Supreme Court of India
The Tulsipur Sugar Co. Ltd vs The Notified Area Committee, ... on 27 February, 1980
Equivalent citations: 1980 AIR 882, 1980 SCR (2)1111
Author: E Venkataramiah
Bench: Venkataramiah, E.S. (J)

PETITIONER:
THE TULSIPUR SUGAR CO. LTD.

Vs.

RESPONDENT:
THE NOTIFIED AREA COMMITTEE, TULSIPUR

DATE OF JUDGMENT27/02/1980

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
DESAI, D.A.

CITATION:
1980 AIR 882 1980 SCR (2)1111
1980 SCC (2) 295
CITATOR INFO :
R 1981 SC1127 (17)
RF 1986 SC 515 (76)
F 1990 SC 261 (14,26)
RF 1991 SC1893 (14,27)

ACT:
Administrative law-Conditional legislation-Subordinate legislation-Power to extend the area of Municipal Committee whether subordinate legislation-Audi alteram partem-When necessary.

HEADNOTE:
The plaintiff (appellant) was a sugar manufacturer with its factory in a suburb of Tulsipur Town. By a notification issued on August 22, 1955 under section 3 of the U.P. Town Area Act, 1914 the limits of the Tulsipur Town were extended bringing the factory area within the jurisdiction of the Town Area Committee. In October, 1959 a draft notification was issued by which objections and representations to the levy of octroi on goods brought into the limits of the Town Area Committee for the purposes of sale, use or consumption were invited. Later a final notification dated December 15, 1959 was issued under section 39. In both the notifications however though reference was made to two schedules to the

notifications in neither was the second schedule which referred to the limits of the Town Area, added.

This defect was cured by notification dated April 14, 1960 incorporating Schedule II in the Notification dated December 15, 1959. The plaintiff was then called upon to pay octroi on some of the materials and stores brought into the factory.

The plaintiff thereupon questioned the validity of the Notification dated August 22, 1955 extending the limits of the Town Area Committee bringing its factory within the limits of the Town Area Committee and the subsequent notifications on the grounds that (i) the first of them dated August 22, 1955 did not give an opportunity to all concerned to make representations regarding the advisability of extending the limits of the Town Area Committee (ii) that the notification dated December 15, 1959 was inchoate because neither the draft notification nor the final notification contained the second schedule and (iii) that this defect could not be cured by issue of the Notification dated April 14, 1960 in that it was issued without following the procedure prescribed by section 39 of the Act.

The Trial Court held that the notification of August 22, 1955 was not open to question, that there was no valid levy because the draft notification the final notification and the amending notification were invalid and ineffective for the reason that the omission of the second Schedule was a material illegality and the subsequent notification could not validate an irregular notification.

On appeal by the defendant the civil judge, and on further appeal the High Court, dismissed the plaintiff's suit.

In appeal to this court it was contended that since the declaration of any area as a town area involved civil consequences, exercise of power by the State
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Government under section 3 by necessary implication imposed a duty on the State Government to give publicity to its proposals and failure to comply with such procedure invalidated a declaration made under section 3.

Dismissing the appeal,

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HELD : 1. Where a function performed by the State Government is judicial or quasi-judicial involving adjudication of the rights of any person resulting in civil consequences it becomes necessary to follow the maxim audi alteram partem (hear the other side) before taking a decision. [1118E]

2. In order to establish that a duty to act judicially applies to the performance of a particular function it is no longer necessary to show that the function is analytically of a judical character or involves the determination of a lis interpreters, though the presumption that natural justice must be observed will arise more readily where there

is an express duty to decide only after conducting a hearing or inquiry or where the decision is one entailing the determination of disputed questions of law and fact. Prima-facie a duty to act judicially will arise in the exercise of a power to deprive a person of his livelihood or of his legal status where the status is not merely terminable at pleasure or to deprive a person of liberty or property rights or other legitimate interest or expectation or to impose a penalty on him; though the conferment of a wide discretionary power exercisable in the public interest may be indicative of the absence of an obligation to act judicially. Where a discretionary power to encroach upon individual rights is exercised, the factors pointing to whether it must be exercised judicially include the nature of the interests to be effected, the circumstances in which the power falls to be exercised and the nature of the sanctions if any involved. Exceptionally a duty to act judicially may arise in the course of exercising a function not culminating in a binding decision if the wording of the grant of power or the context indicate that a fair hearing ought to be extended to persons likely to be prejudicially affected by an investigation or recommendation. [1118F-H, 1119A-C]

Halsbury's Laws of England Vol. I, 4th Edition page 77 referred to.

