 & Fin 710 per Lord Brougham, *British Railways Board v. Pickin*, 1974 AC 765."

Prof. H. W. R. Wade has similarly pointed out in his *Administrative Law* (4th Edn.): "There is no right to be heard before the making of legislation, whether primary or delegated, unless it is provided by statutes". There is, therefore, no substance in the invocation of the rules of natural justice."

18. Mr. Mridul also cited *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India* AIR 1986 SC 515 , in which in para 76 reference has been made to *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, and *R. K. Porwal's case* (AIR 1981 SC 1121) (supra) and *Bates case* ((1972) 1 WCR 1373) (supra) and it was observed that the subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned.

19. The last case to which reference has been made by *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, . Their

Lordships considered the provision relating to the constitution of municipal corporation contained in Section 3 of the Bombay Provincial Municipal Corporation Act, 1949. It was held that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid down on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court should say no more. In that case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified u/s 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs". Their Lordships referred to the Bate's case (1972) 1 WLR 1373 (supra), Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, and Baldev Singh and Others Vs. State of Himachal Pradesh and Others, .

20. Thus the principle is well settled that the action of the State Government with regard to the exercise of power u/s 4 of the Act was of legislative character and principles of natural justice would not be attracted. However, the power is required to be exercised in accordance with statutory provisions. Thus what is to be seen in the present case is as to whether the State Government has exercised the power of issuance of notification u/s 4 complying with the requirements of Sub-section (2) of Section 6.

21. Shri L.R. Mehta, learned Counsel for the appellant vehemently submitted that a mere approval by the Minister was not enough and it was no consideration of the objections. An opinion is required to be formed by the State Government regarding sufficiency or validity of the objections. No such consideration was made and as such compliance of Sub-section (2) of Section 6 has not been made in this case and so the notification u/s 4 is liable to be struck down. Reliance was placed by Shri Mehta on a decision in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . In that case the expression "If in the opinion of Central Government" occurring in Section 237(b) of the Companies Act came up for consideration. It was observed that formation of opinion is a subjective process but existence of circumstances suggesting inference of what has been set out in Sub-clause (i), (ii) or (iii) must be made out. It may be mentioned that such circumstances should be present on the basis of which inferences should be drawn which find mention in Sub-clauses (i), (ii) and (iii). This authority is of no help to the counsel for the appellant. On the contrary what has been observed is that the formation of opinion is a subjective process. In the present case opinion is required to be formed with regard to sufficiency or validity of the objections by the State Government. It is to be seen as to whether such an opinion has been formed or not.

22. Reference has also been made to a decision of this Court in *G. D. Mehtav. State of Rajasthan 1980 WLN UC 301*, by the learned single Judge. It has been held in the appeal by the Division Bench in *Notified Committee, Rawat Bhata v. G. D. Mehta 1980 WLN UC 297*. This case relates to the provision contained in Section 313(3) and (4) of the Rajasthan Municipalities Act, 1959. It was observed in this case that the State Government ought to have passed at least a speaking order, however brief or short it may be, on each and every objection raised to the notification issued under Sub-section(1) of Section 313 of the Act, so as to show that the objections were considered and dealt with on merits. It was found that only one objection was considered out of all the objections relating to inevitability of imposition of taxes. The other objections were not examined on merits, nor any speaking order of rejection was passed. The decision of the learned single Judge was upheld in appeal. Section 313 of the Rajasthan Municipalities Act made a provision for declaration of notified area. Sub-section (4) clearly provides that the State Government may by notification in the Official Gazette declare such municipal area or other specified area or any portion of the municipal area of the specified area to be notified "area, when it has considered and passed orders on such objections as may have been submitted to it. It would appear from the language of Sub-section (4) of Section 313 that objections have to be considered and orders have to be passed on the objections. It is in view of this statutory provision, a duty is cast on the State Government to pass orders on the objection and on that basis it has been found that all objections have to be considered and a speaking order has to be passed. Consideration and passing of order would suggest that it should be a speaking one. The language of Sub-section (2) of Section 6 in our opinion is altogether different and different expression has been used in Sub-section (2) of Section 6. The State Government is only required to form its opinion about the insufficiency or invalidity of the objections. Mr. M. Mridul, relied on a decision of the Supreme Court in *Bhaskar Textile Mills Ltd. Vs. Jharsuguda Municipality and Others*, . In that case the final notification was issued including villages in municipality u/s 4(2) of the Orissa Municipal Act. Objections were submitted and the objections were examined by the District Magistrate and thereafter by the Revenue Divisional Commissioner. The objection was overruled treating it to be of general nature. Thereafter the Community Development and the Panchayat Raj (Grama Panchayat) Department were consulted to agree with the proposal and thereafter the Urban Development Department issued a final notification. It was held that the contention of the appellant that the objection had not been considered cannot be accepted inasmuch as the objection is required to be made through the Magistrate of the District. The District Magistrate made his comments, the Revenue Divisional Commissioner intervenes in the channel of communication between the District Magistrate and the State Government and he therefore had an occasion to process the matter. The Panchayati Raj Department was also consulted by the State Government and ultimately the notification was issued by the State Government. It was held that in these circumstances it cannot be accepted that the objection filed by the appellant had not been considered by the

