ATLAS CYCLE INDUSTRIES LIMITED

v.

STATE OF HARYANA AND ANOTHER

DECEMBER 17, 1992

[L.M. SHARMA, CJ., S. RATNAVEL PANDIAN, B.P. JEEVAN REDDY, S.P. BHARUCHA AND S. MOHAN, JJ.]

Punjab Municipal Act, 1911: Sections 5(4), 62, 70(2)(c) and 71—Octroi—Levy of by Municipal Council of Sonepat—Whether Valid. Constitutional validity of section 5(4) upheld.

Constitution of India, 1950: Article 14—Octroi—Imposition of—Punjab Municipal Act, 1911—Section 5(4)—Constitutional validity of.

Words and Phrases—Octroi—Meaning of.

A notification was issued under Section 62(10) of the Punjab Municipal Act on 3rd November, 1942 which stated that the Municipal Committee of Sonepat had imposed a tax called 'octroi' on the articles mentioned in the Schedule to the said notification which were imported into the octroi limits of Sonepat municipality.

On 11th February, 1948, it was notified that the limits of Sonepat municipality for the purpose of collection of octroi would be the boundaries of the municipality as fixed from time to time.

On 15th September, 1966 a notification was issued in pursuance of the provisions of Section 5(1) whereby the intention of including the areas specified in the Schedule thereto within the municipal limits of Sonepat was declared, and the inhabitants of the municipality were invited to submit objections in writing to the proposed inclusion. The area on which the factories of the petitioner were situated was proposed to be included within the municipal limits.

On 3rd November, 1966 the petitioner filed objections to the inclusion of the proposed area within the municipal limits of Sonepat, and contended that the additional taxes that were already being collected by the Central and State Government considerably increased the cost of the production of the petitioner's bicycles, that the 'octroi' alone would

A be Rs.1.30 per bicycle manufactured, that the burden would thus be unbearable and suggested that the proposed inclusion of the Industrial Unit within the municipal limits should be dropped.

On 11th August, 1967, the notification issued under Section 5(3) included within the municipal limits of Sonepat the area in which the B factories of both the petitioners stood, and on 18th August, 1967, octroi was levied upon the materials imported by the two companies into the municipal limits of Sonepat.

The petitioners filed writ petitions in 1967 in the High Court C challenging the collection of octroi and inclusion of the industrial area within the municipal limits. The same having been dismissed by the High Court, they filed appeals to this Court. This Court in *Atlas Cycle Industries Ltd.* v. *State of Haryana,* [1972] 1 SCR 127, allowed the appeals and the writ petitions on the ground that no notifications as required were issued and made applicable to the included areas under Section D 5(4) of the Act, and the municipality was restrained from levying and collecting octroi from the petitioners.

On 15th November, 1971, the Punjab Municipal (Haryana Validation and Amendment) Act ,1971 amended Section 5(4) to include the word E 'notification' to enable the levy of octroi. The Validation and Amendment Act also validated with retrospective effect the levy and collection of octroi.

Thereupon the petitioners filed the present writ petitions in this Court and contended that the right of representation against the levy of octroi was an important safeguard, that the petitioners had been F deprived of the right to make a representation under Section 62(3) against the imposition of octroi upon the area in which the factories were situated; they had, therefore, been discriminated against, so the provisions of Article 14 of the Constitution were violated, and Section 5(4), in so far as it had the effect of imposing octroi upon those areas, G was unconstitutional. It was further contended that the retrospective imposition of octroi was bad under Article 14 because it singled out those which were affected by the retrospectivity and denied them the opportunity of representation.

The writ petitions were contested on behalf of the respondent by H contending that the levy and collection of octroi was no longer open to

the question by the petitioners, and that Section 5 and 62 of the Act operated in different fields. Under the provision of Section 5 the State Government was concerned with determining whether or not the local area of the municipality should be extended and objections were invited and considered in this regard, while Section 62 set out the procedure which was required to be followed by the Committee of a municipality when it proposed to impose a tax under Section 61 and objections were invited and considered by the Committee and the State Government in this regard. There was no hostile discrimination against the petitioners, and, in any event, it was open to a party within the proposed extended limits of the municipality to represent there against on the ground that the levy of municipal tax upon that area would have adverse consequences; and that, in fact, the petitioners had made such a representation.