3. Where an administrative decision affects the rights of persons, it becomes the duty of the authority concerned to give notice of the proposed action to the persons to be affected and to take a decision after giving a fair opportunity to the person concerned to make his representation in that regard. [1119C-D]

A. K. Kraipak & Ors. Etc. v. Union of India & Ors. [1970] 1 S.C.R. 457; Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors. [1978] 2 S.C.R. 272; Maneka Gandhi v. Union of India [1978] 2 S.C.R. 621 referred to.

4. Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf. [1119E]

5(a) The power of the State Government to make a declaration under section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area, which is declared as

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a town area, is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. [1119H, 1120A]

In the instant case the maxim audi alteram partem does not become applicable by necessary implication. [1121G]

(b) The contention that the declaration to be made

under section 3 of the Act is in the nature of subordinate legislation is not tenable. It is not possible to equate a declaration to be made under section 3 of the Act with rules made under section 39. [1122A, B]

Sub-section 3 of section 39 does not in terms apply to a declaration to be made under section 3 of the Act. [1122B]

(c) The contention of the plaintiff that the declaration made by the State Government under section 3 of the Act declaring the area in which the sugar factory of the plaintiff is situated as a part of the Tulsipur Town Area is invalid is not tenable. A notification issued under section 3 of the Act which has the effect of making the Act applicable to a geographical area is in the nature of conditional legislation. It cannot be characterised as a piece of subordinate legislation. [1126B-C]

(d) The notification dated December 15, 1959 by which octroi was sought to be levied was valid. In the instant case the omission to mention the boundaries of Tulsipur Town in the draft notification and in the final notification did not make the final notification ineffective as there could be no room for doubt about the local area within whose limits the said impost would be effective. The procedure prescribed for the imposition of octroi was valid because representations and objections to the proposed levy were invited and a valid notification was issued. A notification so published is conclusive proof that the tax had been imposed in accordance with the provisions of the Act. [1128G-H, 1129A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 577 of 1970.

From the Judgment and Order dated 17-1-1968 of the Allahabad High Court in Second Civil Appeal No. 462 of 1964.

Mr. Anil B. Diwan, J. S. Sinha and K. J. John for the Appellant.

Mr. J. P. Goyal, S. K. Jain and S. M. Jain for the Respondent.

The Judgment of the Court was delivered by VENKATARAMIAH, J.-This appeal by certificate arises out of Suit No. 416 of 1960 on the file of the Munsif, Utraula at Gonda instituted by the Tulsipur Sugar Company (hereinafter referred to as 'the plaintiff') against the Town Area Committee, Tulsipur (hereinafter referred to as 'the defendant') for a permanent injunction restraining the defendant from levying octroi on goods brought into the premises of the sugar factory belonging to the plaintiff pursuant to the Notification bearing No. 540/XXIII-102 (58-

