

the provisions are in effect and virtually in *pari materia*. Once this is so, it is plain that if the third proviso could operate in the field of section 27(1)(a)(ii), it could with equal facility have identical operative force with regard to the provisions of the predecessor statute of the Punjab General Sales Tax Act as contained in section 5(2)(a)(ii) thereof. Consequently on this score as well the challenge to the retrospectivity of the provision is to be repelled.

19. No other point has been raised. Both the basic contentions on behalf of the petitioners having been rejected all the writ petitions are without merit and are hereby dismissed. The parties, will however, be left to bear their own costs.

H.S.B.

Before J. M. Tandon, J.

HINDUSTAN WIRE PRODUCTS LTD., PATIALA,—*Petitioner.*

versus

PUNJAB GOVERNMENT *and others*.—*Respondents.*

Civil Writ Petition No. 1401 of 75.

March 16, 1979.

Punjab Municipal Act (III of 1911)—Sections 5(1) and (3)—Punjab Gram Panchayat Act (IV of 1953)—Section 4(2)—Notification under Section 5(1)—Object of—Stated—State Government—Whether must always determine mode of publication in “such other manner” as required by section 5(1)—Areas sought to be included in municipal area already forming part of Gram Sabha—Exclusion of such area from Gram Sabha by notification under Section 4(2) of the Gram Panchayat Act—Whether a necessary pre-requisite before its inclusion in the municipal area.

Held, that the object of publication of the declaration of the intention of the Government in the official gazette and otherwise through notification under Section 5(1) of the Punjab Municipal Act, 1911, is to apprise the people about the proposal of the Government to include the area within the municipal limits so that they may, if so desired, file objections to be considered by the Government before making the final notification under Section 5(3) of the Act including

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the area within the municipal limits. The publication in the official gazette as also in other manner is mandatory. The discretion in the matter of determination of mode of local publication by the State Government has to be exercised in a reasonable manner and the discretion in this regard is admittedly open to scrutiny by the Court. The mode of local publication determined by the State Government if found not achieving the desired object would render the local publication bad, vitiating the final notification under section 5(3) of the Act. If the local publication is made in consonance with the mode determined by the State Government then the Municipal Committee can publish the said notification. However, in such a case the said publication could still be challenged and examined by the Court to see whether the said local publication made in the particular manner has achieved the desired object or not. Conversely, if the local publication already made by the municipal authorities has achieved the desired object in terms of section 5(1), the non-determination by the State Government about the manner of such publication may not remain sacrossact, indispensable, imperative or relevant in its context. (Para 20)

Held, that under the Punjab Gram Panchayat Act, 1953, nobody has a right to object to the inclusion or exclusion of any area from the Sabha Area. A notification of the Government, that is publication of an order of the Government in the official gazette is sufficient to exclude any area from the sabha area. Assuming that two local authorities in the same area cannot co-exist, the notification of the Government under section 5(3) of the Municipal Act would exclude that area from the sabha area in the context of section 4(2) of the Gram Panchayat Act. (Para 21).

Petition under Article 226 of the Constitution of India praying that :

- (a) a writ of mandamus may be issued thereby releasing respondents from levying and realising octroi from the petitioner in respect of the goods brought into the factory premises.
- (b) respondent No. 3 may be directed to refund the octroi amount illegally recovered from the petitioner company.
- (c) a writ of mandamus may be issued thereby quashing notification Annexure P-3 because the said notification is illegal ultra vires and null and void.
- (d) the provisions of Sec. 60(2) and S. 5 of Punjab Municipal Act and Octroi schedule of Municipal Committee, Patiala

May be declared illegal, ultra vires, null and void and unconstitutional.

- (e) *condition regarding service of notice of motion on the respondents may be dispensed with at this stage.*
- (f) *petitioner may be permitted to file true copies of the annexures because certified copies cannot be obtained without undue delay.*
- (g) *adinterim stay order may be issued restraining the respondents from recovering octroi from the petitioner in respect of the goods brought by the petitioner Company into the factory premises till the final disposal of the writ petition.*
- (h) *or such other appropriate writ, order or direction as may be deemed fit under the circumstances of the case may be issued.*
- (i) *cost of the writ petition may be allowed against the respondents.*

J. N. Kaushal, Advocate with Shri K. P. Bhandari, Advocate and Bipan Kaushal, Advocate and Ravi Kapoor, Advocate, for the Petitioner.