On the question of the constitutional validity of Section 5(4) of the Punjab Municipal Act, 1911, as amended by the Punjab Municipal (Haryana) Amendment and Validation Act, 1971.

Dismissing the writ petition, this Court

HELD: *(By the Court)*

Section 5(4) of the Punjab Municipal Act, 1911, as amended by Haryana Act No. 41 of 1971 is constitutional and valid. There is no scope for the plea that the petitioners have been discriminated against in that they were given no opportunity to object to the imposition of octroi, and the retrospective operation of section 5(4). [704-D]

(L.M. Sharma, CJI; S. Ratnavel Pandian, B.P. Jeevan Reddy, S.P. Bharucha, JJ. - per Bharucha J.)

1. Section 5 of the Act empowers the State Government to declare by notification its intention to include within the municipality any local area in the vicinity and defined in the notification. To such proposal any inhabitant of the municipality and of the local area proposed to be included may object, and the State Government is obliged to take that objection into consideration. If, having considered all objections the State Government decides to include the local area in the municipality, it may do so by notification. Section 5(4) sets out the consequences of such extension of the municipality by such inclusion. It is the State Govern-

A ment, therefore, which has to decide whether or not any local area in the vicinity of the municipality should be included within the municipality.

[715-B-D]

2. The object of the inquiry under Section 5 is to determine the feasibility and the desirability of so doing. In the event that a local area B in the vicinity of the municipality is included in the municipality that local area becomes subject to all rules, notification, by-laws, orders, directions and powers then in force in the municipality. That local area, therefore, becomes subject to all taxes imposed within the municipality.

[715-D,E]

C

3. The object of the inquiry under Section 5 is different from the object of the inquiry under Section 62. The object of the inquiry under Section 5 is far broader. It would be open to an inhabitant of the local area proposed to be included within the municipality to object under Section 5 D to such inclusion even upon the ground that a municipal tax should not be imposed that local area. Planning regard to the differences in the objects of Sections 62 and 5 and of the inquiries thereunder, there was no discrimination against the petitioners in so far as the retrospective operation of Section 5(4) was concerned. In the instant case, the petitioners had raised the objection, under the provision of Section 5, that the inclusion E of the local area upon which their factories were situated within the municipality would make them liable to pay octroi which they would be ill able to afford. This reinforced the conclusion that they had not been discriminated against. [715-H; 716-A-C]

F 4. Power is conferred by Section 70(2)(c) and section 71 upon the Committee and the State Government respectively to exempt wholly or in part any person or class of persons or any property or description of property from payment of any tax. [716-B]

In the instant case, the petitioners and other manufacturers sought G such examption and were given partial exemption from the payment of octroi. [716-B]

Atlas Cycle Industries Ltd. v. *State of Haryana & Anr.*, [1972] 1 SCR 127, referred to.

H *Visakhapatnam Municipality* v. *Kandregula Nukaraju & Ors.*, [1976] 1

SCR 544, distinguished. A

(per Mohan J.)

1. The power to tax by the State can be exercised only by the State Legislature. The extent of the power is fixed by the Constitution. The said Legislature can impose all taxes as are covered by the subjects enumerated B **in List II (State List) under the Seventh Schedule. In so far as, the municipalities or 'local self governments are concerned, they are authorised by the State to levy some of these taxes for their own purposes. [717-B-C]**

2. The power to tax is a necessary adjunct of a system of local 'self-government'. The amounts collected by way of taxes are mainly intended to C **enable them to meet their fiscal needs in the municipal area. [717-E]**

3. Under the Punjab Municipal Act, 1911 the power to levy the octroi is traceable to Section 61(2). The procedure as to the levy is set out under section 62. The power to fix the municipal limits within which octroi could D **be levied, is traceable to section 168. [717-G; 718-F]**

In the instant case, by a notification dated 3.11.1942 octroi came to be levied in Rohtak district in exercise of powers conferred by sections 188 and 189. On 11.12.1948 a bye-law notified that the limits of Sonepat Municipality for the purpose of collection of octroi shall be the boundaries of the E **Municipality of Sonepat. On 15.9.1966, in exercise of powers under section 5(1), the intention to alter the limits of Sonepat municipality was notifed. Objections were invited and the petitioner filed objections on 3.11.1966, which were considered and were over-ruled by a notification dated 11.8.1967 under section 5(3) of the Act. It is thus clear that it is by virtue of inclusion of the area within the municipal limits octroi had came to be levied in the** F **included area. It was the legal consequence of section 5(4). Thus, the levy was already there. The newly added area becomes subject to the levy by a legal consequence and not by an imposition under sections 61 and 62 and other relevant sections relating to bye-laws. [719-G-H; 720-B; 723-F]**