59)-7 dated December 15, 1959 issued by the Commissioner of Faizabad Division in exercise of the powers conferred on him by sub-section (2) of section 39 of the U.P. Town Area Act, 1914 (U.P. No. II of 1914) (hereinafter referred to as 'the Act') read with the Notification bearing No. 1375(1)/XXIII-102(58-59)-24 dated April 14, 1960. The name of the defendant was altered into the Notified Area Committee of Tulsipur by virtue of an order made by the Munsif on August 18, 1962 since the defendant which was originally a Town Area Committee had been re-constituted as a Notified Area Committee with effect from March 15, 1962. The plaintiff is a company carrying on the business of manufacturing sugar in its factory which was established in the year 1936 in Shitlapur village which was situated in the suburb of Tulsipur Town. By the Notification bearing No. 1853-IX-86 T-51 dated December 22, 1955 issued by the Governor of Uttar Pradesh under section 3 of the Act, the limits of the Tulsipur Town Area were extended so as to bring within its limits the village of Shitlapur. Thus the sugar factory of the plaintiff was brought within the jurisdiction of the Tulsipur Town Area Committee. In the year 1959, it was proposed to levy octroi on certain goods which were brought into the limits of the Tulsipur Town Area Committee for purposes of sale, use or consumption and for that purpose a draft notification was published on October 28, 1959 notifying the proposed rules which would govern the levy of octroi and inviting objections and representations thereto. The final Notification was published by the Commissioner on December 15, 1959 under section 39 of the Act notifying the rules governing the levy of octroi in the Town Area of Tulsipur. In both these notifications, there was a reference to two Schedules-Schedule No. 1 and Schedule No. 2 but in fact neither of the two notifications contained the second schedule. The first schedule referred to the rates of octroi leviable on the goods specified therein and the second schedule referred to the limits of the Town Area. When the Commissioner noticed that the Notification dated December 15, 1959 by which the octroi rules were promulgated did not contain the second schedule, he published a notification dated April 14, 1960 in the U.P. Gazette dated April 23, 1960 setting out the octroi limits of the Town Area of Tulsipur by way of amendment to the Notification dated December 15, 1959 incorporating the second schedule containing the limits of the Town Area of Tulsipur in the latter notification. By the said notification dated April 14, 1960, item No. 29 in the first schedule of the Notification dated December 15, 1959 was also directed to be omitted. After the publication of the Notification dated December 15, 1959, the plaintiff was called upon to pay octroi on some of the materials, articles and stores brought into its sugar factory which was situated within the limits of the Tulsipur Town Area for being used in the manufacture and sale of sugar. Aggrieved by the said levy, the plaintiff instituted the above suit on November 18, 1960 for permanent injunction as stated above questioning the validity of the Notification dated August 22, 1955 issued by the Governor of Uttar Pradesh extending the limits of the Tulsipur Town Area so as to include the area in which the factory of the plaintiff was situated and also the Notification dated December 15, 1959 and the amendment of the said Notification by Notification dated April 14, 1960 issued by the Commissioner of Faizabad.

The contention of the plaintiff with regard to the Notification dated August 22, 1955 was that since it had been promulgated without giving a prior opportunity to all those concerned to make representation regarding the advisability of extending the limits of the Tulsipur Town Area Committee so as to include the village of Shitlapur within whose limits the factory of the plaintiff was situated, it was liable to be declared as void. In so far as the Notification dated December 15, 1959 was concerned, it was urged by the plaintiff that it was liable to be struck down on the ground

that it was inchoate as the second schedule defining the limits of the Tulsipur Town Area had not been incorporated either in the draft notification dated October 28, 1959 or in the final Notification dated December 15, 1959. It was also urged that the above defect could not be cured by the issue of the Notification dated April 14, 1960 by which the Notification dated December 15, 1959 was amended without following all the procedure prescribed for promulgating rules under section 39 of the Act. The defendant pleaded that neither of the two contentions urged by the plaintiff was tenable. The defendant pleaded that since all the legal formalities required for the extension of its limits and for the imposition of the octroi had been followed, it was not open to the plaintiff to question any of the above notifications. The trial court held that the validity of the Notification dated August 22, 1955 was not open to question before the civil court but it however declared the draft Notification issued on October 28, 1959, the final Notification issued on December 15, 1959 and the amending Notification dated April 14, 1960 as invalid and ineffective on the ground that the omission to include the second schedule containing the octroi limits in the draft Notification and the Notification dated December 15, 1959 was a material illegality and the Notification dated April 14, 1960 which had been issued without following all the formalities could not have the effect of validating the Notification dated December 15, 1959. In view of the above finding, the trial court held that there was no valid levy of octroi by the defendant. Accordingly, the trial court passed a decree restraining the defendant from levying octroi on goods brought by the plaintiff into its factory. The defendant filed an appeal against the said decree before the District Judge, Gonda in Civil Appeal No. 2 of 1963. The plaintiff filed cross objections in that appeal. That appeal was heard by Civil Judge, Gonda who allowed the same and dismissed the cross objections. The suit instituted by the plaintiff was consequently dismissed. The plaintiff thereafter filed a second appeal before the High Court of Allahabad (Lucknow Bench) in Second Civil Appeal No. 462 of 1964 questioning the decree passed by the first appellate court. By its judgment dated January 17, 1968, the High Court dismissed the second appeal. On the basis of a certificate issued by the High Court under Article 133 (1) (b) of the Constitution, the plaintiff has come up in appeal to this Court.

