
(1952) 12 PAT CK 0020
In the Patna High Court
Case No : Misc. Judicial Case No. 78 of 1952

Rajnarain Singh

APPELLANT

Vs

The Chairman, Patna Administration Committee

RESPONDENT

Date of Decision : 22-12-1952

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 98
Constitution of India, 1950 — Article 14, 226
Patna Administration Act, 1915 — Section 3(1), 5

Citation : AIR 1953 Patna 117 : (1953) 1 BLJR 102

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : B.C. Ghosh, N. Chatterjee and A.C. Mitra, for the Appellant; A.G. and K.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prosad, J.—This is an application under Article 226 of the Constitution by one Rajnarain Singh, who styles himself as Secretary to the Rate Payers' Association, resident of village Yarpur in the district of Patna. He has prayed for an appropriate writ or direction against the opposite party, who is the Chairman of the Patna Administration Committee, for restraining him from proceeding with the realisation of municipal taxes from the petitioner and other members of the Rate Payers' Association, or from enforcing the provisions of the Bihar and Orissa Municipal Act, 1922, as modified and extended by notifications dated 25-4-1931, & the 25-4-1951, and similar other notifications to the area in which the petitioner and the members of his association reside, and for quashing the said notifications.

2. The material facts are that in 1911, when the province of Bihar and Orissa was originally constituted the municipal legislation applicable to the province was the Bengal Municipal Act, 1884 (Bengal Act 3 of 1884), and the said Act with modifications from time to time continued to apply to the province. The Bihar

and Orissa Legislature subsequently enacted the Patna Administration Act, 1915 (Bihar and Orissa Act 1 of 1915). This Act was made applicable to Patna, and the area and the boundaries thereof were specified in the schedule to the Act, the said area being subject to exclusion or inclusion of any other local area by notification of the Local Government u/s 6 of the Act.

Section 3 of the Act authorised the Local Government to impose in Patna any tax which could be imposed there by the Municipal Commissioners, if Patna were" a municipality constituted under the Bengal Municipal Act of 1884. Clause (f) of Section 3 (1) of the Act further authorised the local Government to extend to Patna the provisions of any section of the said Act subject to such restrictions and modifications as the Local Government might think fit; and u/s 5 it was also provided that the Local Government might at any time cancel or modify any order u/s 3. As I shall show later, these two provisions of the Act as embodied in Sections 3 (1) (f) and 5, have been very seriously attacked by the learned counsel appearing on behalf of the petitioner.

The Local Government from time to time under various notifications purporting to act on the authority of the said provisions extended to Patna certain sections of the aforesaid Municipal Act. In 1922 the Bihar and Orissa Municipal Act (Act 7 of 1922) was enacted, and came into force with effect from 1-1-1923, under Government notification dated 22-11-1922. It extended to the whole of the province of Bihar including the Santal Parganas. By virtue of this Act, the whole of the Bengal Municipal Act applicable to the province of Bihar and Orissa stood repealed. In consequence of this statute, the Patna Administration Act also came to be amended by the Bihar and Orissa Act 4 of 1928, and in place of the words "Bengal Municipal Act 1884" the words "Bihar and Orissa Municipal Act 1922" were substituted in Section 3 (1) (a) of the Patna Administration Act.

This change took place undoubtedly after six years of the passing of the Bihar and Orissa Municipal Act. The result of this change in the Patna Administration Act was that the Provincial Government acquired authority by virtue of Section 3 (1) (f) of the Act to extend to Patna the provisions of any section of the Bihar and Orissa Municipal Act subject, to such restrictions and modifications as it thought proper, and also by virtue of Section 5 of the Act to cancel or modify any such order made u/s 3. On 25-4-1931, the Government of Bihar and Orissa published a notification in the local official Gazette.

The notification purports to have been made in exercise of the power conferred by Clause (f) of Sub-section (1) of Section 3 of the Patna Administration Act and by this notification the Government of Bihar and Orissa were pleased to extend to Patna the sections of the Bihar and Orissa Municipal Act according to the specification which followed in the body of the notification and in the modified form shown therein. The said notification also cancelled all the previous notifications extending to Patna the sections of the Bengal Municipal Act 1884 and the Bihar and Orissa Municipal Act 1922. In the said notification the various sections of the Act, as modified by the Provincial Government in appropriate

cases, are mentioned from chapter to chapter. The notification is thus a self-contained legislation in itself.