Municipal Board of Hapur **v.** *Raghubir Singh,* **[1966] 2 SCR 891;** *Jothi Timber Mart* **v.** *Calicut Municipality,* **1970 SC 264;** *Atlas Cycle Industries Ltd.* **v.** *State of Haryana & Anr.,* **[1972] 1 SCR 127 and** *Hindustan Gum and Chemicals Ltd.* **v.** *State of Haryana & Ors.,* **[1985] 4 SCC 124, referred to.** G

Visakhapatnam Municipality **v.** *Kandrecula Nukaraju & Ors.,* **[1976] 1** H

A **SCR 544, distinguished.**

ORIGINAL JURISDICTION : Writ Petition (C) No. 1 of 1972.

(Under Article 32 of the Constitution of India).

B WITH

Writ Petition (C) No. 54 of 1972.

Harish N. Salve, H.S. Parihar, Kuldeep S. Parihar, R.P. Kapur and Sanjay Kapur for the Petitioner.

C Manmohan, K.C. Bajaj and Ms. Indu Malhotra for the Respondents.

L.K.P. Pandey, S.K. Verma and B.R. Kedia for the Intervenors.

The Judgments of the Court were delivered by

D **BHARUCHA, J.** : These writ petitions under Article 32 of the Constitution of India challenge the constitutionality of Section 5(4) of the Punjab Municipal Act, 1911, as amended by the Punjab Municipal (Haryana Amendment and Validation) Act (Haryana Act No. 41 of 1971), in so far as it has the effect of imposing octroi upon that area of the local limits of the municipality of Sonepat in which the petitioners' factories are E situated.

The relevant facts of the first writ petition may be noted. On 3rd November, 1942 a notification was issued under Section 62(10) of the Punjab Municipal Act (hereinafter called "the said Act") which stated that the Municipal Committee of Sonepat had imposed a tax called 'octroi' on F the articles mentioned in the Schedule to the notification when imported into the octroi limits of Sonepat municipality. On 11th February 1948 it was notified that the limits of Sonepat municipality for the purpose of collection of octroi would be the boundaries of the municipality as fixed from time to time. On 15th September 1966 a notification was issued in pursuance of the provisions of Section 5(1) of the said Act whereby the intention on of G including the areas specified in the Schedule there to within the municipal limits of Sonepat was declared and the inhabitants of the municipality and of the local area in respect of which the notification was published were invited to submit objections in writing to the proposed inclusion. The area upon which the factories of the petitioners are situated was proposed to be included within the municipal limits of Sonepat. On 3rd November 1966 H the petitioner filed objections to the inclusion of the proposed areas within

the municipal limits of Sonepat. The Petitioner stated that it understood that the proposed inclusion was intended to increase the income of the Sonepat municipality by bringing the different industries around Sonepat within its limits thereby making them pay all municipal taxes. Such additional taxes would add considerably to the cost of production of the petitioners' bicycles and the octroi alone would be Rs.1.30 per bicycle manufactured. The petitioner was "already groaning under the heavy Central and State taxes. If saddled with additional local taxes, the burden will become unbearable." The petitioner therefore asked that the proposed inclusion of the industrial area within the municipal limits of Sonepat should be dropped. On 11th August 1967 a notification was issued under Section 5(3) of the said Act by the Governor of Haryana. (This was because the State of Haryana had been created on 1st November, 1966 by bifurcation of the State of Punjab). The notification under Section 5(3) included within the municipal limits of Sonepat the area upon which the factories of both the petitioners stood. On and from 18th August, 1967 octroi was levied upon materials imported by them into the municipal limits of Sonepat.

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In 1968 the Manufacturers' Association of Sonepat, of which the petitioners were members, made a representation, consequent upon which the Sonepat municipality reduced the rate of octroi chargeable upon cycles, tyres, tubes and parts imported, *inter alia,* by the petitioners.

