Allahabad High Court
Ghulam Mohiuddin vs Munsiff Of Etah And Ors. on 10 October, 1960
Equivalent citations: AIR 1961 All 200
Author: Mootham
Bench: O Mootham, N Beg, S Dwivedi
JUDGMENT Mootham, C.J.

1. I have had the advantage of reading the judgment prepared by Dwivedi, J., and I agree that this petition fails substantially for the reasons which he has stated. Mr. Justice Tandon had referred this petition to a larger Bench as he doubted whether the case of Abdul Aziz v. State of Uttar Pradesh, AIR 1958 All 109, had been rightly decided. Out of deference to the learned Judge, I think it proper to state shortly the reasons which lead me to take a different view. The learned Judge was of opinion that the provisions of Sections 47-A and 87-A of the U. P. Municipalities Act, 1916, could not be extended to town areas substantially on two grounds: first, that only such provisions of the Municipalities Act can be extended to town areas as relate to the carrying out. of functions which a Municipal Board can discharge and, secondly, that the modifications made by the State Government when extending those sections radically altered the policy underlying the Municipalities Act and were therefore illegal.

2. Section 87-A provides for the manner in which a motion expressing non-confidence in the President of a Municipal Board may be made; Section 47-A imposes certain obligations on the President against whom such a motion has been passed. The petitioner in the present case attacks only the extension of Section 87-A to town areas.

3. The power to extend to a town area an enactment in force in a municipality is to be found in Section 38 of the U. P. Town Areas Act, 1914. The material provisions of this section are Sub-sections (1), (3) and (4), and they read as follows:

"(1) The State Government may, by notification in the Official Gazette, extend to all town areas or to any town area or to any part of a town area any enactment for the time being in force in any municipality in Uttar Pradesh, and declare its extension to be subject to such restrictions and modifications, if any, as it thinks fit.

(3) When any enactment has been so extended the functions of the municipal hoard shall, so long as the extension is in force, be discharged by the prescribed authority or if none is appointed, the District Magistrate or by the Committee, if so empowered by the State Government.

(4) When the committee is empowered under Sub-section (3) to discharge any functions assigned to the municipal board by any enactment so extended, the State Government may declare applicable also to the committee, for such periods as the extension continues in force and subject to such restrictions and modifications, if any, as it thinks fit, any enactment prescribing the status, rights or liabilities of the municipal board in respect of the exercise of such functions."

Tandon, J.'s view was that the effect of Sub-sections (3) and (4) was to restrict the power conferred upon the State Government by Sub-section (1) by limiting its operation to the extension to a town area of only those functions which a municipal board can discharge. With great respect, I am unable to subscribe to this view. Sub-section (1) is in very wide terms; it empowers the State Government to extend to a town area any enactment for the time being in force in any municipality in the Uttar Pradesh, subject to such restrictions and modifications, if any, as it thinks fit.

I see no reason why, if such can be avoided, a limitation should be placed on the ambit of the State Government's power under Sub-section (1), and it appears to me that the purpose and effect of Sub-sections (3) and (4) is to make provisions of general application which will, if necessary, come into operation automatically when an enactment which relates to the carrying out of municipal functions is extended to a town area. I do not think that the Court would be justified in holding that because Sub-sections (3) and (4) make provision for the manner of the discharge of functions of a municipal board that only those sections of the Municipalities Act can be extended to a town area which relate to such functions.

4. The principal modification which has been made by the State Government in extending Section 87-A of the Municipalities Act to town, areas is the substitution in that section of the word 'Chairman' for the word 'President', the purpose of the alteration being to make the provisions int the section regulating the consideration of a motion of non-confidence in the Chairman of a town area committee. It is said that this change has substantially affected the policy underlying the Municipalities Act, and that what the State Government has really done is to enact a parallel law for the making of a non-confidence motion in the Chairman of a town area where no such provision existed in either of the two Acts.

I find it difficult to accede to this view. The provisions of the Municipalities Act are applicable only to municipalities in the Uttar Pradesh; none of them has per se any application to a town area. It appears to me therefore to follow that every extension to a town area of any provision of the Municipalities Act involves, in the sense in which that phrase is used by the learned Judge, the enactment of parallel legislation; and this is no less so when the extension is of a provision which relates to the carrying out of a function vested under the Municipalities Act in a municipal board.

