

(1968) 01 AHC CK 0016
In the Allahabad High Court
Case No : Second Appeal No. 462 of 1964

Tulsipur Sugar Co. Ltd.

APPELLANT

Vs

Notified Area Committee, Tulsipur Town

RESPONDENT

Date of Decision : 15-01-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 226
Uttar Pradesh Town Areas Act, 1914 — Section 15A, 15B, 15B(3), 15C, 3

Citation : AIR 1968 All 285

Hon'ble Judges : V.G. Oak, C.J; U.S. Srivastava, J

Bench : Division Bench

Advocate : Bishun Singh, for the Appellant; Rajkumar Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Oak, C.J.—This second appeal by plaintiff arises out of a suit for permanent injunction. The Tulsipur Sugar Company Limited filed a suit against the Town Area Committee, Tulsipur, on the following allegations.

2. The plaintiff is A joint stock company carrying on the business or manufacturing and selling sugar at the Sugar Factory at Tulsipur. The factory is situate within the agricultural village of Shitalapur, district Gonda. The plaintiff has to import stores and materials for the purposes of the factory. In the year 1955 a notification u/s 3 of the U. P. Town Areas Act, hereinafter referred to as "the Act", was issued establishing a Town Area at Tulsipur. The notification u/s 3 of the Act is void and has no legal effect. In the year 1959 the authorities took certain steps to introduce octroi duty for the Town Area. A series of notifications were published in 1959 and 1960 on this subject. These notifications also are invalid. The result is that no octroi duty is in force within the Town Area. Further, the plaintiff in particular is not liable to pay any octroi duty. But the defendant has been interfering with the plaintiff's business. The defendant has been

claiming octroi duty from the plaintiff. This demand is illegal. The plaintiff, therefore, brought the suit for permanent injunction to restrain the defendant from interfering with the carrying of goods, etc., by the plaintiff. There was also a prayer to restrain the defendant from levying or collecting any octroi dues from the plaintiff at the plaintiff's sugar factory.

3. The plaintiff's claim was opposed by the defendant. It was pleaded that the notification u/s 3 of the Act is valid, and the Town Area was validly established at Tulsipur. The defendant also supported the various notifications issued in 1959 and 1960 and pleaded that octroi duty had been legally imposed within the Town Area. During the pendency of the suit the Town Area Committee was converted into Notified Area Committee. The Notified Area Committee was accordingly substituted as defendant in the suit.

4. The case was tried by the Munsif, Utraula at Gonda, He upheld the plaintiff's claim that the notification u/s 3 of the Act is invalid, and so are the notifications issued in the years 1959 and 1960 imposing octroi duty. On these findings, the plaintiff's claim for permanent injunction was decreed by the trial Court. The defendant appealed. The appeal was allowed by the Civil Judge, Gonda. He upheld the validity of the impugned notifications and declaration. In the result, the plaintiff's suit was dismissed.

5. The plaintiff has, therefore, come to this Court in a second appeal. When this appeal came up before a learned Judge of this Court, he considered that the appeal involves certain important questions of law. He, therefore, referred the case to a larger Bench.

6. The contention of Sri Bishun Singh appearing for the plaintiff-appellant may be divided into two parts: Firstly, he challenged the notification u/s 3 of the Act. Section 3 of the Act states:

"The State Government may by notification in the official Gazette-

(a) declare any town, village, suburb, bazar or inhabited place to be a town area for the purposes of this Act, . . .

(b) . . .

(c)

(d)

Provided that an agricultural village shall not be declared, or included within the limits of a town area.

(2) The decision of the State Government that any inhabited area is not an agricultural village within the meaning of the proviso to Sub-section (1) of this section shall be final and conclusive, and the publication in the official Gazette of a notification declaring such area to be a town area or within the limits of a town area shall be conclusive proof of such decision."

On 22-8-1955 the State Government issued a notification u/s 3 of the Act establishing a Town Area at Tulsipur. The notification was published in the "U. P. Gazette", dated 27-8-1955. This notification has been challenged by the plaintiff on a variety of grounds.

7. Sri Bishun Singh pointed out that, under the proviso to Sub-section (1) of Section 3 of the Act, an agricultural village cannot be declared to be a Town Area. The plaintiffs case is that the plaintiff's factory lies within Shitalapur, which is an agricultural village. On page 43 of the paper-book it was recorded in the judgment of the trial Court:

"Admittedly, plaintiff's sugar factory is situate in agricultural village Shitalapur."