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In 1967 the petitioners filed writ petitions in the High Court of Punjab and Haryana for writs of mandamus restraining the municipality of Sonepat from levying against and collecting from them any octroi in respect of raw materials, components and parts imported by them into their factories situated in the industrial area of Sonepat. The High Court having dismissed the writ petitions, appeals were filed in this Court. This Court based its judgment *(Atlas Cycle Industries Ltd.* v. *State of Haryana & Anr.,* [1972] 1 SCR 127), upon the provisions of Section 5(4) of the said Act, as it then read. Section 5(4), as it then read, spoke of rules, bye-laws, orders, directions and powers. It did not mention notifications. Notifications under the said Act were the only authority and mandate for the imposition and charge of taxes. Notifications were not made applicable to included areas under Section 5(4). Therefore, the appeals were allowed and the Sonepat municipality was restrained from levying against and collecting from the petitioners any octroi in respect of raw materials, components and parts imported by them into their factories.

F G H

A Consequent upon this judgment the petitioners were refunded the octroi that had been collected from them.

On 15th November, 1971 was passed the Punjab Municipal (Haryana Validation and Amendment) Act (hereinafter called "the Validation and Amendment Act") which amended Section 5(4) to include within it the B word 'notification'. The Validation and Amendment Act also validated with retrospective effect and levy and collection of octroi in these terms:

> "4. Validation (1) Notwithstanding any judgment, decree or order of any court or other authority to the contrary, any assessment, reassessment, levy or collection of any tax C made or purporting to have been made at the rate of fifteen per centum instead of twelve-and-a-half per centum and any octroi levied, charged or collected or purporting to have been levied, charged or collected before the commencement of this Act and any action taken or thing done D before such commencement in relation of the principal Act and the rules made thereunder shall be deemed to be as valid and effective as if such assessment, reassessment levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and the rules and bye-laws made thereunder...." E

Thereupon the present writ petitions were filed.

To be able to better appreciate the arguments which have been advanced the relevant provisions of the said Act are set out. Section 5 (after inclusion of the word 'notification' in sub- section (4) thereof) read, so far F as is material for our purposes, thus:

> "5(4) When any local area has been included in a municipality under sub-section (3) of this section, this Act, and, except as the State Government may otherwise by G notification direct, all rules, notification, bye-laws, orders, directions and powers made, issued or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such area."

Section 61 of the said Act empowered the Committee of a municipality to H impose in the whole or any part of a municipality the taxes set out therein

subject to any general or special orders which the State Government might make in this behalf and to the Rules. The power was circumscribed by stating that the imposition should be for the purposes of the said Act and in the manner directed by it. The taxes mentioned in sub-section (1) did not include octroi. For the purpose of octroi the relevant provision of Section 61 is sub-section (2) which reads thus:-

> "61(2). Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution."

Section 62 deals with the procedure to impose taxes and reads thus:

> "62. Procedure to impose taxes-(1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under Section 61.
>
> (2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.
>
> (3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.
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> (4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals along with a notice indicating that they are in modification of the previsously published for objection.
>
> (5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).
>
> (6) When the committee has finally settled its proposals it shall, if the proposed tax falls under clauses

A (b) to (f) of sub-section (1) of section 61 direct that the tax be imposed, and shall forward a copy of its order to the effect through the Deputy Commissioner to the State Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection if any made in connection therewith to the B Deputy Commissioner.

(7) If the proposed tax falls under clause (a) of sub-section (1) of section 61, the Deputy Commissioner, after considering the objections received under sub-sections (3) C and (5) may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of D sanction; and if the tax falls under sub-section (2) of section 61, the Deputy Commissioner shall submit the proposals and objections with his recommendations to the State Government.

E (8) The State Government on receiving proposals for taxation under sub-section (2) may sanction or refuse to sanction the same, or return them to the committee for further consideration.

F (9) (Omitted by Government of India (Adaptation of Laws) Order, 1937.)

(10) (a) When a copy of order under sub-section (6) and (7) has been received, or

G (b) when a proposal has been sanctioned under sub-section (8) the State Government shall notify the imposition of the tax in accordance with such order of proposal, and shall in the notification specify a date not less than one month from the date of the notification, on which the H tax shall come into force.

(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July or on the first day of October in any year, and if it comes into force on any other than the first day of the year by which it is leviable, shall be leviable by the quarter till the first day of such year than next ensuing.

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act."

Sections 70 and 71 empower the committee and the State Government respectively to, *inter alia*, exempt in whole or in part from the payment of any tax any person or class of persons or any property or description of property.