A. S. Sarhadi, A. G., Punjab with N. S. Bhatia, Advocate, for Respondents Nos. 1 and 2.

D. S. Nehra, Advocate, for Respondent No. 3.

Dr. Gurnam Singh Tir, Advocate, for respondent No. 3.

N. K. Sodhi, Advocate, for respondent No. 3.

JUDGMENT

J.M. Tandon, J.

(1) This order will dispose of Civil Writ No. 1401 of 1975 (*The Hindustan Wires Products Ltd., Patiala v. The State of Punjab and others*) and Civil Writ No. 3347 of 1975 (*M/s. Achhru Ram Suresh Kumar and another v. The State of Punjab and others*).

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(2) The petitioner-Company in Civil Writ No. 1401 of 1975 owns a factory in the revenue estate Taffazalpur, Patiala. It was situated outside the municipal limits of Municipal Committee, Patiala. The State Government,—*vide* Notification No. 19279-ICI-74/4866 published in the official gazette on September 20, 1974 (P. 3) under section 5(1) of the Punjab Municipal Act (hereinafter the Act), declared its intention to include certain area detailed therein including Taffazalpur within the Municipal Committee, Patiala. The State Government thereafter issued another Notification No. 24473-ICI-74/14, published in the official gazette on February 14, 1975, (P. 2), under section 5(3) of the Act and included the proposed area within the limits of Municipal Committee, Patiala. The factory of the petitioner Company thus came within the limits of Municipal Committee, Patiala, with effect from February 14, 1975, rendering the incoming goods to their factory liable to octroi charges.

(3) In March, 1975, the petitioner filed the present writ challenging the notification of the Government dated February 14, 1975 (P. 2) on various grounds being illegal, *ultra vires*, null and void. It was prayed that the notification be quashed and the Municipal Committee, Patiala, be restrained from recovering octroi for the goods brought to its factory and further to refund the octroi already charged illegally.

(4) The petitioner in Civil Writ No. 3347 of 1975 has challenged the same notification, which also covers Tripuri and has prayed that the levy of house-tax made by the Municipal Committee, Patiala, for its property situate therein, be quashed.

(5) The writs have been resisted by the State Government as also by the Municipal Committee, Patiala. In their separate written statements, the averments made in the writ petition have been controverted and the impugned notification justified. According to them, the factory of the petitioner-Company in C.W.P. 1401 of 1975 having been included in the municipal limits, the incoming goods to its premises are liable for the payment of octroi charges. The property of the petitioner in C.W.P. 3347 of 1975 having been similarly included within the municipal limits of Patiala is liable to House Tax.

(6) Shri J. N. Kaushal, learned counsel for the petitioner, has argued that there has been no proper publication of the preliminary

notification (P. 3) in the locality in terms of section 5(1) of the Act and the final notification (P. 2) is thus liable to be quashed. He has further argued that the area of revenue estate Taffazalpur where the factory of the petitioner is situate was within the Gram Sabha and it has not been excluded from the latter's purview by a proper notification under the Punjab Gram Panchayat Act and as such it could not be included within the municipal limits of Patiala. The impugned notifications (P. 2 and P. 3) are liable to be quashed on this ground as well.

(7) Another argument advanced is that mere extension of the municipal limits does not make the petitioner automatically liable for the payment of octroi without following the prescribed procedure for the levy of octroi afresh for the added area and it has not been done.

(8) The last contention is that sections 61 and 62 of the Punjab Municipal Act relating to the imposition of taxes and the procedure thereof respectively are *ultra vires* the *Constitution*, being excessive delegation of legislative power.

(9) Section 5 of the Punjab Municipal Act provides for a notification of declaration of intention of the State Government to alter the limits of the Municipality. Sub-sections (1), (2) and (3) of this section read as under :—

“5. (1) The State Government, may by notification published in the Official Gazette and in such other manner as it may determine, declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification whether such local area is a municipality or a notified area under this Act or not.