Apart from this observation the judgment of the trial Court, we do not find any such admission by the defendant. On the contrary, it is stated in paragraph 1 of the written statement that it is wrong that the factory is situated in any agricultural village. In view of this clear allegation in the written statement, it could not be laid that it was an admitted fact that the pain-tiff's sugar factory is situated within an agricultural village.

8. It is true that it is not permissible to declare an agricultural village a Town Area. But the question remains whether Shitalapur is an agricultural village at all. According to subsection (2) of Section 3, this was a question to be decided by the State Government. It is further mentioned in Sub-section (2) that a notification declaring such area to be a Town Area shall be conclusive proof of such decision. There has been a declaration by the State Government declaring the area to be a Town Area. Such a declaration, according to Sub-section (2) of Section 3 of the Act, is conclusive proof of a decision by the State Government to the effect that this is not an agricultural village.

9. Sri Bishun Singh attacked the decision by the State Government on the ground that no opportunity was given to the local residents before arriving at such a decision. It was urged by the appellant's counsel that the decision contemplated by Sub-section (2) of Section 3 of the Act is a quasi-judicial decision. Consequently, it was obligatory upon the State Government to give an opportunity to the local residents.

10. In AIR 1940 105 (Privy Council) it was held that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure

11. The same view was taken by the Supreme Court in Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, .

12. It was further urged by Sri Bishun Singh that Sub-section (2) of Section 3 of

the Act is invalid, because the provision confers arbitrary power on the State Government. Reliance was placed upon *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, . In that case the Court noticed that under Clause 3 (1) of the U. P. Coal Control Order, 1953, no person shall stock, sell, store for sale or utilise coal for burning bricks or shall otherwise dispose of coal in this State except under a licence granted under the Order. It was held by the Supreme Court that Clause 3 (1) confers an unrestricted power on the State Controller to make exemptions. That clause was consequently unreasonable.

13. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . the Court explained the distinction between an administrative act and a quasi-judicial act. A writ of certiorari can be issued only to quash a judicial or quasi-judicial act. Before such a writ can be issued the following conditions have to be complied with :--

- (1) the body of persons must have legal authority;
- (2) there must be authority to determine questions affecting the rights of subjects; and
- (3) the body of persons should have a duty to act judicially

The provisions of a statute may enjoin on an administrative authority to act administratively or judicially. If it expressly imposes a duty on the administrative body to act judicially, it is a clear case of judicial act. But the act may not expressly confer a duty to act judicially but this duty may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, of the duty imposed on the authority and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances and a hard and fast rule or an inflexible rule of guidance, is neither possible nor advisable to be laid down.

14. We may examine the provisions of Section 3 of the Act on the principle laid down by the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . Sub-section (1) of Section 3 enables the State Government to declare an area as a Town Area. u/s 3 the State Government has to decide whether a particular area consists of an agricultural village or not. When an area is declared as a Town Area, no specific rights of residents are adversely affected. It may be that in due course of time taxes would be imposed, and residents of the locality may have to pay such taxes. But it cannot be said that a mere declaration of a Town Area with respect to a specified area directly affects the rights of the residents of the locality. Such a declaration is of administrative nature. Since the decision is of administrative nature, it is not necessary for the State Government to give an opportunity to residents of the locality to oppose such a proposal. In our opinion, Section 3 of the Act is valid. It follows that the notification dated 22-8-1955 declaring the

particular area as a Town Area is valid

15. The second part of the argument of Sri Bishun Singh concerns the validity of the notifications for imposing octroi duty. For appreciating this part of the argument, it is necessary to examine the provisions of the Act for imposing taxes. Section 15-A provides for preliminary proposals for taxes. The Committee has to prepare a draft of the rules. Such draft rules have to be published. It is open to inhabitants of the Town Area to file objections. Such objections have to be considered by the committee. In the light of such objections, proposals are settled. The proposals are submitted to the District Magistrate. Section 15-B provides for imposition of tax. Under Sub-section (2) of Section 15-B a District Magistrate forwards the proposal to the State Government. Subsection (3) of Section 15-B states:

"After the rules have been framed by the State Government, a copy thereof shall be forwarded to the prescribed authority, and when the Committee shall, as soon as may be, by a resolution direct the imposition of the tax with effect from a date to be specified and forward a copy of the resolution to the prescribed authority who shall notify in the same manner prescribed."