For example, the extension to town areas of the power to make certain rules conferred upon a municipal board by Section 298 of the Municipalities Act necessarily involves the conferment upon the Town Area Committee of a power to make such bye-laws, but the conferment on Town Area Committee of a rule-making power is completely Outside the ambit of the Municipalities Act. In my view however there is, strictly speaking, no parallel legislation. The power conferred on the State-Government is to extend to a town area the provisions of an enactment in force in municipality and to make such extension subject to such modifications and restrictions as it thinks fit.

The State Government's power to modify and restrict is solely for the purpose of so adapting the enactment as to make its provisions appropriate to the conditions prevailing in the town area to which it is extended. It is useless, as pointed out by Fazl Ali, J., in Article 143, Constitution ot India

and Delhi Laws Act (1912) etc., In re, 1951 SCR 747 at p. 848: (AIR 1951 SG 332 at pp. 359-360), to give an authority the power to adapt a law without giving it the power to make suitable changes; and it is, I venture to suggest, a misnomer to designate the exercise of such power as parallel legislation

5. The learned Judge places some emphasis on the proposition that an enactment extended to a town area does not thereupon become part of the Town Areas Act but remains a part of the parent Act: in this case the Municipalities Act. I agree that the enactment so extended does not become part of the Town Areas Act; but with great respect I entertain considerable doubt whether it is correct to say that it continues to be a part of the parent Act. It appears to me that the extended enactment is in reality a new law derived from die parent Act and which, without becoming part of the Town Areas Act, will be in force in a town area for such time as the State Government may think fit.

6. In exercising its power to extend the provisions of the Municipalities Act to town areas the State Government cannot depart from the policy of the Act. That policy, in my opinion, includes the development of the organs of self-government and the progressive control by citizens over the matters of local concern, A Municipal Board and a Town Area Committee are the elected bodies responsible respectively for the good governance of the municipality and town area. The former is presided over by a President and the latter by a Chairman, and in my opinion, the extension of Section 87-A of the Municipalities Act to town areas with such modifications as are necessary to render it applicable to the case of the presiding officer of the Town Area Committee is within the power of the State Government. It is unlikely that the question now before us would have arisen had the Chairman of a Town Area Committee been designated the President and the committee had been called a board. I think, with respect, that AIR 1858 All 109 was rightly decided.

Beg, J.

7. I have had the advantage of going through the judgments prepared by my learned brother Dwivedi, and my Lord the Chief Justice. I am also of the opinion that the extension of Section 87-A of the U. P. Municipalities Act 1916, to the Town Areas under Section 38 of the Town Areas Act 1914 by the Government Notification dated May 2, 1956, was not ultra vires of the State. I may, however, add some observations. On behalf of the petitioner a two-fold argument was advanced before us. It was, in the first place, argued that the U. P. Municipalities Act, 1916, already extended to the whole of Uttar Pradesh, and hence it could not be extended to the Town Areas. In the alternative, it was argued that even if the Municipalities Act could be extended to the Town areas, only such portions of it could be extended under Sub-section (3) of Section 38 as related to the functions of the Municipal Board.

8. So far as the first argument is concerned, the provisions of Sub-section (1) appear to me to be wide enough to cover any Act including the U. P. Municipalities Act, 1916. All that Sub-section (1) lays down is that the Act to be extended must be one which is "for the time being in force in any Municipality in the Uttar Pradesh". It cannot be denied that the Municipalities Act, 1916, was one of the Acts which was in force in the Municipalities in Uttar Pradesh on the date of the notification. Under the circumstances, I find it difficult to see how its extension is barred by Sub-section (1) of Section 38. No other condition is contained in Sub-section (1). The addition of any further condition

or the imposition of any other limitation in this Sub-section would be tantamount to legislation. This is not the task of the Court but of the Legislature.