Mr. Salve, learned counsel for the petitioner, submitted that the right of representation was an important safeguard and he relied upon the judgments of this Court in *Prakash Chandra Mehta* v. *Commissioner and Secretary, Government of Kerala & Ors.*, [1985] 3 SCR 697, and *Baldev Singh and Others* v. *State of Himachal Pradesh and Others*, [1987] 2 SCC 510. There can be no doubt about the correctness of this proposition.

Mr. Salve submitted that the petitioners had been deprived of the right to make a representation under Section 62(3) against imposition of octroi upon the area in which their factories were situated. The petitioners had, therefore, been discriminated against so that the provisions of Article 14 of the Constitution were violated and Section 5(4), in so far as it had the effect of imposing octroi upon those areas, was unconstitutional.

Great emphasis was laid by learned counsel upon the judgment of this Court in *Visakhapatnam Municipality* v. *Kandregula Nukaraju & Ors.*, [1976] 1 SCR 544. In exercise of powers contained in the District Municipalities Act, 1920, the Government of Andhra Pradesh had declared its intention to include within the limits of the Visakhapatnam municipality the local area comprised in the villages of Ramakrishnapuram and Sriharipuram. The District Municipalities Act, 1920 was repealed by the Andhra Pradesh Municipalities Act, 1965 which came into force on 2nd April, 1965. On 24th March, 1966 the Government of Andhra Pradesh, acting in exercise of powers conferred by Section 3(3) of the 1965 Act,

A issued a notification including within the limits of the appellant municipality the area comprised in the villages of Ramakrishnapuram and Sriharipuram with effect from 1st April, 1966. On 24th March, 1970 and 10th June, 1970 the Municipal Council declared its intention to levy property tax in the areas newly included within the municipal limits and, after considering objections, passed a resolution on 28th August, 1970 confirm-
B ing the levy of property tax on lands and building situated within the municipal limits from 1st October, 1970. However, it issued notices to the contesting respondents demanding property tax from them not from 1st October, 1970 but from 1st April 1966, that is to say, from the date when the villages of Ramakrishnapuram and Sriharipuram were included within
C the municipal limits. The contesting respondents filed the writ petition asking for a declaration that the levy of property tax for the period prior to 1st October, 1970 was illegal. The inclusion of the villages of Ramakrishnapuram and Sriharipuram within the limits of the appellant municipality was found by the court to be in order. The true question for
D the Court's consideration, it said, was whether property tax which could be levied under the 1920 Act could be lawfully levied under that Act, after the repeal of that Act, on property situated in the areas included within the municipal limits after the constitution of the municipality. Section 391(1) of the 1965 Act expressly repealed the 1920 Act from which it would follow, ordinarily, that no action could be taken under the 1920 Act, but the
E appellant municipality contended that clause 12 of Schedule IX of the 1965 Act kept the repealed enactment alive for tax purposes and, therefore, the municipality had the authority to impose the tax under the 1920 Act. It was found, upon an analysis of clause 12, that it had no application. The Court then proceeded to consider the provisions of the 1965 Act in so far as they
F obliged the Municipal Councils to impose certain kinds of taxes. Under Section 18(1)(a) every Municipal Council was obliged to levy the taxes therein stated. Under sub-section (2) the Municipal Council was obliged to set out in its resolution determining to levy tax the rate at which and the date from which it would be levied. The first proviso to this sub-section required that "before passing a resolution imposing a tax for the first time"
G or increasing the rate of an existing tax, the Municipal Council shall publish a notice in the prescribed manner declaring its intention and inviting objections thereto, which it was obliged to consider. Thereafter, by reason of Section 83, when a council determined, subject to the provisions of Section 81, to levy any tax for the first time to at a new rate, its Secretary