State Government.

23. Mr. Mridul, further placed reliance on S. B. decision in *Jetha Ram v. State of Rajasthan*, 1984 WLN 580. In that case there was a notification issued for alteration of the municipal limits of Nokha. Some lands, earlier situated within the areas of villages, were included in the Municipal Board, Nokha. Objections were invited. The Collector, Bikaner expressed the view that the objections had no merit and should be rejected. The Collector also obtained the views of the Deputy Town Planner, Bikaner and forwarded the same to the State Government and the same were rejected. The learned Judge observed as under :--

"Where objections were invited from all persons of a locality and numerous objections are likely to be filed, it is not possible for the State Government or some other authority to give a personal hearing to all the residents of the locality, who might have filed objections against the notification issued u/s 4(1) of the Act. In such cases the requirements of the principles of natural justice would be fulfilled if the representations made by the residents of the localities, proposed to be included or excluded to the municipal area, are considered, by the State Government and after consideration thereof a notification u/s 4(1) is issued. In the present case, it appears that the minimum requirements of the principles of natural justice were fulfilled as the representations submitted by the petitioners were considered by the State Government, after obtaining the views of the Collector, Bikaner and the Deputy Town Planner, Bikaner in respect thereof."

24. Reference was also made to *Motilal v. State of Rajasthan*, 1983 WLN 130, in which it was said that it was subjective satisfaction of the State Government to convert a Panchayat area into a Municipality. On merits it was held that there is no force in the objections of the petitioner that any principles of natural justice has been violated or opportunity of hearing or filing of objections have not been given to the residents of the area concerned.

25. It would appear from the facts of the present case that the proposal of the inclusion of local area into municipality was under consideration of the State Government right from 1976. Executive Officer was called. A proposal was sent to the Collector that there was a demand for expansion of municipal area by the Municipal Board as well as by the President of Youth Congress and it is in this background that a proclamation was issued u/s 6(1) inviting objections. Objections were received. Although it was not necessary to call comments from the Collector were called and the Collector expressed his opinion that the objections are not proper. It can be taken to mean that they do not deserve acceptance. The entire file containing the objections, comments, and other material was placed before the Minister-in-charge along with the note prepared by the Director, Local Bodies and the Secretary, Local Self Government. A brief note with the opinion of the concerned officers in the local self Government was put up for approval before the Minister-in-charge. It is true that it has not been said in so many words that the objections are insufficient or invalid but it cannot

be said that the opinion to that effect has not been formed by the Minister-in-charge. It is only after formation of that opinion that the Minister in charge approved issuance of the "notification u/s 4. All the material was placed before the Minister in charge, then it can be taken that the material has gone into consideration including the comment of the Collector and thereafter the Minister in charge thought it proper to approve issuance of notification. It is significant that in the last para of the note prepared by the Director, Local Bodies for consideration of the Secretary as well as for the Minister in charge reference is made to the original proposal of 1976 and to the issuance of notification u/s 6 inviting objections. The proposal of 1976 was required to be called along with the comments of Collector and thereafter issuance of proclamation u/s 6 was made and objections were invited and comment of the Collector were referred to in the note and it was also mentioned in the note that the expansion of the municipal area is necessary for residential scheme. It was a gist of the record though the record was also there with the aforesaid note. So the whole matter is to be examined in the right of the nature of the function being legislative in character and in the light of the background and processing of the matter on various levels. Viewed in this light, we are clearly and firmly of the opinion that the compliance of Sub-section (2) of Section 6 has been made and notification u/s 4 has been issued after formation of the opinion that the objection has no merit. Thus notification u/s 4 is not liable to be struck down as contended by the learned Counsel for the appellant. Having regard to the nature of the Act it was not necessary for the State Government to pass a speaking order on the objections. Only an opinion is required to be formed. The manner in which the whole matter is processed clearly indicates that the requisite opinion was formed and there has been no non-compliance of the provision of Sub-section (2) of Section 6.