(2) Any inhabitant of a municipality or local area in respect of which a notification has been published under subsection (1), may, should he object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the State Government within six weeks from the publication of the notification in the Official Gazette and the State Government shall take such objection into consideration.

(3) When six weeks from the publication of the notification have expired, and the State Government has considered

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the objections (if any) which have been submitted under sub-section (2), the State Government may, by notification include the local area in the municipality.”

(10) Sub-section (1) of section 5 specifically provides that the State Government shall notify the declaration of its intention by (1) notification published in the official gazette and (2) in such other manner as it may determine. It is, therefore, necessary that for issuing a valid notification under sub-section (3) including any local area in the Municipal Committee, two conditions laid down in sub-section (1) must be complied with. In the absence of a notification of the declaration of intention published in the official gazette and/or its publication in other manner in terms of sub-section (1) of section 5, the notification under sub-section (3) thereof including the local area in the municipality shall be invalid. In *Ram Singh and others v. State of Haryana* (1), section 4(1) of Haryana Municipal Act corresponding to sub-section (1) of section 5 of the Punjab Municipal Act was examined and it was held that the law that affects the citizens requires such publicity as may be considered sufficient to inform of its existence to a man in the street, and any provision requiring publication, of a fact which affects the citizens, in a given manner to achieve the aforesaid object of giving information to the affected person has to be considered mandatory one. In that case, the declaration of intention to include the area within the municipal limits of the Municipal Committee had been notified only through a notification and not additionally through other manner envisaged under section 4(1) of the Haryana Municipal Act. This lapse was held to vitiate the final notification including the area within the municipal limits.

(11) In *Gopabandhu Das v. State of Orissa* (2), it was also held that mere publication of the intention of the Government in the official Gazette would not serve any useful purpose as the official Gazette is not available to the majority of inhabitants of the area and consequently they are deprived of an opportunity to submit their objections. A similar view was taken in *Siya Sharan Sinha and others v. State of Bihar and others* (3).

(1) A.I.R. 1978 Pb. & Haryana 290.

(2) A.I.R. 1972 Orissa 35.

(3) A.I.R. 1969 Patna 88.

(12) The contention of the learned counsel for the petitioner is that the State Government complied with the first mandatory provision under section 5(1) of the Act by publishing the notification (P. 3) regarding the declaration of its intention but failed to comply with the second one about the publication thereof in other manner. The petitioner in paragraph 4 of the petition stated that the notification dated September 20, 1974, (P. 3) was published in the Gazette, but it was neither conveyed nor brought to its notice nor any publicity thereof was made in the revenue estate Taffazalpur. It was further stated in paragraph 6 that under section 5(1) of the Act it was obligatory for the State Government to publish the preliminary notification in the official gazette and also in such other manner as it may determine. The object of provisions of section 5(1) is to afford an opportunity of submitting objections to the inhabitants of the Municipality or the local area. The notification proposing the change in the limits of the Municipal Committee was not published in the revenue estate Taffazalpur. The provisions of section 5 of the Act cast a mandatory obligation on the State Government to publish the notification in the locality. The failure to follow this mandatory procedure laid down by the provisions of section 5 of the Act had deprived the petitioner of an opportunity to submit objections as laid down in section 5 of the Act. It was again repeated in paragraph 6-A that in terms of the basic scheme of sections 4 and 5 of the Act, the proposed notification must be published in the locality so as to enable the affected persons to avail of an opportunity of being heard. It is clear from the averments made in the petition that according to the petitioner no publication of the preliminary notification was affected in the locality, which lapse in turn vitiated the final notification including the area within the municipal limits of Patiala Municipal Committee.

