

(1987) 03 OHC CK 0035

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1356 of 1978

Ladu Kishore Acharya and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Municipal Act, 1950 — Section 417A, 417A(1), 417B

Citation : (1987) 64 CLT 281

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : S.N. Satapathy, for O.Ps. Nos. 1, 3 and 4, for the Appellant; P.K. Mishra, for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—The two Petitioners who on their own statements, are dealers in articles have filed this case under Articles 226 and 227 of the Constitution of India for declaring the constitution of Purusottampur Notified Area Council in the district of Ganjam as invalid being not in conformity with the statute and also to declare the imposition of octroi duty holding taxes and other taxes as being without authority.

2. The short facts necessary for the decision of the case are that a proclamation was issued on 24-3-1972 by the Urban Development Department u/s 417-A (I-a) announcing the Government's intention to issue a notification constituting different areas including Purusottampur as Notified Area Councils u/s 417-A (I) and calling upon the person residing within the areas to submit objections to the proposal. Two notifications were thereafter published on 22-12-1972 u/s 417-A (1) constituting the N. A. C. for all purposes of Orissa Municipal Act with effect from 1.1.1973 and the other u/s 417-B (a) (c). applying the different provisions of the Orissa Municipal Act to the N. A. C. including Chapter XIII. A further notification was made on 18-4-1974 u/s 417-B (a) in partial modification of the

notifications made on 22-12-1972 u/s 417-B (a) (c) and Anr. notification of the same date applying different provisions of the Orissa Municipal Act to the N. A. C. including whole of Chapter III. Admittedly the notification u/s 417-A (1-a) was published in the Orissa Gazette in English and was also published in an Oriya news paper "Swarajya" on 5-4-1972 in English. The Petitioners challenge such notification urging that the notification do not in terms satisfy the requirements of Section 417-A (1) since under that Section it is mandatorily required that the notification u/s 417-A must reveal the specific purpose of the Act which is to be made applicable to the area, in question and that the notification u/s 417-A (1-a) must be published in Oriya language in one of the newspaper circulating in the area.

3. The question came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal Nos. 515 and 546 (N) of 1980 disposed of on 31-7-1985 arising out of the judgment of this Court in O.J.C. Nos. 241 and 249 of 1977 disposed of on 27-2-1978 where a notification u/s 417-A was struck down on the twin basis that it did not specify whether the administrative provision for the area in question was necessary to be made in respect of all the purposes of the Act or only some of them and if so which. and secondly, that the proclamation u/s 417-A (1-a) was not published in the local newspaper in Oriya language as a result of which residents of the area were deprived, of the opportunity for submitting effective objection to the proclamation.

4. So far as the present case is concerned, notification u/s 417-A (I) has been issued for making the administrative provision for all purposes of the Orissa Municipal Act and hence the first ground on which the notification was set aside in the case before the Hon'ble Supreme Court is not available to be agitated here. It is however the admitted case in the counter-affidavit that the proclamation u/s 417 (1-a), besides being published in the Orissa Gazette in English was published in English language in the Oriya newspaper in circulation in the area and hence the second part of the decision of the Hon'ble Supreme Court would have become applicable to the facts of the case, but however for the reasons as stated hereinafter, we do not propose to issue a writ declaring the constitution of the Notified Area Council invalid.

5. The Petitioners are admittedly dealers and the purpose of their filing the case is primarily to void the imposition of octroi duty. The N. A. C. was constituted in March, 1972 but the challenge to the constitution has only been made by filing the case in 1978 when the octroi duty was started to be collected with effect from 1-9-1978. The N. A. C. being in existence in 1972 and various provisions under the Oriya. Municipal Act having been made applicable to it, the functioning of the N. A. C. must be presumed to have been to the knowledge of the Petitioners who never thought it fit to object to its constitution or application of different laws by it until they were affected by the collection of octroi. The purpose of proclamation being published in one of the local newspapers in Oriya language, as has been explained in the judgment of the Hon'ble Supreme Court, is to elicit the opinion

of the residents of the area who will be affected by the constitution of the notified area. The provision is thus primarily intended to enable the Government to reach a decision either in favour of the formation of the N. A. C. or otherwise after considering the opinion of the residents of the area. If the N. A. C. has continued without objection for six years and no objections were raised regarding it, it must be concluded that the present petition is a speculative one and is definitely not a representative petition as it claimed to be but has been merely filed for personal reliefs. The delay in moving this Court has not at all been explained. The petition suffers from gross laches and hence is liable to be rejected on that account.

6. In *State of Assam v. The Amalgamated Tea Estates Co. Ltd. and Ors.*, a similar question came up for consideration arising out of the Assam Municipal Act and the petition challenging the validity of a notification years after the constitution of the notified town committee and only after tax was demanded, was through out, reversing the decision of the High Court, as a speculative petition. In another case reported in *Om Prakash and Another Vs. Ashu Mandal and Others*, , a writ petition challenging the constitutionality of a Gram Panchayat 11 years after its constitution was dismissed on the ground of delay. In that view of the matter, it must be held that the writ petition is stale and that no effective challenge can be sustained in respect of the constitution of the N. A. C.

7. In the result, the petition is dismissed. There shall be no order as to costs.

G.B. Patnaik, J.

8. I agree.