This procedure adopted by the Provincial Government has also been seriously questioned on behalf of the petitioner, and it has been urged that the Provincial Government has in making this notification usurped the functions of the legislature, which it had no authority to do the Government being a mere delegate of the legislative body for administrative purposes. On 11-4-1951, by a Gazette notification the provisions of the Bihar and Orissa Municipal Act were extended to certain other local areas including the area in which the petitioner resides. It also appears that on 25-4-1951, there was a further notification by the Government of Bihar in exercise of the power conferred by Clause (f) of Sub-section (1) of Section 3 of the Patna Administration Act under which the Governor of Bihar applied to Patna Section 104, Bihar and Orissa Municipal Act (Act 7 of 1922) in a modified form.

The Patna Municipal Corporation Act 1951 (Act 13 of 1952) came into force on the 26th of July, 1952, and u/s 2 of the Act the Bihar and Orissa Municipal Act 1922 was withdrawn from the local area comprised within the Patna City Municipality and the Patna Administration Act 1915 stood repealed but the withdrawal or abolition did not affect the validity of anything done or suffered or obligation or liabilities created under those Acts before the operation of the new statute. The complaint of the petitioner is that by virtue of these notifications he has been seriously prejudiced on account of the extension of the Bihar and Orissa Municipal Act to the area in which the petitioner and the members of his association reside.

3. It is contended by Mr. Ghosh on behalf of the petitioner that Sections 13 (1) (f) and 5 of the Patna Administration Act and the notification dated 25-4-1951, in pursuance thereof are void on the ground of delegated legislation. The Local Government u/s 3 (1) (f) undoubtedly enjoyed very large powers to extend to Patna the provisions of any section of the Bihar and Orissa Municipal Act subject to such restrictions and modifications as the Local Government thought fit. These restrictions and modifications might be very far reaching in their character, and it is submitted that some of them are indeed very far reaching, and Section 5 further authorised the Local Government at any time to cancel or to modify any order u/s 3. This, according to the petitioner, amounted to vesting the Local Government with full legislative powers to make any and every change they liked and to apply the Patna Municipal Act in any shape and form. Indeed the changes effected in the Act might metamorphose the Municipal Act into a completely new legislation.

It is to be borne in mind that in pursuance of these modifications the notification dated 25-4-1951, was published by the Local Government, and this notification itself shows that, according to the petitioner, vast changes have been made in the Municipal Act; many of the provisions of the Municipal Act have been omitted, while several others have been substantially changed or altered. He

points out, for instance, that Section 12, Municipal Act has been altered, and there is no provision for a body of Municipal Commrs. as contemplated by the Act. Sections 13 and 23 and various other sections of the Act have been omitted, and substantial changes have been introduced in Section 98, which is one of the vital sections, in regard to the assessment of taxes on the annual value of holdings.

4-5. These changes are undoubtedly there, but these omissions and changes appear to have been necessary on account of the fact that the area to which the notification applied was not governed by any municipality but by the Administration Committee under the Patna Administration Act which was presided over by a Chairman of its own. The changes were, therefore, consequential, and some of the changes which could not apply to the Administration Committee had to be left out of account in extending the provisions of the Municipal Act to the Patna Administration area. It cannot, therefore, be said that the modifications were so vital as to change the whole character and nature of the legislation which was, after all, a legislation for the purpose of providing the residents of the locality with municipal amenities and also to levy taxes on them for the purpose of financing those amenities. In this connection reliance was placed upon a decision of the Supreme Court in the famous Delhi Laws Act case which is also otherwise known as the Delhi Delegation case -- "In re Article 143, Constitution of India and Delhi Laws Act (1912) etc. AIR 1951 SC 332 (A). In that case there were three questions referred to the Supreme Court for its decision. The questions were as follows:

"1. Was Section 7 of the Delhi Laws Act, 1912, or any of the provisions thereof and in what particular or particulars or to what extent "ultra vires" the Legislature which passed the said Act?"

Section 7 of the Delhi Laws Act, mentioned in the question runs as follows :

"The Provincial Government may, by notification in the official gazette, extend with such restrictions and modifications as it thinks fit to the Province of Delhi or any part thereof, any enactment which is in force in any part of British India at the date of such notification."

2. Was the Ajmer-Merwara (Extension of Laws) Act, 1947, or any of the provisions thereof and in what particular or particulars or to what extent "ultra vires" the Legislature which passed the said Act?"