We shall first examine the correctness of the contention advanced on behalf of the plaintiff relating to the validity of the Notification dated August 22, 1955 declaring the area in which the sugar factory of the plaintiff is situated as a town area. The said Notification reads as follows:-

> 22nd August, 1955 No. 1853A-IX 86 T-51-In exercise of the powers conferred by clause (a) of sub-section (1) of section 3 of the U.P. Town Area Act, 1914 (U.P. Act No. II of 1914), the Governor of Uttar Pradesh is pleased to declare the town of Tulsipur in Gonda district to be a town area for the purpose of the said Act and under clause (b) of sub-section (1) of section 3 of the said Act to define the limits of the said town area as shown in the schedule hereto.

SCHEDULE BOUNDARIES OF TULSIPUR TOWN AREA DISTRICT GONDA North: Janakpur forest road crossing at Nakti Nala to station road upto Public Works Department inspection house railway crossing.

West: From the terminating point of Northern Boundary of Public Works Department Inspection House railway crossing towards south upto plot No. 223 of village Tulsipur on Tulsipur Chaudhari

Dih Road. South: From plot No. 2418 of village Tulsipur to the 3rd furlong pillar of 18th mile on Balrampur Road and therefrom upto plot No. 359 on Tulsipur Chaudharidih pucca Road and from there to plot No. 223 of village Tulsipur.

East: From the terminating point of southern Boundary at plot No. 2418 towards north parallel to Nakti Nala upto the point where Pachperwa Road meets and therefrom upto Sugar Factory railway crossing, Sugar Factory railway line to the eastern side of the Sugar Factory upto the terminating point of the Northern Boundary at Nakti Nala."

Section 3 of the Act reads:

"3. Declaration and definition of town areas:-

> (1) The State Government may, by notification in the Official Gazette-
>
> (a) declare any town, village, suburb, bazar or inhabited placed to be a town area for the purpose of this Act, and may unite, for the purpose of declaring the area constituted by such union to be a town area, the whole or a portion of town, village, suburb, bazar or inhabited place with the whole or a portion of any other town, village, suburb, bazar or inhabited place;
>
> (b) define the limits of any town area for the like purposes;
>
> (c) include or exclude any area in or from any town area so declared or defined; and
>
> (d) at any time cancel any notification under this section;
>
> Provided that an agricultural village shall not be declared, or included within the limits of a town area. (2) The decision of the State Government that any inhabited area is not an agricultural village within the meaning of the proviso to sub-section (1) of this section shall be final and conclusive and the publication in the Official Gazette of a notification declaring such area to be a town area or within the limits of a town area shall be conclusive proof of such decision."

The Act does not provide that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. It is not in dispute that no such previous publication was made in the instant case. The contention of the plaintiff is that even though the statute does not expressly require such previous publication and consideration of representations and objections made to the proposal to declare any area as a town area since a declaration of any area as a town area involves certain civil consequences such as the obligations arising from the implementation of the provisions of the Act in that area, we should hold that the exercise of the power of the State Government under section 3 of the Act by necessary implication imposes a duty on the State Government to follow the principles of natural justice i.e. to give

publicity to its proposal to declare any area as a town area and to decide the question whether any declaration under section 3 of the Act should be made or not after taking into consideration the representations or objections submitted by the members of the public in that regard and failure to comply with such procedure would invalidate any declaration made under section 3. The above contention is based on the assumption that the duty imposed on the State Government is in the nature of an administrative power in the exercise of which the State Government should follow the principles of natural justice.

