

(1985) 07 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No's. 545 and 546 of 1980

State of Orissa

APPELLANT

Vs

Sridhar Kumar Mallik and Others
State of Orissa Vs
Raghunath Das and Others

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Orissa Municipal Act, 1950 — Section 417A(1)
Orissa Municipal Rules, 1953 — Rule 602

Citation : AIR 1985 SC 1411 : (1985) 2 SCALE 317 : (1985) 3 SCC 697 : (1985) 2 SCR 349 Supp : (1985) 17 UJ 830

Hon'ble Judges : R. S. Pathak, J;A. N. Sen, J

Bench : Division Bench

Advocate : P. Govindan Nair R.K. Mehta and Baby Krishna, for the Appellant;
B.P. Maheshwari, for Respondent Nos. 1 and 2 and G.S. Chatterjee (Not Present),
for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—These appeals by special leave are directed against the judgment and order dated February 27, 1978 of the High Court of Orissa allowing two writ petitions and quashing a notification issued by the State Government for the purpose of constituting a notified area under the Orissa Municipal Act, 1950.

2. The Orissa Municipal Act, 1950 provides for the Constitution of Municipalities and the application and enforcement of various provisions commonly found in legislation dealing with local self-government. They include provisions relating to public health, supply of water for domestic use, lighting, public and private drainage, conservancy, maintenance and repair of public roads, building regulations, markets, slaughter houses, burial and burning grounds, places of public resort and entertainment, as well as provisions for raising taxes to enable the Municipality to fulfil its function and obligations. Ordinarily, the provisions of the Orissa Municipal Act apply to towns, for u/s 4 a town alone can be constituted into a municipality. But under Chapter XXX-A of the Act the State

Government has been empowered to apply the provisions of the Act' to other areas, conveniently described as "notified areas". Section 417-A in that Chapter provides :

417-A.(1) The State Government may by notification declare that it is necessary to make administrative provision for all or any of the purposes of this Act in any area, specified in the notification other than a municipality.

(1-a) Before the publication of a notification under Sub-section (1) the State Government shall cause to be published in the Official Gazette and also at least in one newspaper circulating in the area a proclamation announcing the intention of Government to issue such notification and inviting all persons residing within such area to submit their objections, if any, in writing to the District Magistrate within one month from the date of publication of the proclamation in the Official Gazette.

(1-b) The District Magistrate shall, with all reasonable despatch, forward all objections so submitted along with his views thereon to the State Government who shall, before publication of the notification under Sub-section (1), take into consideration the objections and views forwarded as above.

(2) An area, in respect of which such a notification has issued, is hereinafter called a "notified area".

3. In August 1972, the State Government proclaimed their intention to issue a notification under Sub-section (1) of Section 417-A of the Act in respect of certain areas in the district of Ganjam, and invited objections from persons residing within the area. The proclamation was published in English in the Orissa Gazette, and in the same language in a local Oriya newspaper, the "Daily Samaj". It seems that no objections were received and on March 31, 1977, the State Government issued a notification constituting with effect from April 1, 1977, the area specified in the appended Schedule a notified area in terms of Sub-section (1) of Section 417-A of the Act. The notification stated that the notified area would consist of two villages, Ganjam and Damodarpur, and that all the provisions of the Act would be applied to the notified area.

4. The residents of the villages Ganjam and Damodarpur filed writ petitions in the High Court challenging the validity of the notification dated March 31, 1977. Two points were taken in the main. It was contended that the proclamation conveying the intention of the State Government to constitute a notified area was vague in content and did not specify whether all the purposes of the Act or only some of them, and if so which, were to be the subject of administrative provision in relation to the area. The residents of the area, it was urged, were thus deprived of a full and proper opportunity to express their views on the proposal of the Government. The second contention was that most of the residents did not know English, and as the proclamation was made in the English language, both in the Orissa Gazette and in the local newspaper, the publication served no purpose and was contrary to the intent of the statute. Both points

found favour with the High Court and, consequently, the notification was quashed.

5. In this appeal, the appellant, the State of Orissa has attempted to show that the proclamation satisfied the requirements of the statute and that the High Court erred in finding fault with it.