(13) The State Government in its written statement in reply to paragraph 4 of the petition averred that the notification (P. 3) was published in the official gazette and the office of the Municipal Committee got made the publicity of the said notification by affixing the notice dated October 4, 1974 (R. 1) at various conspicuous places in the city including the concerned locality. The notice dated October 4, 1974, was issued by the Executive Officer, Municipal Committee, Patiala, where mention was made about the approval of a proposal for the extension of limits of Municipal Committee, Patiala, to include Taffazalpur, Nanak Nagar etc. and calling upon any person interested in or affected by the said proposal to submit objections to the Secretary to the Government, Punjab, Local Government Department, through the Deputy Commissioner, Patiala,

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within six weeks of the publication of the said notification. It was further averred that the publicity of notice dated October 4, 1974, was also got made by means of loud-speaker on October 11, 1974. It was repeated in reply to paragraph 6 of the petition that the notice was duly published and the petitioner was fully aware of the notification and could file objections, if so desired. The requirements of section 5 of the Act had been fully complied with. The reply to paragraph 6-A of the petition was that the affected persons were given due opportunity of being heard.

(14) The Municipal Committee, Patiala, in its separate written statement, in reply to paragraph 4 of the petition, stated that the copy of the notification (P. 3) was received in the office of the Municipal Committee, Patiala, on October 1, 1974, and thereupon immediate publicity of the said notification was got made by the office and copies of the notice dated October 4, 1974 (R. 1) were affixed at various places in the city including the concerned locality by the Process-servers on October 4 and 5, 1974,—*vide* their compliance report R. 2. The Executive Officer of the Municipal Committee got the publicity made by loud-speaker and for this purpose the letter dated October 10, 1974 (R. 3) was addressed by him to Bakhsh Sound Service, Patiala, who submitted their bill (R. 3/1), dated October 14, 1974, after compliance. In reply to paragraph 6 of the petition it was repeated that the notice was duly published and the petitioner was fully aware of the notification and could file objections, if so desired. The requirements of section 5 of the Act had been fully complied with.

(15) Annexure R. 2 is a copy of the compliance report of the peons (Process-servers) of the Municipal Committee, dated October 7, 1974, regarding the pasting of the copies of the notice dated October 4, 1974 (R. 1) on the notice-board of the Municipal Committee, on the walls of a part of Chowk Qilla, Railway Station, Bus Stand near Railway Octroi post and the office of the Deputy Commissioner. The copies (R. 3 and R. 3/1) indicate the announcement of the notice (R. 1) in the town through loud-speaker.

(16) The learned counsel for the petitioner has argued that the report of the Process-servers (R. 2) does not indicate that the notice (R. 1) had been pasted anywhere in the locality which was proposed to be included in the municipal limits and, similarly, the letter (R. 3) and bill (R. 3/1) show that the announcement through loud-speaker was restricted to the town of Patiala and it was not

made in the local area which was proposed to be included in the municipal limits. It was necessary that the publication should have been made in the concerned locality and, as it was not done, it cannot be taken as proper publication in terms of section 5(1) of the Act which was mandatory. I am not impressed by this contention. The area proposed to be included within the municipal limits is contiguous to the area which fell within the municipal limits. The Tahsil Office at Patiala served the residents both living within the municipal limits and without. The learned counsel for the respondents states during arguments that the *Patwar Khana* of revenue circle Taffazalpur is situate in Tahsil Office, Patiala. The Library was a common institution for all. The Chowk Quilla which is an important land-mark in the town of Patiala was equally important for those living within the municipal limits and outside. The Railway Station of Patiala as also the Bus Stand were common places for both sets of citizens and so was the office of the Deputy Commissioner. Through letter (R. 3), the Executive Officer desired Bakhsh Sound Service, Patiala, to announce the notice (R. 1) in the town through loud-speaker. There is hardly any justification to interpret and restrict the word 'town' to the municipal limits only. The announcement was made in the town of Patiala, which obviously included the *abadis* outside the municipal limits. The *abadis* as also the industrial units which develop in the outskirts of a town do constitute its integral part irrespective of the fact that in the revenue records they continue to be shown as a part of a revenue estate. The publication of the preliminary notification is made in the official gazette and in another manner to apprise the people of the intention of the Government to include the area within the municipal limits so that they may file objections which may be considered by the Government before making the final notification under section 5(3) of the Act including that area within the municipal limits. Keeping this object in view, the local publication made in the instant case cannot be termed as factually inadequate or insufficient.