9. Further, a reference to the provisions of Sub-section (3) of Section 38 would itself indicate that the Legislature clearly envisaged in this very section the extension of the provisions of the Municipalities Act to the Town Areas. The extension of the Municipalities Act, 1916, from the category of extensible Acts would, therefore, appear to be against the intendment of the legislation as indicated by Sub-section (3) of this very section.

10. Learned counsel in this connection also relied on Section 1(2) of the U. P. Municipalities Act, 1916, which provides that the said Act "shall extend to the whole of Uttar Pradesh", and argued that as the area of the application of the Municipalities Act covered the whole of Uttar Pradesh, a Town Area would necessarily lie within Uttar Pradesh; hence it could not be extended again to the same area. This argument of the learned counsel seems to rest on a conclusion between the range of potential applicability of an Act and its actual application.

Section 1(2) of the Municipalities Act defines the former and not the latter. This may be illustrated from an examination of Section 1 (2) of the Municipalities Act in the light of its neighbouring provisions in the same Act which prescribe the mode of formation of a municipality. Under Section 3(1) of the Act the Government is authorised to select a particular local area in U. P., and to issue a notification declaring it to be a Municipality. The effect of the issue of such a notification is that the said area assumes the status of a "Municipality" as defined in Section 2(9) of the Act, and becomes subject to all the Municipal rules, regulations and bye-laws etc., as provided in Section 5 of the Municipalities Act.

11. In this connection it is significant to note that similar provisions are also to be found in the Town Areas Act, 1914. Thus Section 1(3) of the Town Areas Act, 1914, similarly provides that the said Act shall extend to the whole of Uttar Pradesh, but particular local areas assume the rank of Town Areas as defined in Section 2(8) of the Act only after a notification under Section 3 of the Act has been made in respect of them. The purpose of the Legislature seems to be to introduce the scheme of local self-development in U. P. in successive stages in various local areas according to the level of progress or development attained by them at the time.

Reference in this connection might also be made to Sections 337 and 338 of the Municipalities Act; 1916, in which a similar provision is made for .the extension of the provisions of the Municipalities Act, 1916, Or of any other Act which w applicable to the Municipalities with such restsi" tions or modifications as may be considered Pit, to areas to be styled as "Notified Areas by the issue of a Notification by the State Government in that regard. The argument of the learned counsel on this aspect of his case seems to ignore the scheme devised by the Legislature for the actual implementation of both these skier Acts in U. P.

12. So far as the alternative argument of the learned counsel is concerned, it seems to rest on the erroneous assumption that Sub-section (3) of section 38 of the Town Areas Act, 1914, governs, or in any way controls the provisions of Sub-section (1) of the same section. The entire extent of the

power of extension possessed by the State Government is defined in Sub-section (1). Sub-section (3) only makes provision for certain consequential matters which may follow the extension into the Town Areas of certain particular provisions of the Municipalities Act, or of any other Act in which the Municipal Board may have to perform certain functions. Sub-section (3), therefore, presumes that an enactment has already been extended, and merely lays down that where under the patent Act the extended provision involves the performance of any functions by the Municipal Board, such functions shall, under the Town Areas Act, be discharged by the authority prescribed therein.

13. This would be further borne out by the opening part of Sub-section (3) which starts with the recital that 'when any enactment has been so extended" i.e., after extension of an Act as provided in Sub-section (1) has already been made, then, as a result of it, the consequential replacement of the prescribed authority in place of the Municipal Board takes place. Sub-section (3), therefore, comes into play only after the Act has already passed the test prescribed under Sub-section (1) and has been extended. It is not a part and parcel of die test itself. In others words, whereas Sub-section (1) relates to a stage precedent to the act of extension, Sub-section (3) relates to a stage subsequent to it.

14. The insertion of Sub-section (3) was obviously found necessary for the purpose of constituting a parallel body which could perform the functions of the Municipal Board under the Town Areas Act. Sub-section (3) does not at all prescribe the test for the determination of the question whether an Act is capable of being extended to a Town Area. That test is provided in Sub-section (1) which is exhaustive in this regard. The extended Act might or might not involve the performance of any functions of the Municipal Board.

