

Baldev Singh and Others

Vs

State of Himachal Pradesh and Others

Civil Appeal No. 1215 of 1985

(CJI R. S. Pathak, Ranganath Misra JJ)

10.04.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal is by special leave. The appellants are residents of four villages being Bhota, Hatera, Morsu Garla and Dhamani Chambala within Hamirpur District of Himachal Pradesh. These villages are inhabited by agriculturists and have rural set up. They used to be parts of Gram Panchayats duly constituted under the relevant statute prevalent within the State. An attempt was made to constitute a notified area as provided under Section 256 of the Himachal Pradesh Municipal Act, 1968 by including portions of these four villages for such purpose. Initially the Sub-Divisional Officer of the area reported against such a move by saying that the villages were inhabited by agriculturists, the population was small, panchayats were already functioning in the area and there was not sufficient non-agricultural activity in the area which would justify these villages to come under a notified area but later the State Government decided to constitute a notified area within the meaning of Section 256 of the Act and on March 31, 1982 such a notification was published. Petitioners thereupon challenged the validity of the notification by filing an application under Article 226 of the Constitution before the High Court. That application has been summarily dismissed and thereupon with leave from this Court, the present appeal has been filed.

2. Several affidavits have been filed on either side in support of the respective stands. 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. Section 256 of the Himachal Act provides :

256. Constitution of notified area. - (1) The State Government may, by notification, declare that with respect to some or all of the matters upon which a municipal fund may be expended under Section 51, improved arrangements are required within a specified area, which nevertheless, it is not expedient to constitute as a municipality.

(2) An area in regard to which a notification has been issued under sub-section (1) is hereinafter called a notified area.

(3) No area shall be made a notified area unless it contains a town or bazar and is not a purely agricultural village.

(4) The decision of the State Government that a local area is not an agricultural village within the meaning of sub-section (3) shall be final, and a publication in the

official Gazette of a notification declaring an area to be a notified area shall be conclusive proof of such decision.

Though detailed guidelines are not indicated in the section yet from the provisions contained therein it is clear that purely agricultural villages are not to be included in a notified area and there must be a town to form the nucleus of a notified area. It is not disputed that these four villages from out of which portions have been taken out to constitute the notified area were already within Gram Panchayats duly constituted under statute. Once these areas are constituted into a notified area under the Municipal Act, the areas now included in the notified area would necessarily be taken out from the jurisdiction of the Gram Panchayats. The villagers who were elected to the Gram Panchayats and were holding office would, as a consequence of the constitution of the notified area, cease to be in office so far as the Gram Panchayats are concerned. Chapter XII of the Municipal Act dealing with notified areas provides that once a notified area is constituted, taxes would be imposed and it has not been disputed before us that the rates of such taxes would involve higher incidence and the people living within the area would be subjected to higher tax burden. From an agricultural society, the inhabitants of the area will have to switch over into a semi-urban community. There has been a serious dispute as to whether there is really a town or bazar in existence within the area. Undoubtedly, he reports in the record indicate that there are some shops and a good number of passenger buses pass through this area. Shops are found even in agricultural villages. Location of a few shops may not amount to a bazar and location of a bazar may not bring a town into existence. These are factual aspects which require consideration before the State Government could come to the conclusion that the area in question, by the tests indicated in Section 256 of the Act, qualified to be constituted into a notified area.

3. We had called for the record dealing with the constitution of this notified area and after Mr. Thakur, learned counsel for the State, produced the record, counsel for the appellants was given inspection thereof. We have also seen some of the papers in that record. There does not appear to have been consideration of the requirements indicated Section 256 of the Act for finding out whether the portions of these villages should have been constituted into a notified area.

4. Appellants' counsel has raised a more serious issue, namely, denial of an opportunity of being heard before the notified area has been constituted. Since Section 256 of the Act requires certain aspects to be satisfied before a notified area can be constituted, factual determination had to be made as to whether those statutory conditions were satisfied. Ours is a democratic polity. At every level, from the villages up to the national level, democratic institutions have been introduced. The villages are under Gram Panchayats, urban areas under municipalities and corporations, districts are under parishads; for the State there is a legislature and for the entire country, we have the Parliament. People residing within Gram Panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. Citizens of India have a right to decide what should be the nature of their society in which they live - agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like.

5. Reliance was placed on two decisions of this Court in support of the appellants' stand that natural justice required an opportunity of being heard to be extended to the people of the area before the administrative decision to constitute the notified area was taken. The first is the case of S. L. Kapoor

v. Jagmohan ((1980) 4 SCC 379). That was a case where the committee constituted under the Municipal Act was superseded. The Court held that where the administrative action entails civil consequences, observance of natural justice would be warranted and unless the law excludes the application of natural justice it should be taken as implanted into the scheme. The other is the case of State of Orissa v. Sridhar Kumar Mallik ((1985) 3 SCC 697), where the validity of the action taken under Section 417-A of the Orissa Municipal Act in constituting a notified area was being examined. The court, referring to the statutory scheme, found : (SCC pp. 700-01, para 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 indicates 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.

It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision, but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was 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.

6. Mr. Thakur for the State advanced an argument that a few interested people were trying to resist the move of the State to constitute the notified area. Once we have held that the requirements of natural justice have not been fulfilled, it is not for us to examine whether the petition before the High Court was the outcome of efforts confined to a small group of the inhabitants of the area. At any rate there is no clear material before us also to support Mr. Thakur's stand.

7. The appeal is allowed and the impugned notification of March 31, 1982 constituting the particular notified area is quashed. We make it clear that it is open to the State Government to make a fresh notification after complying with the law and this judgment of ours would not stand in the way of the State Government to do so. Parties are directed to bear their own costs.

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