Section 2 of the Ajmer-Merwara (Extension of Laws) Act 1947, runs as follows:

""Extension of Enactments to Ajmer-Merwara --The Central Government may, by notification in the official gazette, extend to the Province of Ajmer-Merwara with such restrictions and modifications as it thinks fit any enactment which is in force in any other Province at the date of such notification.

3. Is Section 2 of the Part C States (Laws) Act, 1950, or any of the provisions thereof and in what particular or particulars or to what extent "ultra vires" the

Parliament?"

6. Section 2 of the Part C States (Laws) Act, 1950, runs as follows:

"Power to extend enactments to certain Part C States -- The Central Government may, by notification in the Official Gazette, extend to any Part C State (other than Coorg and the Andaman and Nicobar Islands) or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which as in force in a Part A State at the date of the notification and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

On the first two questions, the majority of the Judges of the Supreme Court were of the view that the laws referred to in those questions were not ultra vires the Legislature and did not offend against the principle of delegation; in other words, they could not amount to delegated legislation. On the third question, there was some difference of opinion expressed by two of the Judges who agreed with the majority view. Kania C. J. & Mahajan J. held categorically that all the three sections mentioned in the three questions were ultra vires the Legislature. Fazl Ali, J., on the contrary, held with equal unambiguity that none of the provisions which were subject of the three questions referred to was ultra vires and so did Patanjali Sastri J. (as he then was) and Das J.

Mukherjea J. held that Section 2, Part C States (Laws) Act, 1950, was ultra vires to the extent that it empowered the Central Government to extend to Part C States laws which were in force in Part A States, even though such laws might conflict with or affect laws already in existence in the area to which they were extended, and the power given by the last portion of the section to make provisions in any extended enactment for the repeal or amendment of any corresponding provincial law, which was for the time being applicable to that Part C State was, therefore, illegal and ultra vires. Base J. also agreed with this view of Mukherjea J. inasmuch as he was also of the opinion that Section 2 of the Part C States (Laws) Act, 1950, was intra vires except for the concluding sentence which ran as follows :

"and provision may be made in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State."

This portion of Section 2, he held to be "ultra vires". With great respect, it is, difficult to deduce any definite principle from the decision in question because of the varied opinion of the learned Judges; and I do not find anything in that decision to assist the contention of the petitioners counsel. It seems to me safer to base my judgment upon the view of the three learned Judges who were in the majority and who held that the whole of Section 2 of the Part C States (Laws) Act, 1950, was intra vires. It is to be noticed that all the sections referred to in the three questions authorised the Provincial Government to extend by

notification certain enactments "with such restrictions and modifications" as they thought fit.

That being so, I do not see how on the authority of this decision Section 3 (1) (f) or Section 5 of the Patna Administration Act can be held to be anything but *intra vires*. Much stress was laid by the learned counsel on the decision of Bose J. and some of the observations which obtain in his judgment; but even that learned Judge warned that each case had to be decided on its own facts as and when it arose; and even he was unable to hold in view of the past history of judicial pronouncements and in view of the necessities of a modern State that legislations of this kind were altogether beyond the competence of the Legislatures. I cannot do better than reproduce his Lordship's own picturesque language in this context :

"I find myself obliged to steer a middle course between two conflicting principles which have been handed down from the past and which have been woven into the Indian concept of legislative power prior to the present Constitution. One permits very wide powers of delegation for sound and practical reasons despite the attempts made to disguise that fact by placing a special meaning on words like "delegation", "legislation", "sovereignty" and "abdication". The other holds that new legislative bodies cannot be set up by fettered legislatures like ours (I mean of course when they are not exercising constituent powers) and, as a corollary to that, that essentially law-making powers cannot be transferred.

Both principles are sound and there are weighty reasons for retaining both, as indeed the Privy Council has been at pains to do ever since 1878. But I find it difficult to keep them side by side and at the same time be strictly logical. I have therefore endeavoured to give effect to both in a practical way as best I could. I realise that this will lead to differences of opinion among judges in individual cases. But that, to my mind, is the only feasible and practical way of dealing with a situation in which much confusion of thought already exists. In any event, these are the lines along which British jurisprudence has functioned for centuries and our legal and juristic foundations lie there.

It has this much merit. It helps to keep legislation and executive action on an even keel for, so long as the powers are used sparingly and with moderation, no Court is likely to interfere. It is only when advantage is taken of a doctrine based on sound practical considerations and an endeavour is made to push it further and further till the dividing line between permissible delegation of authority and virtual abdication of legislative functions, as a common-sense man in the street would understand it, devoid of legal subtleties, becomes dangerously thin that trouble is likely to arise".