Where, however, the provision of law extended to a Town Area does involve the performance of any function by the Municipal Board, Sub-section (3) provides that role of Municipal Board under the Town Areas Act shall be performed by the authority prescribed therein. Sub-section (3) is, therefore, relevant only for the purpose of determining which is the body that will perform the functions of the Municipal Board under the extended provision of law, if the said provision of law does involve the performance of any such functions. It is not relevant at all for the purpose of determining whether the enactment itself is capable of being extended. The argument of the learned counsel on this aspect of the matter, therefore, appears to be misconceived.

15. In this connection I may also observe that a subsidiary argument was also advanced by the learned counsel for the petitioner to the effect that the passing of a no-confidence motion under Section 87-A of the Municipalities Act is not one of the functions or duties of the Municipal Board as provided in Sections 7 and 8 of the Municipalities Act, 1916, and hence it could riot be extended to Town Areas. This narrow interpretation is, however, not borne out by an examination of the provisions of Sub-section (3). Sub-section (3) itself lay down that it comes into play whenever "any enactment" has been extended.

It is, therefore, wide enough to cover a case of extension of not only the provisions of the Municipalities Act but also of any other enactment. Thus Section 31 of the Cattle Trespass Act (Act 1 of 1871) provides that all or any of the functions assigned to the State Government or the District Magisrate therein may be transferred to a local authority; and under Notification No. 567/

XII-751-B, dated March 24, 1899, functions of the District Magistrate under certain sections of she said Act have been transferred to Municipal Boards and Committees.

There may be similar transfer of power to the Board under other cognate Acts like the Hackney Carriage Act (Act XIV of 1879) or the Vaccination Act (Act XIII of 1880) and so on. The purpose of Sub-section (3) seems to be to constitute a corresponding authority under the Town Areas Act which would be able to perform or take Over all the functions that were assigned to the Municipal Board under the extended provision o law from whichever enactment it was engrafted. The extended provision of law might or might not itself be a part of the Municipalities Act.

16. Reference in this connection might also be made to Section 338 of the Municipalities Act, 1916, which provides for the extension of the Municipalities Act or of any other Act applicable therein to Notified Areas. Under Section 338(l)(c) a Committee is appointed in such Notified Areas to perform certain functions of the Board, and Sub-section (4) of Section 338 provides that for the purpose of any enactment which may be extended, such a Committee "shall be deemed to be a Board". Similarly, under Sub-section (3) of Section 38 of the Town Areas Act the intention of the Legislature appears to be to enable the prescribed authority to step into the shoes of the Board, and, in fact, to virtually take its place for all purposes under the extended law.

17. In view of the aforesaid considerations, it appears to me that if would be more reasonable and more in consonance with the intention of the Legislature to construe the plural noun "functions" used in Sub-section (3) in a broad general sense as referring to or covering all tasks or duties that are assigned to or are normally carried out by the Municipal Board under the parent Act, and as indicating that the performance of all such tasks or duties shall be normal work of the authority prescribed therein as the counter-part of the Municipal Board under the Town Areas Act.

In the Advanced Learner's Dictionary of Current English (Oxford University Press) the meaning of the plural noun "functions" is given as "the tasks or duties which must be carried out by a person in an official position". In Thorndike- Barnhart Comprehensive Desk Dictionary two of the meanings of the word 'function' are given at No. 1 as "proper work; normal action or use'' In Webster's New World Dictionary (Macmillan) the word 'function' is differentiated from its other synonyms thus: 'Function is the broad, general term for the natural, required or expected activity of a person or thing'.

In this connection it can also be argued that the assignment of every function or task, or work or duty to a particular body implies also the vesting of an additional power in that body to enable it to perform and to carry out the same. Reference in this connection might also be made to Schedule I of the Municipalities Act in which under the heading 'The Powers and Functions of a Board', the passing of a 'vote of non-confidence in the President' is enumerated as one. It is, however, not necessary to go further into the matter; because, in any case, if the above view of the interpretation of Sub-sections (1) and (3) is accepted as correct, this argument would be really beside the mark.