26. Shri L. R. Mehta, learned Counsel for the appellant submitted that the notification issued u/s 4 extending the municipal area would not in any way entitle the Municipal Board to impose and levy octroi over the local area which has been included in the Municipal Board. Mr. Mehta, vehemently contended that octroi could be imposed only by a fresh notification and no octroi can be imposed or levied on the basis of the notification, whereby the same was imposed over the municipal area, as it existed prior to the new notification dated 13-2-84 (Ex. 8"). It may be stated that Section 4(7) makes reference to local area and relates to local area which is included in the municipality and Sub-section (8) of Section 4 makes provision for the area of Panchayat circle which is excluded from the Panchayat circle and is included in the municipal area, or the Panchayat circle is declared as a municipality. Expression Panchayat Circle is defined in Section 2, Clause (5) of the Rajasthan Panchayat Act, 1953 to mean the local area over which a Panchayat exercises jurisdiction. The factory area of the appellant company is not an area of the Panchayat Circle as admittedly no Panchayat exercises jurisdiction over the local area where the premises of the appellant company are situated. On facts before us there is no dispute that so far as the area of the appellant company is concerned which is a local area and not an area

of Panchayat Circle so Sub-section (8) of Section 4 would not apply to this area and Sub-section (7) of Section 4 would apply. Under Clause (d) of Sub-section (8) of Section 4 it is provided that the rules, notifications, orders and bye-laws applicable to the municipality shall continue to apply to the area so included until new rules, notification, order and bye-laws are made or issued. Under the Act according to Mr. Mehta there is no such corresponding provision so far as local area under Sub-section (7) is concerned. It is only the rules and bye-laws made, orders, directions and notices issued and powers conferred and in force as were there at the time of inclusion, shall apply to the local area. Mr. Mehta submits that there is no reference to "notification" under subsection (7) so the old notification of 1972 Anx. 9, imposing the levy of octroi would not be applicable to the newly included local area. Mr. Mehta submitted that u/s 104 of the Act, the Board is required to levy tax at such rate and from such date as the State Government may in each case direct by notification in the Official Gazette, octroi can be levied by the Board at such rate and from such date as directed by the State Government by notification to be published in the Official Gazette. In the absence of any such notification no levy can be made by the Board of any obligatory tax u/s 104. Until and unless the State Government directs the Board by notification for the newly included area, the Municipal Board, Nimbahera was no authority to levy octroi.

27, Mr. Mridul on the other hand submitted that the words used in Sub-section (7) are orders, directions, and notices issued and power conferred. Section 104 also uses the word "direct" for the Board to levy tax so the word "notification" should be considered as direction by the State Government. So the "direction" of the State Government shall apply to the newly included local area. He also submitted that the word "notices" is of wide import. It will also include expression "notification". Besides that by the notification of 1972, power has been conferred on the Municipal Board to levy octroi so that power is exercisable by the Board in relation to the newly included area. On this basis Mr. Mridul submitted that by virtue of the provision contained in Section 4(7) octroi is leviable under the 1972 notification Ex.9.

28, We are unable to agree with the submission of Mr. Mridul, the expression notification carries a particular connotation and signification. In the Rajasthan General Clauses Act, 1955 it has been defined u/s 32(48) to mean the "notification" published under proper authority in the Gazette. The expression notice used in Sub-section (7) cannot be taken to embrace within its scope and meaning a "notification". The legislature can be presumed to be alive of the significance of the expression "notification" as it has made use of this expression in Clause (d) of subsection (8) of Section 4. If the legislature intended to make the existing "notification" applicable to the newly included area, then it would have so provided in Sub-section (7). As regards the expression "direction" it may be mentioned that "direction" is different from "notification" so far as levying of obligatory tax is concerned. The "direction" has to be in the form of "notification". The expression "direction" occurs in Sub-section (7). To our mind