The contention, therefore, on the point of delegation must fail.

7. Mr. Ghosh next contends that Section 98 as published in the notification dated 25-4-1931, in its application to the Patna Administration area was void on account of its being inconsistent with Article 14 of the Constitution which deals

with the equality of all persons before the law. Article 14 enacts that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. He has in this connection sought to support his argument by reference to several recent decisions of the Supreme Court. In -- *The State of West Bengal Vs. Anwar Ali Sarkar*, the majority of the Judges held that the procedure laid down by the Act impugned therein for the trial by Special Courts varied substantially from the procedure laid down for the trial of offences generally by the Code of Criminal Procedure, and the Act did not classify or lay down any basis for classification of the cases which might be directed to be tried by Special Courts but left it entirely to the uncontrolled discretion of the State Government to direct any case which it liked to be tried by the Special Court.

In the circumstances they held that the Act in question contravened Article 14 of the Constitution and was as such void. Their Lordships also pointed out that a rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law, and it was, therefore, necessary that all litigants who were similarly situated were able to avail themselves of the same procedural rights for relief and for defence with like protection and without any discrimination between them, it was also pointed out there that the meaning and scope of Article 14 had been elaborately explained in two earlier decisions of the Supreme Court viz., -- *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and -- "*State of Bombay v. F.N. Balsara* AIR 1951 SC 318 (D).

The principles laid down in those decisions were that Article 14 was designed to protect all persons placed in similar circumstance against legislative discrimination, and, if the Legislature took care to reasonably classify persons for legislative purposes and if it dealt equally with all persons belonging to a well defined class, the legislation so enacted would not be open to the charge of denial of equal protection on the ground that the law did not apply to other persons. It was also observed that there was nothing sacred or sacrosanct about the test of reasonableness in making the classification. The same principles appear to have been reiterated in the other two cases cited by the learned Counsel. In -- *Kathi Raning Rawat Vs. The State of Saurashtra*, the Saurashtra State Public Safety Measures Ordinance, 1948, was called in question. The Ordinance was brought into being as crimes involving violence such as dacoity and murder were on the increase, and it empowered the State Government by notification in the official gazette to constitute Special Courts of Criminal Jurisdiction for such area as may be specified in the notification to try such offences or classes of offences or such cases or classes of cases as the Government may by general or special order direct. The procedure laid down by the Ordinance for the trial of such cases also varied from the normal procedure prescribed by Criminal P. C. The majority of the Judges held that the impugned Ordinance did not contravene the provisions of Article 14 and was not ultra vires or void. The following comment of Patanjali Sastri, C. J., on the decision of the Supreme Court in the Delhi Laws Act case while meeting the argument of

Counsel is rather interesting:

"He attempted to make this out toy piecing together certain dicta found in the several judgments delivered in that case. While undoubtedly certain definite conclusions were reached by the majority of the Judges who took part in the decision in regard to the constitutionality of certain specified enactments, the reasoning in each case was different and it is difficult to say that any particular principle has been laid down by the majority which can be of assistance in the determination of other cases."

This diversion apart, to come back to the point (sic) *Mujherjea, J.*, who agreed with the major view, observed as follows:

"It is well settled that a legislature for (sic) purpose of dealing with the complex problem(sic) that arise out of an infinite variety of human(sic) relations, cannot but proceed upon some (sic) of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause.

Equality prescribed by the Constitution would not be violated if the Statute operates equally on all persons who are included in the group, and the classification is not arbitrary or capricious but bears a reasonable relation to the objective which the legislation has in view. The Legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the legislation, that necessity of judicial interference arises."

Mr. Ghosh emphasises upon the dictum in urging that the differences made have no rational relation to the objectives of the legislation so far as the enactment of Section 98 in the notification before us, is concerned, and he, therefore, contends that the necessity for judicial interference arises in the present case. His argument is that not only the classification should not be arbitrary or capricious but that it should be reasonably co-related to the objective of the legislation in view. It must be conceded that these are the normal tests of reasonableness and from time to time courts have adverted to these tests to find out whether or not the classification suggested in a particular legislation is reasonable. For instance, another case in point is the decision in -- *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, where Das, J. again laid stress on the above tests in the following terms:

"It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and (ii) that that differentia must have a

rational relation to the object sought to be achieved by the Act. What is necessary is that there must be nexus between the basis of classification and the object of the Act. To take an example: u/s 11 of the Contract Act persons who have not attained majority cannot enter into a contract. The two categories are adults and minors. The basis of classification is the age. That basis obviously has a relation to the capacity to enter into a contract. Therefore, the section satisfies both the requirements of a permissible classification."