The question whether a particular act was or was not the function of the Municipal Board might be relevant for the purpose of determining whether the action of the Committee, which is the

representative or the substitute of the Municipal Board under Sub-section (3) of the Town Areas Act, was ultra vires, and not for the purpose of deter mining whether the notification issued by the State Government extending a provision of law to Town Areas under Sub-section (1) was ultra vires.

The plea of the petitioner in the present case is the latter one and not the former, and, for the purpose of determining the latter plea, as already indicated above, the sole test is provided by Sub-section (1). For the above reasons, I find it difficult to accept either of the contentions advanced by the learned counsel for the petitioner in this case.

Dwivedi, J.

18. The petitioner, Ghulam Mohiuddin, was in the year 1957 elected Chairman of the Town Area Committee Sakeet (hereinafter called the Committee), constituted under the U. P. Town Areas Act, 1914 (hereinbelow called the 1914 Act). On March 9, 1959, he received a notice of a meeting of the Committee on May 1, 1959 to Consider a motion of no-confidence against the Chairman tabled by six members of the Committee.

Thereupon on April 30, 1959, the petitioner moved in Court the present petition for the primary relief that the scheduled meeting should be interdicted by the Court.

The petitioner failed to get any interim relief, and in the scheduled meeting, which was presided over by the Munsif, Etah, the motion of no-confidence was passed by six members. The Munsif accordingly declared the motion to have been carried. Then on May 5, 1959, the petitioner presented an application, headed under Section 151, C. P. C., in the petition, intimating to the Court the passage of the no-confidence motion as well as praying for the addition to his petition of some fresh grounds of attack and one fresh prayer that the respondents should be restrained from carrying into effect the resolution of no-confidence.

19. Before the learned single Judge, as before us, the petitioner questioned the legality of the no-confidence resolution on the only ground, that Section 87-A of the U. P. Municipalities Act, 1916 (hereinafter called the 1916 Act), in accordance with which the no-confidence motion was tabled, moved and passed, could not be extended to Town Areas by the State Government in exercise of its powers under Sub-section (1) of Section 38 of the 1914 Act. This challenge was foreclosed to the petitioner by a Division Bench decision of the Court in AIR 1958 All 109, but the learned single Judge felt that that decision required reconsideration; hence the case before us.

20. There is no provision in the 1914 Act prescribing the procedure for tabling, moving and passing a no-confidence motion against the Chairman of the Committee. In exercise of its powers, under Sub-section (1) of Section 38 of the 1914 Act the State Government has, by its notification No. 743-A/IX-A-471-T54, dated May 2, 1956, extended the provisions of Section 87-A of the 1916 Act, with certain modifications (which shall be described later), to all the Town Areas in Uttar Pradesh. Section 87-A prescribes a special and exclusive procedure for tabling, moving and passing a no-confidence motion against the President of a Municipal Board. Section 38 of the 1914 Act provides:

"38(1) -- The State Government may by notification in the Official Gazette, extend to all Towro Areas or to any Town Area or to any part of a Town Area any enactment for the time being in force in any Municipality in the Uttar Pradesh, and declare its extension to be subject to restrictions and modifications, if any, as it thinks fit.

(2) Where any enactment is so extended, any provision of this Act inconsistent with such extension or declared in the aforesaid notification to be inoperative shall cease to have effect so long as the extension is in force.

(3) When any enactment has been so extended the functions of the Municipal Board shall, so long as the extension is in force, be. discharged by the prescribed authority or if none is appointed the District Magistrate or by the Committee if so empowered by the State Government.

(4) When the Committee is empowered under Sub-section (3) to discharge any functions assigned to the Municipal Board by any enactment so expended, the State Government may declare applicable also to the committee, for such periods as the extension continues in force and subject to such restrictions and modifications, if any, as it thinks fit, any enactment prescribing the status, rights or liabilities of the Municipal Board in respect of the exercise of such functions.

(5) The State Government may, by notification in the Official Gazette direct that any enactment so extended shall cease to be extended to "any Town Area or part of a Town Area."

21. It is plainly implied in the wordy of Sub-section (1) of Section 38 that the State Government may not extend an enactment in force in a Municipality to Town Areas, if it is already in operation there. It is also quite plain from Sub-section (2) of Section 1 of the 1916 Act that this Act extends to the whole of Uttar Pradesh, but the section cannot, in my view, serve as a springboard to the petitioner's argument that Section 87-A is automatically in force in Town Areas from the date of its enactment, and could not accordingly be extended to them.