reference to the word "direction" is different from the expression "notification". Wherever in the various provisions of Municipal Act, if the State Government is possessing power of giving "direction" then such a "direction" would apply to the newly included area. It may be mentioned that u/s 104 in each case for giving direction to the Board for levying octroi, "notification" is required to be issued. So unless there is "notification" it cannot be said that the Board is directed to levy octroi and there is necessity of "notification" in each case. Section 104 is a taxing provision unless the tax is intended to be clearly imposed and levied by covering the matter under some expression, in our opinion it would not be justified to hold that the expression "direction" makes the old notification Ex. 9 applicable to the newly included area. As regards the expression "power conferred" to the same logic and reasoning applies. Within this expression, in our opinion, levy of octroi would not be covered, by the old notification Ex. 9 so no tax can be levied until and unless there is a clear and unambiguous provision for levying the same and that clear provision would have (been under Sub-section (7) when there would have been a use of the expression "notification" as it is provided in Clause (d) of subsection (8) of Section 4.

29. We have been referred to a decision of the Supreme Court in the *The Atlas Cycle Industries Ltd. Vs. State of Haryana and Another*, , where a similar provision like Sub-section (7) of Section 4 came up for interpretation. The word "notice" was not used in Section 5(4) of the Punjab Municipality Act but the words "rules, orders, bye-laws, direction and powers made, issued or conferred" were used, In that case there was a provision of Section 62(10) which indicates that there is imposition of tax only when the State Government notifies the imposition of tax and in the notification specifies a date on which the tax shall come into force. In the absence of imposition of tax by a notification u/s 62(10) of the Act, the municipality is not competent to impose levy or collect tax. In that case the industrial area of Sonapat where the appellant factory was situated was included in the municipal limits of Sonapat by issuance of notification u/s 5(1) of the Act. There was a notification dated 3-11-42 issued u/s 62(10) of the Act notifying the imposition of octroi within limits of the Sonapat Municipality. In para 21 of the judgment the question was considered as to whether the notification dated 3-11-42 became applicable by virtue of Section 5(4) of the Act. Their Lordships observed as under :--

"It is noticeable at the outset that Section 5(4) of the Act speaks of rules, bye-laws, orders, directions and powers and does not significantly mention "notifications". It is opposite to consider Sections 6,7 and 8 of the Act which deal with the effect of exclusion of local area from the municipality. In the case of exclusion of an area from the municipality it is provided in Section 8(1)(a) of the Act that "This Act" and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under the Act, shall cease to apply thereto". When the Act provided for notifications ceasing to apply in the case of exclusion of local areas, and in the immediately preceding Section 5, refrained from using the word "notifications" becoming applicable in the case of inclusion of areas the

legislative intent is unambiguous and crystal clear that notifications could not become applicable to an: included area on the strength of Section 5(4) of the Act."

30. This decision was referred to in subsequent decision in Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others, and it was observed that following the above decision their Lordships would have allowed the appeal and issued direction similar to those directions issued in the above case but the State Legislature of Haryana passed the Punjab (Haryana Amendment and Validation) Act, 1971 by the Amendment Act. The word "notification" was inserted in subsection (4) of Section 5 of the Act with retrospective" effect and it was observed that the Amending Act thus neutralises the effect of the decision in the case of Atlas Cycle Limited which can no longer be relied upon by the appellant after the amendment of the Act.

31. Thus in the absence of the word "notification" in Sub-section (7) of Section 4, the Municipal Board, Nimbahera has no authority to levy octroi over the newly included local area. We may however make it clear that so far as inclusion of any Panchayat Circle is concerned, that would be governed by subsection (8) of Section 4 and the old notification would apply to the newly included area of Panchayat Circle but the old notification Anx. 9 would not apply to the newly included local area. We, therefore, sustain the contention of Shri Mehta and hold that the levy of octroi under the notification dated 10-2-72 Anx. 9 within the newly included area is invalid with effect from the publication of the notification u/s 4(1) Ex. 8. Consequence thereof is that the party is entitled to the refund of any octroi realised from the party in relation to the local area as envisaged under Sub-section (7) of Section 4.

32. As regards the ground of mala fide action on the part of the Municipal Board, we find no substance in the same and no case is made out on that score by the appellant.

33. In the result, this appeal is partly allowed and it is declared that the notification u/s 4 is valid. However, the imposition of levy of octroi within the newly included "local area" is invalid and the appellant company is entitled to get the refund of the octroi realised from it in respect of the "local area" included in the municipality. Under the circumstances of the case, the parties shall bear their own costs throughout.