The solution to the question raised before us principally depends upon the nature of the function that is performed by the State Government under section 3 of the Act. If that function is judicial or quasi-judicial involving adjudication of the rights of any person resulting in civil consequences, it no doubt becomes necessary to follow the maxim audi alteram partem (hear the other side) before taking a decision. It is also true that in order to establish that a duty to act judicially applies to the performance of a particular function, it is no longer necessary to show that the function is analytically of a judicial character or involves the determination of a lis inter partes; though a presumption that natural justice must be observed will arise more readily where there is an express duty to decide only after conducting a hearing or inquiry or where the decision is one entailing the determination of disputed questions of law and fact. Prima facie, moreover, a duty to act judicially will arise in the exercise of a power to deprive a person of his livelihood or of his legal status where the status is not merely terminable at pleasure, or to deprive a person of liberty or property rights or another legitimate interest or expectation, or to impose a penalty on him; though the conferment of a wide discretionary power exercisable in the public interest may be indicative of the absence of an obligation to act judicially. Where a discretionary power to encroach upon individual rights is exercised, the factors pointing to whether it must be exercised judicially include the nature of the interests to be affected, the circumstances in which the power falls to be exercised and the nature of the sanctions, if any, involved. Exceptionally, a duty to act judicially may arise in the course of exercising a function not culminating in a binding decision, if the wording of the grant of powers or the context indicates that a fair hearing ought to be extended to persons likely to be prejudicially affected by an investigation or recommendation'. (Halsbury's Laws of England, Vo1. I, Fourth Edition, Para 65 at p. 77).

A. K. Kraipak & Ors. etc. v. Union of India & Ors., Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors. and Maneka Gandhi v. Union of India which were decided in the light of the ever widening and expanding horizons of natural justice also lay down that it is only where an administrative decision affects the rights of persons, it becomes the duty of the authority concerned to give notice of the proposed action to the person to be affected and to take a decision after giving a fair opportunity to the person concerned to make his representation in that regard. The decision in Schmidt v. Secretary of State for Home Affairs which was followed by this Court in Maneka Gandhi's case (supra) summarises the above principle as follows: 'Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf'. In all these cases one significant common factor is that the administrative action is directed against a person. None of them, however, is a case where the question whether in the absence of an express provision requiring it to do so, an authority which has to exercise a legislative

function should follow the principles of natural justice before discharging such function arose for consideration.

We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area under section 3 of the Act which does not require the State Government to make such declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. The power of the State Government to make a declaration under section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S. A. De Smith in Judicial Review of Administrative Action (Third Edition) observes at page 163:-

> "However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides".

In Bates v. Lord Hailsham of St. Marylebone & Ors. the facts were these: In 1964, the British Legal Association was formed. Out of about 26,000 practising solicitors some 2,900 were members of the association. The Lord Chancellor announced on May, 1, 1972, that the scale of fees under Schedule I to the Solicitors' Remuneration Order, 1883 were proposed to be abolished and that for all conveyancing transactions the system of quantum meruit was to be applied. On June 6, pursuant to section 56 (3) of the Solicitors Act 1957, the Law Society was sent by the committee set up under section 56 (1) a draft of the order proposed to be made under section 56 (2). The draft order was published in The Law Society's Gazette on June 21. The association set out two circulars about the proposed order, the first at the end of May, to all solicitors, and the second on July 17, making a series of accusations against the Lord Chancellor and the Law Society. On July 11, the association sent printed submissions to the statutory committee, requesting that the order should not be approved at this juncture and that the Lord Chancellor should seek further consultations with the profession and professional organisations. On July 14, the association wrote to each member of the committee asking for further time and a deferment of the decision for two months. The Lord Chancellor's reply dated July 18, was that he saw no reason for postponing the meeting or for refraining from making the order in such terms as the committee approved. On July 18, the plaintiff as a member of the national executive committee of the association, took out a writ against all members of the statutory committee, seeking a declaration and an injunction, and on July 19, at 2 P.M. having previously notified the Treasury Solicitor of the intention, he moved the court ex parte, seeking to restrain the committee from holding the meeting which was to be held at 4.30 P.M. on that day. The motion was dismissed by Megarry, J. and we feel rightly with the following observations:

> "In the present case, the committee in question has an entirely different function: It is legislative rather than administrative or executive. The function of the committee is to make or refuse to make a legislative instrument under delegated powers. The

> order, when made, will lay down the remuneration for solicitors generally; and the terms of the order will have to be considered and construed and applied in numberless cases in the future. Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected by delegated legislation, and effected very substantially, are never consulted in the process of enacting that legislation, and yet they have no remedy. Of course the informal consultation of representative bodies by the legislative authority is a commonplace, but although a few statutes have specifically provided for a general process of publishing draft delegated legislation and considering objections (see for example, the Factories Act 1961, Schedule 4), I do not know of any implied right to be consulted or make objections, or any principle upon which the courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not per se make it immune from attact, whether by injunction or otherwise; but what is important is not its form but its nature, which is plainly legislative".