The argument was overruled by the Division Bench in Abdul Aziz's case, AIR 1958 All 109, and proceeds from a misappreciation of the well-marked distinction between the territorial extent of a law (see Article 245 of the Constitution and its marginal note) and the locale of its effective operation, which is often a smaller area. Sub-section (2) of Section 1 of the 1916 Act declares the territorial extent of the Act, and cannot be strained to yield force and efficacy to Section 87-A in Town Areas.

22. The next argument of the petitioner is that Sub-section (1) of Section 38 envisages extension to town areas of an enactment, which prescribes any function of a Municipal Board, and that Section 87-A is obviously not such an enactment. Sub-section (1) of Section 38 permits extension of 'any enactment'. The word 'enactment' is, by Section 4(14) of the U. P. General Clauses Act, 1904, made to include any provision contained in any Act, and Section 87-A, being a provision in the 1916 Act, will be an enactment, unless there is anything repugnant in the subject or context of Section 38. It is said that Sub-sections (3) and (4) of Section 38 furnish a contrary context and cut down the width of the word 'enactment' to such provisions as prescribe functions of a Municipal Board. I am unable to

accede to this contention.

23. In Indian Immigration Trust Board of Natal v. Govindasamy, AIR 1920 PC 114, the Privy Council, repelling the contention that the statutory definition of the words "Indian immigrant" in the Indian Immigration Act of Natal should not be applied to those words in Section 50 of that Act, said, "Now when the interpretation clause in a statute says that such and such an expression shall include so and so, a Court in construing a statute is bound to give effect to the direction unless it can be shown that the context of the particular passage where the expression is used clearly shows that the meaning is not in this place to be given effect to or unless there can be alleged some general reasons of weight why the interpretation clause is to be denied its application."

24. The burden of showing a plain contextual repugnancy is on the petitioner, vide the remarks of Viscount Maugham in Knightbridge Estates Trust Ltd. v. Byrne, 1940 AC 613, that "..... it is incumbent on those who contend that the definition does not apply to Section 74 to show with reasonable clearness that the context does in fact require a more limited interpretation of the word 'debenture'."

25. Finally I ought also to bear in mind the sobering remarks of Sir George Rankin in Jyoti Bhushan v. Shiva Prasad Gupta, AIR 1943 PC 205, where reversing a Full Bench judgment of this Court he said, "But with all respect to the learned Judges of the High Court, the words which they stress ..... are not intended to entrust the Courts with a discretion, and do not justify them in cutting down the ordinary meaning of the word "debt" or the phrase "any pecuniary liability except a liability for unliquidated damages" on the ground that they do not think that a particular case should come under the Act. This is a question and a debatable question of policy and not a question of something in the subject or context being repugnant to what is expressly stated to be the meaning of the word."

26. In the light of these precedents I shall now examine whether the subject and context of Section 38 plainly stand for the suggested attenuated meaning of the word 'enactment'. Looking first at Sub-section (1) of this section I find no words of limitation there. It appears that enactments in force in a municipality may be of at least three types, one prescribing functions of a municipal board, e.g., Section 180 of the 1916 Act, another vesting powers in some authority for preserving the peace and well-being of the municipality, e.g., Sections 246 and 247 thereof, and a third dealing with various other matters connected with the municipality, e.g., Section 87-A.

Sub-section (3) of Section 88 -- its Sub-section (4) is only consequential -- is designed to come into play on extension to town areas of the first type of enactments, and I find no clear words either in the subsection itself or in the preamble and the body of the 1914 Act which should make me think that the subsection is intended by the legislature to be exhaustive of the categories of extensible enactments.

It needs no argument to show that need for extension of Sections 246 and 247 as well as Section 87-A may at one time be felt to be imperative for the comfort and tranquillity of a particular expanding town area or for resolving deadlock in a Committee, which is engendered by its mutually warring Chairman and members, and which has rendered the Committee incapable of

accomplishing the legislative objects of the 1914 Act. The suggested construction would preclude the extension to town areas of these sections as well as many other beneficent provisions, and should not be accepted without any unequivocal contrary context.

