

STATE OF ORISSA

v.

SRIDHAR KUMAR MALIK AND ORS. ETC. ETC.

JULY 31, 1985

[R.S. PATHAK AND AMARENDRA NATH SEN, JJ.]

Orissa Municipal Act, 1950, Chapter XXX-A, Section 417-A and Rule 602 of the Orissa Municipal Rules, 1953 - Proclamation constituting notified area published in English language both in the Official Gazette and the local newspaper - Validity of.

Chapter XXX-A of the Orissa Municipal Act, 1950 also empowers the State Government to apply the provisions of the Act to areas other than the towns, called "notified areas". Under s. 417-A in that Chapter, 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, for deciding as to 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.

In August 1972 the State Government proclaimed their intention to issue a notification under sub-s.(1) of s.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 as well as in a local Oriya newspaper, the "Daily Samaj". Pursuant to this proclamation no objection was received. On March 31, 1977 the State Government issued a notification constituting with effect from April 1, 1977, the area of Ganjam and Damodarpur villages as a notified area in terms of sub-s. (1) of s. 417-A and making all the provisions of the Act applicable.

The residents of the said two villages challenged the validity of the notification dated March 31, 1977 under Article 226 of the Constitution on two grounds : (1) that the proclamation conveying the intention of the 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

A which, were to be the subject of administrative provision in
relation to the area and thus they were deprived of a full and
proper opportunity to express their views on the proposal of the
Government and (2) that most of the residents did not know
English and as the proclamation was made in the English language,
B 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 the grounds found favour with the High Court
and consequently the notification was quashed.

Dismissing the appeal of the State,

C **HELD:** '1. The declaration that the State Government intends
to issue a notification under sub-s.(1) of s.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 the instant case, 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
D purposes of the Act or only some of them were intended for
administrative provision in the proposed area. Therefore, the
proclamation made under sub-s.(1-a) of the s.417-A was ambiguous
and incomplete and was not the kind of notification which would
ensure that the intention behind making it and calling for
objections would be served. [354 F-H]

E 2. Sub-s.(1)(a) of the s.417-A of the Act requires that
the proclamation should be published in the Official Gazette and
also at least in one newspaper circulating in the area. In the
instant case the proclamation was made in the English language
in the Gazette as well as in the local newspaper. The Oriya
F Gazette is published in English, and that being so the intention
of the legislature in sub-s.(1)(a) must be construed to be that
the proclamation in the gazette should be in the English
language. So far as the proclamation in the newspaper was concerned,
Rule 602 of the Orissa Municipal Rules 1953 does not prescribe
the language in which the proclamation under sub-s.(1) of
s.417-A of the Act has to be made. Having regard to the object
G with which a proclamation is required to be published under sub-
s.(1)(a) of s.417-A of the Act and in order to make all persons
residing within the area to understand the proposal and to
submit their objections, it must be published in the local
language of the area in which the newspaper circulates and with
which the residents are familiar. The local language of the area
H is Oriya and, therefore, the State Government should have
published the proclamation in the newspaper in that language.
[354A 355 A-H. 356 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 545 & 546 of 1980.

From the Judgment and Order dated 27.2.1978 of the Orissa High Court in O.J.C. Nos. 249 & 241 of 1977.

P. Govindan Nair, R.K. Mehta and Baby Krishnan with him for the Appellant.

B.P. Maheshwari for Respondent Nos. 1-2 in 545/80 and R-1 in 546/80 and G.S. Chatterjee (Not Present) for Respondent No. 3 in 545 of 1980.

The Judgment of the Court was delivered by

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.

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 under 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.

A (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
B 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.

C (1-b) The District Magistrate shall, with all reason-
able 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".

D In August 1972, the State Government proclaimed their inten-
tion to issue a notification under sub-s.(1) of s.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
E 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 appen-
ded Schedule a notified area in terms of sub-s.(1) of s.417-A of
the Act. The notification stated that the notified area would
F consist of two villages, Ganjam and Damodarpur, and that all the
provisions of the Act would be applied to the notified area.

G 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
H 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 as 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.

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.

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 decided 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-s.(1) of s.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-s.(1-a) of s.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.

A The proclamation issued by the State Government under sub-s.(1-a) of s.417-A states:

B "In pursuance of sub-section (1-A) of s.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.

C 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.

Schedule

D

Name of Village	Police Station with Thana No.	Name of the G.P.
1	2	3
1. Ganjam	Chatrapur Thana No.17	Ganjam
2. Damodarpur	Chatrapur Thana No.17	Ainchpur"

E 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-s.(1) of s.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-s.(1-a) of s.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.

H The next point concerns the validity of the proclamation made under sub-s.1(a) of s.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 Sámaj". The Oriya Gazette is published in English, and that being so the intention of the legislature in sub-s.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-s.1(a) of s.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-s.1(a) of s.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-s.(1) of s.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

A underestimated. To reach out to the people, it must be published
in a language with which they are familiar. In so fundamental a
B 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
C 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.

The appeals are dismissed with costs.

A.P.J.

Appeals dismissed.