We are, therefore, of the view that the maxim 'audi alteram partem' does not become applicable to the case by necessary implication.

The second limb of the argument in support of the above contention is that the declaration made under section 3 of the Act being in the nature of subordinate legislation, it was the duty of the State Government to follow the same procedure which was applicable to the promulgation of rules under section 39 of the Act. Our attention was drawn in this connection to sub-section (3) of section 39 of the Act which provided that the power to make rules under the said section was subject to the condition of the rules being made after previous publication. We are of the view that it is not possible to equate a declaration to be made under section 3 of the Act with rules made under section 39. Sub-section (3) of section 39 of the Act does not in terms apply to a declaration to be made under section 3 of the Act. The contention that the declaration to be made under section 3 of the Act is in the nature of a subordinate legislation is also not tenable. We may refer at this stage to the decision of the Judicial Committee of the Privy Council in The Queen v. Burah. Section 9 of Act No. XXII of 1869 of the Indian Legislature which camp up for consideration in that case conferred upon the Lieutenant Governor of Bengal the power to determine whether that Act or any part of it should be applied to a certain area within his jurisdiction. It read as under:-

> "9. The said Lieutenant-Governor may from time to time, by notification in the Calcutta Gazette, extend mutatis mutandis all or any of the provisions contained in the other sections of this Act to the Jaintia Hills, the Naga Hills, and to such portion of the Khasi Hills as for the time being forms part of British India.

Every such notification shall specify the boundaries of the territories to which it applies."

Repelling the contention urged against the validity of the aforesaid section 9, Lord Selborne observed at page 193 thus:

> "Legislation which does not directly fix the period for its own commencement, but leaves that to be done by an external authority, may with quite as much reason be called incomplete, as that which does not itself immediately determine the whole area to which it is to be applied, but leaves this to be done by the same external authority. If it is an act of legislation on the part of the external authority so trusted to enlarge the area within which a law actually in operation is to be applied, it would seem a fortiori to be an act of legislation to bring the law originally into operation by fixing the time for its commencement".

Proceeding further, the learned Lord observed at page 195:

> Their Lordships think that it is a fallacy to speak of the powers thus conferred upon the Lieutenant- Governor (large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General in Council. Their whole operation is, directly and immediately, under and by virtue of this Act (XXII of 1869) itself. The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred".

Following the decision in The Queen v. Burah (supra) the High Court of Australia held in Haxter v. Ah Way that sub-section (g) of section 52 of the Customs Act, 1901 which provided that all goods the importation of which was prohibited by a proclamation should be considered as prohibited imports was not a delegation of legislative power but conditional legislation and was within the power conferred on Parliament by sub-sections (i) and (ii) of section 51 of the Australian Constitution.

The essential distinction between conditional legislation and delegated legislation was considered for the first time by this Court in In re The Delhi laws Act, 1912. After considering the decision in The Queen v. Burah (supra), Mukherjea, J. observed at page 980:

> "The same principle was applied by the Judicial Committee in King v. Benoari Lal Sharma (72 I.A. 57). In that case, the validity of an emergency ordinance by the Governor-General of India was Challenged inter alia on the ground that it provided for setting up of special criminal courts for particular kinds of offences, but the actual setting up of the courts was left to the Provincial Governments which were authorised to set them up at such time and place as they considered proper. The Judicial Committee held that "this is not delegated legislation at all. It is merely an example of the not uncommon legislative power by which the local application of the provisions of a statute is determined by the judgment of a local administrative body as to its necessity. Thus, conditional legislation has all along been treated in judicial pronouncements not to be a species of delegated legislation at all. It comes under a separate category, and, if in a particular case all the elements of a conditional legislation exist, the question does not arise as to whether in leaving the task of determining the condition to an outside authority, the legislature acted beyond the scope of its powers."