(17) The learned counsel for the petitioner has argued that assuming the local publication had been made as averred by the respondents, it is no publication in the eyes of law because it is not proved that it was in accordance with the mode determined by the State Government. The contention is that it was mandatory for the State Government under section 5(1) of the Act to determine the manner or mode of local publication. It is not proved that the Government made such determination. The local publication was done by the authorities of Municipal Committee, Patiala at their

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discretion. In the absence of determination of the mode of publication by the State Government, the factual publication made locally would not tantamount to the compliance of the mandatory provisions of section 5(1) which lapse would vitiate the final notification (P. 2) including the area within the municipal limits.

(18) The learned Advocate General for the State of Punjab has argued that it is incorrect that the Government did not determine the mode of local publication and in this connection he has referred to paragraph 6 of the written statement submitted on behalf of the State Government wherein it has been specifically stated that the requirements of section 5 had been fully complied with and the petitioner had full opportunity for submitting the objections. The learned Advocate General has further contended that the main thrust of the petitioner in paragraphs 4, 6 and 6-A of the petition was that no local publication had been effected. In reply to these averments the State Government as also the Municipal Committee, Patiala, averred that local publication had been made and the requirements of section 5 had been fully complied with. The averments made in the written statements were not controverted in any rejoinder. It being the case, there is hardly any scope to infer that the State Government did not determine the mode of local publication which was got made by the Municipal authorities.

(19) After having carefully considered the arguments of the learned counsel for the parties, advanced with full vehemence, I come to the conclusion that those of the learned Advocate General for the State of Punjab must prevail. In the writ petition, the averment made was that local publication had not been made. Shri J. N. Kaushal, learned counsel for the petitioner, has argued that the petitioner could only aver whether the local publication had been made or not. It could not be within the knowledge of the petitioner whether the determination about the mode of local publication had been made by the State Government or not. The petitioner, therefore, could not make any averment regarding the omission on the part of the State Government in the matter of determination of mode of local publication. It was necessary for the State Government to come forward and show that the determination about the mode of local publication had been made and further local publication effected in accordance therewith. As the State Government did not specifically aver that the determination of mode had been made by the State Government, it is proper to infer that no such determination had been made and the local publication was effected in the

absence of such determination. This contention is without force. The petitioner did not state that there was no determination regarding the mode of publication. May be that the petitioner could not aver about this aspect for want of knowledge, but after the State Government and the Municipal Committee, Patiala, had taken up the stand in their written statements that requirements of section 5 had been fully complied with and the petitioner had full opportunity of submitting the objections, the petitioner could but did not controvert it by a rejoinder. In this situation, it would not be proper or justified to raise a presumption that the State Government did not determine the mode of local publication under section 5(1) of the Act.

(20) The object of publication of the declaration of intention of the Government in the official gazette and otherwise is to apprise the people about the proposal of the Government to include the area within the municipal limits so that they may, if so desired, file objections to be considered by the Government before making the final notification including the area within the municipal limits. The publication in the official gazette as also in other manner is mandatory. The discretion in the matter of determination of mode of local publication by the State Government has to be exercised in a reasonable manner. The exercise of discretion in this regard is (admittedly) open to scrutiny by the Court. The mode of local publication determined by the State Government if found not achieving the desired object would render the local publication bad, vitiating the final notification under section 5(3) of the Act. The local publication could be made by the municipal authorities. The objection raised is that it was not in consonance with the mode determined by the State Government. If the determination had been made by the State Government and the municipal authorities effected it in accordance therewith, it could still be challenged and examined by the Court whether the local publication made in the particular manner had achieved the desired object or not and conversely if the local publication already made by the municipal authorities has achieved the desired object in terms of section 5(1), the non-determination by the State Government about the manner of such publication may not remain sacrosanct, indispensable, imperative or relevant in its context.