6. The extension of the Orissa Municipality Act to an area other than a municipality is a matter of serious moment to the residents of the area. It results in the provision of amenities and conveniences necessary to civil life and their regulation by a local body. But the Act also provides for the imposition of taxes of different kinds on the residents. The tax structure does not embody an integrated unified impost expressed in a single tax measure. Different kinds of taxes are contemplated by the Act. The scheme set forth in Chapter XXX-A of the Act intends that before the Government extends the operation of the Act to an area under a municipality it must afford an opportunity to the local residents to object to the proposed action. The objections are submitted to the District Magistrate who forwards them along with his views to the State Government. The State Government must take into consideration all the material before it and decide thereafter what should be the precise area to which the Act should be extended, and indeed whether all the provisions of the Act or only certain specified provisions should be so extended. The possibility of some only of the provisions of the Act being applied to the notified area is evident from the terms in which the grant of power has been conferred on the State Government. Sub-section (1) of Section 417-A specifically envisages that when issuing the notification contemplated therein the State Government must decide whether administrative provision needs to be made "for all or any of the purposes" of the Act in the area proposed to be notified. Unless the proposal formulated in the proclamation made under Sub-section (1-a) of Section 417-A is precise and clear, and indicates with sufficient accuracy the area intended to be notified, and further indicate whether the administrative provision is proposed for all the purposes of the Act or only some of them, and if only some of them then which of them, it will not be possible for the residents to properly avail of the right conferred on them by the statute to make their objections to the proposal of the State Government. We do not see how it can be otherwise.

7. The proclamation issued by the State Government under Sub-section (1-a) of Section 417-A states:

In pursuance of Sub-section (1-A) of Section 417-A of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) the State Government do hereby announce their intention to issue a notification under Sub-section (1) of the said section in respect of the area in the district of Ganjam, specified in the schedule appended hereto.

Any person residing within the said area may submit his/her objections, if any, in writing to the District Magistrate, Ganjam, within one month from the date of publication of this proclamation in the Orissa Gazette.

While it may be possible to say that the areas covered by the proposal are indicated with sufficient precision, it is not possible to hold that all the purposes of the Act or only some of them were intended for administrative provision in the proposed area. The declaration that the State Government intends to issue a notification under Sub-section (1) of Section 417-A does not satisfy the statutory requirement because a notification under that sub-section may either be for all the purposes of the Act or for any of them. In our opinion, the proclamation made under Sub-section (1-a) of Section 417-A is ambiguous and incomplete. It is not the kind of notification which will ensure that the intention behind making it and calling for objections will be served. On that ground alone the High Court was justified in allowing the writ petitions.

8. The next point concerns the validity of the proclamation made under Sub-section 1(a) of Section 417-A of the Orissa Municipal Act. The sub-section requires that the proclamation should be published in the official Gazette and also at least in one newspaper circulating in the area. Admittedly, the proclamation was framed in the English language, in the Gazette as well as in the local newspaper, the "Daily Samaj". The Oriya Gazette is published in English, and that being so the intention of the legislature in Sub-Section 1(a) must be construed to be that the proclamation in Gazette should be in the English language. But the proclamation in the newspaper was also in the English language. The contention of the resident, which has found favour with the High Court, is that the notification should have been in Oriya, the local language of the people residing in the area and invited to submit their objections. Our attention has been drawn to Rule 602 of the Orissa Municipal Rules, 1953 which provides:

(1) Every notification required to be published by a municipal council under the Act shall be published in Oriya by affixture in the notice board of the municipal office concerned and also proclaimed by beat of drum.

(2) Every notification required to be published by the State Government in the prescribed manner shall be published in English in the Gazette.

There is nothing, however, in rule 602 which prescribes the language in which the proclamation under Sub-section 1(a) of Section 417-A of the Orissa Municipal Act has to be made. Sub-rule 1 of Rule 602 deals with the notification published by a municipal council while Sub-rule 2 deals with a notification published in the Gazette by the State Government. We have no doubt in our mind that having regard to the object with which a proclamation is required to be published under Sub-section 1(a) of Section 417-A of the Orissa Municipal Act, it must be published in the local language of the area in which the newspaper circulates. It is apparent that the legislature attaches serious importance to eliciting the opinion of the residents of the area who will be affected by its Constitution as a notified area, and that is why express provision in that behalf was made in Sub-section (1) of Section 417-A. The legislature did not consider it sufficient that the proclamation was published in the official Gazette. It is a notorious fact that few people beyond those who belong to the official community actually read the

official Gazette. Therefore, the legislature imposed the further requirement that the proclamation should be published in a newspaper circulating in the area. A newspaper today has become a basic medium for communication with the people. Its effectiveness in that regard cannot be disputed, even as its influence in the dissemination of information cannot be underestimated. To reach out to the people, it must be published in a language with which they are familiar. In so fundamental a matter as local self-government the legislature intended that an opportunity should be available to all persons residing within the area to submit their objections. The local language of the area is Oriya, and therefore the State Government should have published the proclamation in that language in the newspaper. On this point also we find ourselves in agreement with the High Court.

9. The appeals are dismissed with costs.