27. I am also unable to discover any repugnancy in the subject of Section 38, which, in view of human failing to foresee and pre-plan for the varying problems and complexities of a new experiment in local self-government in places, which are outgrowing their rural character, makes provision for cautious and gradual extension to town areas of laws whose usefulness has been verified by experience of their working in a municipality, which is a bigger local self-governing area.

28. The last argument is that Section 87-A has been extended to town areas with such modifications as overcarry the modifying power of the State Government under Section 38 (1) and that its extension is consequently ultra vires. Support was sought from the case of Raj Narain Singh v. Chairman, Patna Administration Committee, Patna, (1955) 1 SCR 290 : (AIR 1954 SC 569). There a taxing provision in a general municipal law, which was considered to be interlaced with another provision in that law, providing that no area could be included in a municipality constituted under that law without affording a prior chance of hearing against its inclusion to the inhabitants of the area, was alone extended to a new area recently included in a municipality constituted under a special municipal law giving no similar safeguard of hearing, and it was held that the dissociated extension of the taxing provision affected an impermissible essential change in the general law in the guise of the power of modification.

29. Nothing of the kind has, in my opinion, been done here by the State Government. It has extended Section 87-A to town areas by substituting the words 'Chairman' and Committee', for the words 'President' and 'Board' wherever they occur in the section. These are only nominal changes made with a view to adapt Section 87-A to the relative provisions of the 1914 Act; they do not effect any essential change either in Section 87-A or in the 1916 Act. These modifications are only incidental adaptations, mutato nomine, and I have no doubt that they could legitimately be made. Our Constitution, which lay Article 372(2) empowers the President to make such adaptations and modifications of the existing laws as may appear to be necessary or expedient to bring them into accord with its other provisions, should not be construed to interdict the modifications involved in this case.

30. My view is fortified by dicta of their Lord ships of the Supreme Court in 1951 SCR 747 : (AIR 1951 SC 332). At page 846 of the Report Fazl Ali J.

said, "The power of introducing necessary restrictions and modifications is incidental to the power to apply or adopt the law ..... The power to modify certainly involves a discretion to make suitable changes, but it would be useless to give an authority the power to adapt a law without giving it the power to make suitable changes."

At page 1006 (of SCR) : (at) page 407 of AIR) Mukherjea, J. said, "The word 'modification' ..... does not, in my opinion, mean or involve any change or policy but is confined to alteration of such a character which keeps the policy of the Act in tact and introduces such changes as are appropriate to

local conditions ....."

At page 1124 (of SCR) : (at page 440 of AIR) Bose, J. said, "The power to 'restrict and modify' does not import the power to make essential changes. It is confined to alterations of a minor character 'such as are necessary to make an Act intended for one area applicable to another and to bring it into harmony with laws already' in being in the State, or to delete portions which are meant solely for another area." (emphasis (here in ' ') mine).

31. There appears to be no ground to suppose that in Raj Narain's case, 1955-1 SCR 290 : (AIR 1954 SC 569) Bose, J. has departed from his views in the Delhi Laws Act case 1951 SCR 747 : (AIR 1951 SC 332).

32. I think I should also consider the effect of accepting the petitioner's argument, which is that even those sections of the 1916 Act, which deal with functions of a municipal board, and which could, according to the view of the learned single Judge in his referring order, be extended to town areas, would become inextensible for lack of power to substitute suitable words, for instance, in Section 180 of the 1916 Act, the word 'Committee' for the word 'board'.

33. I think, with respect, that Abdul Aziz's case, AIR 1958 All 109 was correctly decided.

34. To sum up, the petition is entirely devoid of any merits, and I would dismiss it with costs which I assess at Rs. 400/-. One half of the costs will be payable to the respondents 1 to 4 and the other half to the remaining respondents.

35. BY THE COURT: This petition, therefore, fails and is dismissed with costs which are assessed at Rs. 400/-. One half of the costs will be payable to the respondents 1 to 4, and the other half to the remaining respondents.