In Basant Kumar Sarkar & Ors. v. Eagle Rolling Mills Ltd. & Ors. this Court was required to consider the question whether section 1(3) of the Employees' State Insurance Act, 1948 was valid. One of the conditions urged by the appellants in that case was that the said provision suffered from the vice of excessive delegation on the ground that the power given to the Central Government to apply the provisions of that Act by notification, conferred on the Central Government absolute discretion, the exercise of which was not guided by any legislative provision and was, therefore, invalid. Gajendragadkar, C.J. rejected the above contention with the following observations:-

> "We are not impressed by this argument. Section 1 (3) is really not an illustration of delegated legislation at all; it is what can be properly described as conditional legislation. The Act has prescribed a self- contained code in regard to the insurance of the employees covered by it; several remedial measures which the Legislature thought it necessary to enforce in regard to such workmen have been specifically dealt with and appropriate provisions have been made to carry out the policy of the Act as laid down in its relevant sections. Section 3(1) of the Act purports to authorise the Central Government to establish a Corporation for the administration of the scheme of Employees' State Insurance by a notification. In other words, when the notification should be issued and in respect of what factories it should be issued, has been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation. What Lord Selborne said about the powers conferred on the Lieutenant-Governor by virtue of the relevant provisions of Act 22 of 1869 in Queen v. Burah (5 I.A. 178 at p. 195), can be said with equal justification about the powers conferred on the Central Government by s. 1 (3)."

Following the decision in Baxter v. Ah Way (supra) this Court in Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore v. The Corporation of the City of Bangalore by its Commissioner, Bangalore City upheld the validity of section 97(e) of the City of Bangalore Municipal Corporation Act, 1949 by which the Bangalore Municipality had been authorised by the State Legislature to levy

certain taxes. In the course of the said decision, Kapur, J. observed thus:

> "In the present case, the Legislature has laid down the powers of the Municipality to tax various goods. It has enumerated certain articles and animals and Clause VIII read with s, 97(e) of the Act has authorised the Municipality to impose tax on other articles and goods. This power is more in the nature of conditional delegation as was held in Baxter v. Ah Way [1909] 8 C.L.R. 626 where it was held that under s. 52(g) of the (Australian) Customs Act, 1901, a power given to prohibit by proclamation the importation of certain articles was not a delegation of legislative power but conditional legislation because the prohibition of importation was a legislative act of Parliament itself and the effect of sub-s. (g) of s. 52 was only to confer upon the Governor-General in Council the discretion to determine to which class of goods other than those specified in the section and under what conditions the prohibition should apply. All that the legislature has done in the present case is that it has specified certain articles on which octroi duty can be imposed and it has also given to the Municipal Corporation the discretion to determine on what other goods and under what conditions the tax should be levied."

We are, therefore, of the view that a notification issued under section 3 of the Act which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and that it cannot be characterised as a piece of subordinate legislation. In view of the foregoing, we hold that the contention of the plaintiff that the declaration made by the State Government under section 3 of the Act declaring the area in which the sugar factory of the plaintiff is situated as a part of the Tulsipur town area is invalid is not tenable.

The other submission made in this connection that the area in which the factory of the plaintiff was situated was a part of an agricultural village which could not be included within the limits of a town area committee has also got to be rejected in view of sub-section (2) of section 3 of the Act which provides that the decision of the State Government that any inhabited area is not an agricultural village within the meaning of the proviso to sub-section (1) of section 3 shall be final and conclusive and the publication in the Official Gazette of a notification declaring such area to be a town area or within the limits of a town area shall be conclusive proof of such decision, since it is not disputed that the notification had been duly published in the Official Gazette.

The next question relates to the validity of the notification dated December 15, 1959 by which octroi was sought to be levied by the Town Area Committee of Tulsipur. There is no dispute that the procedure prescribed for the imposition of octroi was followed in the instant case. A draft of the octroi rules containing the schedule of octroi rates which were proposed to be levied on different kinds of goods was published inviting representations and objection to the proposed levy and that a final notification dated December 15, 1959 was published in the Official Gazette as required by the Act. Subsection (4) of section 15B of the Act provides that the notification so published shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act. What is, however, argued before us is that the Notification dated December 15, 1959 which did not contain the second schedule specifying the octroi limits could not be read as levying octroi as the omission to

specify the octroi limits was not curable in the circumstances of the case and that the subsequent notification issued on April 14, 1960 could not cure the said defect. In order to appreciate the contention, it is necessary to set out the relevant parts of the Notification dated December 15, 1959:

> December 15, 1959 No. 540/XXIII-102 (58-59)-7-In continuation of notification No. 190/XXIII-102 (58-59)-5 dated October 28, 1959, and in exercise of the powers conferred by sub-section (2) of section 39 of the U.P. Town Area Act, 1914 (U.P. Act No. II of 1914), the Commissioner, Faizabad Division, is pleased to make the following rules for the assessment and collection of octroi in the Town Area, Tulsipur, District Gonda, after their previous publication in the aforesaid notification as required by sub-section (3) of section 39 of the said Act.
>
> Rules
>
> 1. Octroi shall be levied according to the rates and description given in Schedule I on goods and animals brought within the octroi limits of Town Area Tulsipur (hereinafter called the town area) as specified in Schedule II for consumption, use or sale therein.
>
> 2. No person shall bring within the limits of the Town Area any laden vehicles or laden animal in respect of which octroi is leviable under these rules until the octroi due in respect of the commodities has been paid to such persons (hereinafter called the Moharrirs) and at such barriers as the Town Area Committee (hereinafter called the Committee) may appoint from time to time.
>
> 3. No laden coolie from whom octroi is leviable in respect of commodities under his charge, shall enter the limits of the Town Area until he has paid the octroi for such commodities in the manner aforesaid.

....

Schedule of Octroi rates in Town Area, Tulsipur

S. No. Name of goods Rates Remarks

... ."

The opening part of the above notification dated December 15, 1959 clearly states that the rules mentioned therein had been made for the assessment and collection of octroi in the Town Area, Tulsipur, District Gonda after their previous publication. The rates at which the octroi was leviable

on different commodities are stated in the schedule. After inviting our attention to Rule 1 of the Rules which provides that octroi shall be levied according to the rates and description given in the first schedule on goods and animals brought within the octroi limits of the Town Area, Tulsipur (hereinafter called the town area) as specified in the second schedule for consumption, use or sale therein, learned counsel for the plaintiff contends that Rule 1 postulates the incorporation in the notification of the second schedule containing octroi limits of the Town Area of Tulsipur and by the omission of the second schedule the levy of octroi has become ineffective. It is argued that the expression 'octroi limits of the town area' should be construed as different from the expression 'town area' appearing in the opening part of the Notification dated December 15, 1959 and hence the omission to set out the octroi limits in the second schedule was fatal to the Notification. It is further contended that the amendment of the above notification made by the notification dated April 14, 1960 also could not validate the levy of octroi by the notification dated December 15, 1959 as the said amending notification had not been made after previous publication. It is true that Rule 1 refers to the second schedule in which the octroi limits of town area were proposed to be set out but we are of opinion that such omission is not fatal to the notification dated December 15, 1959. It is not disputed that the opening part of the notification dated October 28, 1959 containing the draft of the octroi rules also stated that it was proposed to make provision for the assessment and collection of octroi in the Town Area, Tulsipur. In that notification also there was no specific reference to the octroi limits as such. The octroi being a tax on the entry of goods into a local area for consumption, use or sale therein, it cannot be said that the members of the public who were interested in opposing the levy of octroi by way of making any representation in that behalf were misled as to the local area in which octroi would be levied. On a fair reading of Rule 1 we feel that the authority which promulgated the rules only intended to set out in the second schedule the limits of the Town Area which had already been published in the notification dated August 22, 1955 under section 3 of the Act declaring the geographical area situated within the boundaries set out therein as the Town Area of Tulsipur. By the notification dated April 14, 1960, the notification dated December 15, 1959 was amended by incorporation of the second schedule with the very same boundaries of the Town Area found in the notification dated August 22, 1955. Since the intention of the authority imposing octroi in the Town Area of Tulsipur is made explicit in the opening part of the notification dated December 15 1959, we do not think that the omission to set out the boundaries of Tulsipur Town in that notification can make the levy of octroi ineffective as there could be no room for any doubt about the local area within whose limits the said impost would be effective. The declaration made on August 22, 1955 under section 3 of the Act specifies the said limits. In the circumstances, it has to be held that the notification dated December 15, 1959 was neither incomplete nor ineffective. The omission to incorporate the second schedule was only an inconsequential mistake which was rectified by the subsequent notification dated April 14, 1960. We do not, therefore, find any substance in this contention also.

For the foregoing reasons, we do not find any error in the judgment of the High Court. In the result, the appeal fails and is hereby dismissed but in the circumstances of the case without any order as to costs.

N.K.A. Appeal dismissed.