16. On 28-10-1959, draft rules were published. These rules were published in the. U. P. Gazette dated 7-11-1959. On 15-12-1959 the Commissioner of Faizabad issued a notification under Sub-section (3) of Section 39 of the Act. This notification contains the approved rules. This notification was published in the U. P. Gazette, dated 26-12-1959.

17. In both these notifications dated 28-10-1959 and 15-12-1959 we find one defect. Rule 1 of the draft rules contained in the notification dated 28-10-1959 ran thus:

"Octroi shall be levied according to the rates and description given in Schedule I on goods and animals brought within the octroi limits of Town Area, Tulsipur (hereinafter called the "town area") as specified in Schedule II for consumption, use or sale therein."

18. The draft rule No. 1 contemplated two separate schedules. Schedule I was with respect to goods and animals; whereas Schedule II was expected to specify the limits of the Town Area. But at the foot of the notification dated 28-10-1959 we find a single notification dealing with goods and animals of different kinds. This schedule is obviously Schedule I contemplated by draft rule No. I. We do not find there any schedule corresponding to Schedule II mentioned in draft rule No. 1. The same defect appears in the notification dated 15-12-1959. There also we find a single notification for goods and animals.

19. The authorities tried to remove that defect by issuing an amendment. That amendment was contained in a notification dated 14-4-1960. The amendment notification was published in the U.P. Gazette dated 23-4-1960. The notification dated 14-4-1960 contains the limits of the Town Area.

20. The procedure adopted by the authorities is challenged by Sri Bishun Singh on two grounds. Firstly, he contended that it was impossible for the residents of the locality to lodge objections, in pursuance of the notification dated 28-10-1959, without knowing the limits of the area within which the proposed octroi duty was to operate. The material words of draft rule No. 1 were:

". . . . brought within the octroi limits of Town Area Tulsipur... as specified in Schedule II. . . "

The language of draft rule No. 1 makes it clear that it was proposed to impose octroi duty within the limits of Town Area Tulsipur. It is true! that the notification dated 28-10-1959 did not specifically define the limits of Town Area Tulsipur. But we have seen that the Town Area was established in the year 1955. The limits of the Town Area were a matter of common knowledge in the locality in the year 1959. So, the failure of the authorities to define the limits again in 1959 was not likely to prejudice the residents of the locality. It was open to all the residents of the Town Area to lodge objections against the draft rules.

21. Section 15-C of the Act lays down the procedure for altering taxes. Section 15-C states:

"The provisions of Sections 15-A and 15-B shall as far as may be apply for altering or abolishing tax already imposed under this Act"". Relying on Section 15-C of the Act, Shri Bishun Singh urged that if it was proposed to amend the notification issued in October, 1959, the authorities should have repeated all the steps laid down in Section 15:A and 15-B of the Act. Section 15-C provides for a situation where it is proposed to alter or abolish a tax. In the instant case there was no proposal to alter or abolish a tax. All that the notification dated 14-4-1960 did was to give the limits of the Town Area. Limits of the Town Area were not being fixed for the first time. The limits specified in the notification dated 14-4-1960 were the same as were specified in the notification dated 22-8-1955. So the notification dated 14-4-1960 cannot be treated as an amendment in the true sense. It was merely a clarification of the notification issued in October, 1959. A clarification of this kind did not attract Section 15-C of the Act.

22. It was also urged by Sri Bishun Singh that it was not permissible to issue such notifications piece-meal. As explained above, the notification dated 14-4-1960 was merely a clarification of the earlier notifications issued in October and December, 1959. This was not a case of action being taken piece-meal.

23. Lastly, it was urged for the appellant that no notification was issued as required by Sub-section (3) of Section 15-B of the Act. On the one hand, there is no such allegation in the plaint. On the other hand, the written statement does not refer to any such notification. Since there was no such plea in the plaint, we are not called upon to decide whether such a notification was ever issued.

24. All the contentions advanced on behalf of the plaintiff-appellant against the

notification dated 22-8-1955 and the various notifications issued in 1959 and 1960 tail. The plaintiff's claim was, therefore, rightly dismissed by the learned Civil Judge. Gonda.

25. The second appeal is dismissed with costs. The interim injunction is vacated.