I am unable to appreciate, however, how Section 98 of the notification in the present case offends against any of the tests laid down in the above case. Section 98 as given in the notification lays down the procedure for the assessment of taxes on the value of holdings. It provides two different standards for determining the annual value of a holding (1) in the case of holdings of which Government was the owner and which are in the occupation of a Government servant; in such cases the annual rental as determined by Government in the Public Works Department in accordance with the rules for the time being in force was to be deemed to be the annual value of the holdings; (2) in the case of any other holding at the gross annual rental at which it might reasonably be expected to be let. Comparing it with Section 98 as mentioned in the Bihar and Orissa Municipal Act, it would appear that owners of holdings not belonging to Government were not in any better or worse position than what they were under the Municipal Act.

There is undoubtedly a distinction made between holdings owned by Government and those by private owners. The standard of assessment in either case is evidently different; but there is nothing to show that the classification was unreasonable. It is true that the object of the enactment was to provide for municipal amenities to the residents of the locality but at the same time it had to levy taxes in order to raise funds for carrying on its administration and in assessing these taxes the different standards suggested in Section 98 seem to be natural. Government holdings which were meant for occupation of Government servants could not be let out at varying rates of rent, but the maximum rental was fixed in all cases and sometimes they could be even in occupation of officers who were not able to pay the maximum rent fixed.

These holdings were not, therefore, meant for bringing any profit to Government in the sense that they could be let out from time to time for earning larger rents from the occupants of those holdings as would be in the case of holdings owned by private owners. In those circumstances, it was not unnatural and unreasonable to direct that in the case of Government holdings the annual value had to be fixed on one standard, while that of private holdings it had to be fixed on another standard, namely, "the annual rental" at which the holding was "reasonably expected to be let." In my opinion, this classification was not only natural but rational and could not be criticised as an unwarranted discrimination so as to bring it in conflict with Article 14 of the Constitution. The classification suggested above is vitally correlated to the object of the enactment for the purpose of

raising funds for the administration of the municipal area to which the notification applied. There is, therefore, no substance in this contention of Mr. Ghosh at all.

8. It may be that this classification is now unwelcome to the residents of the area in view of the rise in the letting value of holdings; and a schedule has been attached to the petition, which is annexure Y, to show that in various cases the taxes imposed on Government and non-Government holdings in the same locality are widely divergent, the taxes on non-Government holdings being much higher than those on Government holdings. This schedule cannot be of any value because the assessment of the tax depends upon various factors, namely, the magnitude of the building, the number of rooms and amenities provided etc. But even if it is granted that all things were equal, the taxation may still be justified on the ground that the letting value of non-Government holdings had appreciably increased. It is, therefore impossible for us to say that there has been any discrimination between the two classes of holdings.

9. There is hardly any other point worthy of serious consideration, and I have no hesitation in coming to the conclusion that the application is without any merit and must be dismissed with costs. The hearing fee is assessed at five gold monurs.

Ramaswami, J.

10. I agree. Two questions were argued by Mr. B.C. Ghosh: (1) whether Section 3(1)(f) and Section 5, Patna Administration Act, 1915, and the Government Notification dated 25-4-1931, are unconstitutional on the ground of excessive delegation of legislative power; and (2) whether Section 98, Bihar and Orissa Municipal Act, as modified by the Government Notification dated 25-4-1931, is void on the ground that it conflicts with Article 14 of the Constitution. For the reasons which have been elaborately discussed by my learned brother both these arguments have no substance and there is no case made out for issuing a writ against the respondent. On the question of delegation Mr. B.C. Ghosh made a valiant attempt to gain support from the dicta of some learned Judges who pronounced judgment in the Delhi Laws Act case, --AIR 1931 S. C. 332 (A).

But it was pointed out by the learned Chief Justice of the Supreme Court in --Kathi Raning Rawat Vs. The State of Saurashtra, that it is difficult to say that any particular principle has been laid down by the majority in the Delhi Laws Act case which can be of assistance in the determination of other cases. In my opinion the present case falls within the ambit of the actual decision reached by the majority of the Judges in the Delhi Laws Act case, referred to above, and the attack made on Section 3(1) (f) and Section 5, Patna Administration Act, on behalf of the petitioner must fail.