(21) The petitioner in paragraph 10 of the petition stated that before including the revenue estate Taffazalpur within the municipal

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limits of Patiala Municipality, it was obligatory for the State Government to exclude it from the purview of Sabha area under the provisions of the Punjab Gram Panchayat Act. The failure to do so has rendered the impugned notifications (P. 2 and P. 3) illegal, *ultra vires* and bad in law. The State Government in reply to this paragraph averred that with the inclusion of the area within the municipal limits, it automatically ceased to be a part of the Sabha area because two local authorities in the same area cannot co-exist. Shri J. N. Kaushal, learned counsel for the petitioner, has referred to section 4(2) of the Gram Panchayat Act which provides that the Government may by notification include or exclude any area from the Sabha area. His argument is that in the absence of a specific notification of the Government under the Gram Panchayat Act to exclude the revenue estate Taffazalpur from the Sabha area, it could not be included in the municipal limits of Municipal Committee, Patiala. He has placed reliance on *Gram Panchayat, Shialawas Khurd and another v. The State of Rajasthan and others*, (4), wherein it was held that section 4 of the Rajasthan Municipalities Act could not be so interpreted as to imply an automatic exclusion of an area from the Panchayat limits on its inclusion in the municipal limits. I see no force in this contention. The rule laid down in *Shialawas Khurd's case* (supra) has no application to the instant case. In the said case section 86 of the Rajasthan Panchayat Act empowered the Government to include any area in the Panchayat circle or to exclude any area therefrom and transfer any area from one Panchayat circle to another and it prescribed a procedure therefor. The Rajasthan Panchayat Act was supplemented by the rules which provided for consideration of objections to the proposed inclusion, exclusion or transfer. In this situation, before any area could be excluded from the Panchayat Circle, the procedure laid down in section 86 was required to be followed. Under these circumstances it was held that the inclusion of an area within the municipal limits would not imply automatic exclusion of that area from the Panchayat limits. Under the Punjab Gram Panchayat Act, nobody has a right to object to the inclusion or exclusion of any area from the Sabha area. A notification of the Government, that is, publication of an order of the Government in the official gazette is sufficient to exclude any area from the Sabha area. Assuming that two local authorities in the same area cannot co-exist, the notification of the Government under section 5(3) of the Act would exclude that area

(4) A.I.R. 1971 Rajasthan 263.

from the Sabha area in the context of section 4(2) of the Gram Panchayat Act.

(22) Another argument of the learned counsel for the petitioner is that the extension of the municipal area does not *per se* make the petitioner liable for payment of octroi and for this purpose it is necessary that the procedure prescribed under the Punjab Municipal Act for the levy of octroi is followed afresh for that area. Reliance has been placed on *The Atlas Cycle Industries Ltd., v. The State of Haryana and another*, (5). When confronted with the amendment of sub-section (4) of section 5 of the Act by Punjab Act 24 of 1973, by insertion of a word 'notification' therein and the rule laid down in a Division Bench judgment of this Court in *Surindera Steel Rolling Mills v. The State of Punjab etc.*, (6), the learned counsel did not press this argument.

(23) The last contention of the learned counsel for the petitioner is that sections 61 and 62 of the Punjab Municipal Act are *ultra vires* the Constitution as they suffer from the vice of excessive delegation of legislative power. This argument was raised and repelled in a Division Bench judgment of this Court in *Messers Mohan Meakin Breweries Ltd., Solan v. Municipal Corporation of Jullundur City and others*, (7). In view of this Shri J. N. Kaushal, learned counsel for the petitioner, abandoned this contention as well.

(24) In the result, both the writs fail and are dismissed with costs.

H.S.B.

Before S. S. Sandhawalia C.J. and S. S. Dewan, J.

SHREE GANESH OIL AND RICE MILLS and others,—
Petitioners.

versus

STATE OF HARYANA and another,—Respondents.

Civil Writ No. 1925 of 1975.

March 20, 1979.

Haryana General Sales Tax Act (20 of 1973) as amended, by the Haryana General Sales Tax (Second) Amendment Act (34 of 1976)—Sections 6, 16-A and 24—Retrospective operation of the amendment

(5) A.I.R. 1972 S.C. 121.

(6) 1977 P.L.R. 718.

(7) 1979 Simla Law Journal 21.