

PATNA HIGH COURT

Binoy Bhusan

Vs

State of Bihar

Misc. Judicial Case No. 141 of 1953

(Ramaswami and Choudhary, JJ.)

14.01.1954

ORDER

Choudhary, JJ.

In this case the petitioners have obtained a rule calling upon the opposite parties to show cause why a writ in the nature of mandamus should not be issued restraining them from imposing or collecting a holding tax levied by a resolution of the Mihijam Notified Area Committee. Cause has been shown by the learned Government Advocate on behalf of the opposite parties.

2. The petitioners are residents of three villages, Mihijam, Kanungui and Anui which have been formed into a Notified Area Committee known as the "Mihijam Notified Area Committee' set up by a notification issued by the Government of Bihar. The draft notification was issued on 4-7-1950 inviting objections or suggestions from the persons likely to be affected. On 5-4-1951 the Government of Bihar acting in exercise of the powers under Sections 388 and 389 of the Bihar and Orissa Municipal Act applied to the Notified Area of Mihijam various provisions of the Act mentioned in the schedule to the notification. There was another notification dated 7-9-1951 wherein the Government sanctioned the imposition of holding tax by the Mihijam Notified Area Committee. This notification was issued under Section 82 of the Bihar and Orissa Municipal Act. The case of the petitioners is that the imposition of the tax is illegal, firstly, on the ground that the provisions of Sections 388, 389 and 390 are beyond the legislative competence of the State Legislature, and, secondly, because the power of taxation is vested in Section 389 (b) with Local Government and the Notified Area Committee has no authority to impose the tax. The petitioners therefore pray that a writ in the nature of mandamus should be issued prohibiting the opposite parties from imposing or realising any tax within the Notified Area.

3. In support of this rule Mr. Baldeva Sahay presented the argument that Section 389 empowered the Local Government to appoint a committee for the notified area for the purpose of carrying

out the purpose of the Act in the said notified area. Counsel stressed the point that all the members of the Committee in the present case are nominated and no provision has been made for election of the members of the committee. Counsel referred to Item 5 of the State List (Seventh Schedule) of the Constitution. Item 5 states :

"Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration".

The argument of the counsel is that Item 5 relates to matters of Local Self Government and a legislation which authorises the formation of a committee, all the members of which are nominees of the Government, would not be constitutional. The contention of the counsel is that such a legislation would fall beyond the legislative competence of the State Legislature. It is not necessary for the purposes of this case to express a concluded opinion whether such a legislation would fall within the ambit of Item 5 of the State List, for it would be a wrong approach to decide the validity of the law in the present case with reference to the legislative competence conferred by different items of the State List. It should be noticed that the impugned Act was passed in 1922, even before the coming into force of the Government of India Act. Section 292 of the Government of India Act states :

"Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the laws in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority."

The validity of the Act is also continued under the provisions of Article 372 of the Constitution which runs as follows:

"Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority".

It follows therefore that the Bihar and Orissa Municipal Act continues to be legally valid and the argument of Mr. Baldeva Sahai on this aspect of the case must fail.

4. The next point taken by the learned Counsel is that Section 389 (b) granted a power to the Local Government to impose any tax in a notified area

"which could be imposed by the Commissioners if the notified area were a Municipality".

It was stated by the counsel that Section 389 (b) expressly granted the power of taxation to the Local Government and that it should be held by implication that there was no power of taxation vested in the Notified Area Committee. This argument overlooks however the provisions of Section 389 (a) which runs as follows:

"The Local Government may by notification apply or adapt to notified area or to any part of a notified area any provision of this Act which may be applied to a municipality, or any rule or by-law in force or which can be made in any Municipality under this or any other Act".

In the present case the learned Government Advocate produced a copy of the notification of the Local Government which is annexed to the counter-affidavit. This notification applies the provisions of Chapter IV of the Bihar and Orissa Municipal Act along with other provisions to the notified area of Mihijam. Section 82 which falls within Chapter IV of the Municipal Act authorises the imposition of a tax by the Commissioners of the Municipality with the sanction of the Local Government. It is not disputed in the present case that the Notified Area Committee have passed a resolution to impose holding tax and the notification dated 7-9-1951 conveys the sanction of the Government to the imposition of the holding tax by the Mehijam Notified Area Committee. The argument of Mr. Baldeva Sahai is that the Legislature has in Section 389 (b) granted power to the Local Government to impose a tax in a notified area, and as a matter of necessary implication, it must be held that under Section 389 (a) the Local Government cannot apply the provisions with respect to taxation to a notified area. This argument is unsound, for there is no room in the present case for the application of the doctrine 'expressio unis est exclusio alterius'. The reason is that the Legislature has granted the power of taxation concurrently to two different authorities. By enacting section 389 (b) the Legislature has granted power to the Local Government who may by notification impose in a notified area any tax which could be imposed by the Commissioners if the notified area were a Municipality. Section 389 (a) grants to the Local Government an independent power of applying to the notified area 'any provision' of the Act which may be applied to a Municipality. The language of Section 389 (a) is unqualified and there is nothing in the context of the Act to suggest that the Local Government have no authority to apply the provision as to taxation under Section 389 (a) of this Act to a notified area or to any part of a notified area. The argument advanced on behalf of the petitioners on this part of the case must be rejected as unsound.

5. Lastly the contention on behalf of the petitioners is that the notification under Section 388 is invalid since the Local Government have not described in detail for what purposes the notified area was constituted. The notification of the Government dated 4-7-1950 mentions that

"it is necessary to make administrative provision for the purpose of the said Act in the area lying in the villages Mihijam, Kangoi, Butheria and Amoi in the district of Santhal Parganas".

It is true that the nature of the purpose is not mentioned in this notification but the notification contains only a draft and the matter is clarified by the second notification of the Government dated 5-4-1951 which is annexure-"B" to the counter-affidavit. In this notification, issued under Section 389 (a) and Section 389 (c), the Government state that they are applying the provisions of the Act described to schedule "B" of the notification to the notified area of Mehijam. The Schedule mentions "Section 3 of Chapter 1, sections 21, 22, 24-27 (both included) 20-51 (both included) and 53-57 (both included) of Chapter 2, the whole of Chapters 3, 4, 5, 6, 7, 8, 9 and 10 sections 339 and 340 and 343-352 of Chapter 11 and the whole of Chapters 12 and 13". If the two notifications are read together, it is clear that the Local Government have constituted the notified area for the purposes described in the schedule and it is impossible to accede to the argument that there is any legal invalidity in the notifications constituting the notified area of Mehijam or appointing the Committee for carrying out the purposes of the Act in the said area.

6. For the reasons we have attempted to state we think that there is no case made out for issue of a writ under Article 226 of the Constitution against the opposite parties. This application accordingly fails and must be dismissed with costs. We assess hearing fee at Rs. 50/- to be paid to opposite party, State of Bihar.

Application dismissed.