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had forthwith to publish a notification in the prescribed manner specifying the rate at which, the date from which and the period of levy, if any, for which, such tax would be levied. Section 83 was thus expressly subject to section 81 and, under the latter provision, no tax could be imposed "for the first time" unless the procedure prescribed therein was followed. Since the procedure prescribed therein had not been followed in the case before the court in regard to the period prior to 1st October, 1970, the levy of property tax on the properties of the contesting respondents for that period was without authority of law. The court said that the municipality might have been levying property tax since long on property situated within its limits. But, until 1st April, 1966, the villages of Ramakrishnapuram and Sriharipuram were outside those limts. Qua the areas newly included within the municipal limits the tax was being imposed for the first time and, therefore, it was incumbent on the municipality to follow the procedure prescribed by the first proviso to section 81(2). The residents and tax payers of those areas never had an opportunity to object to the imposition of the tax and that valuable opportunity could not be denied to them. It was obligatory upon the municipality not only to invite objections to the proposed tax, but also to consider the objections received by it within a specified period. The policy of the law was to afford to those likely to be affected by the imposition of the tax a reasonable opportunity to object to the proposed levy. According to the appellant municipality, the residents of Ramakrishnapuram and Sriharipuram had an opportunity to object to the imposition of tax when the State Government issued a notification under Section 3(1)(b) of the 1965 Act declaring its intention to include the two villages within the limits of the municipality. The Court did not find it possible to accept this submission. When the State Government issued a notification under this proviso any resident of the local area concerned could "object to anything therein contained" meaning thereby anything contained in the notification. Such notification contained only the declaration of the Government's intention "to include within a municipality any local area in the vicinity thereof and defined in such notification". The right of objection would, therefore, be limited to the question whether a particular area should, as proposed, be included within the municipal limits. It would be premature at that stage to offer objections to the imposition of any tax because it was only after the final notification was issued under Section 3(3) that the question would arise about the imposition of a tax on the newly included areas. A notification under Section 3(3) had to be

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A followed by a resolution under Section 81(1) if the municipality wanted to impose a tax and, for the resolution to be effective, the procedure prescribed by the first proviso to Section 81(2) had to be followed. The appellant municipality was found to have short-circuited the mandatory procedure and thereby deprived the contesting respondents of the valuable right of objecting to the imposition of the tax.

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Mr. Salve submitted, accordingly, that octroi had been imposed for the first time on the area in which the petitioners' factories were situated without giving to the petitioners the valuable right of representation thereagainst provided by Section 62 of the said Act, an opportunity which had C been given to residents of the original area of the municipality when octroi was imposed upon that area. Accordingly, the petitioners had been discriminated against and there had been a violation of Article 14 of the Constitution.

D In the alternative, Mr. Salve submitted, at the very least, the retrospective imposition was bad under Article 14 because it singled out those who were affected by the retrospectivity and denied them the opportunity of representation. The submission may be explained thus: when the area of the municipality was extended to include that upon which the petitioners' factories stood, Section 5(4) did not contain the word E 'notification' and, therefore, the imposition of octroi within that area was bad. When Section 5(4) was amended to include the word 'notification' octroi was imposed retrospectively but the petitioners had, in the circumstances, no opportunity to represent then against such imposition.

Mr. Manmohan, learned counsel for the respoundents, drew our F attention to the judgment in *Hindustan Gum and Chemicals Ltd.* v. *State of Haryana and Others,* [1985] 4 SCC 124. In this case the appellant had a factory which, prior to 10th August 1965, was situated outside the local limits of the Bhiwani Municipal Committee but with effect from that date, by reason of the extension of the local limits of the Municipal Committee by a notification issued under Section 5(3) of the said Act, the factory G premises of the appellant had come within the municipal limits of Bhiwani. The appellant filed a writ petition questioning the imposition of octroi, *inter alia,* on the ground that it was not open to the Municipal Committee to levy octroi without complying with the legal formalities necessary for its imposition in the extended area. This Court noted its earlier judgment in H *Atlas Cycle Industries Limited* v. *State of Haryana and Anr.,* (ibid) and the

fact that the Validation and Amendment Act had included the word 'notification' in Section 5(4) of the Act and validated the levy of octroi retrospectively. The Court held that if the expression 'notification' had been there in that sub-section on the date on which the municipal limits were extended, this Court would have upheld the levy and collection of octroi in its judgment in *Atlas Cycle Indusries Limited* case. This court found that sub-section (4) of Section 5 which did not contain the word 'notification' was inadequate for the purpose of upholding the levy and collection of octroi in the extended local area. Since the word 'notification' had now been inserted in Section 5(4) of the Act with retrospective effect, the basis on which the said decision was rendered had been removed because the deficiency in Section 5(4), noticed by this Court, had been made good and the levy and collection of octroi had also been validated. The Amending Act satisfied the tests laid down by this court in its decision in *Sri Prithvi Cotton Mills* case for overcoming an earlier decision of a court in such circumstances. The Amending Act thus neutralised the effect of the decision in the case of *Atlas Cycle Industries Limited* which could no longer be relied upon by the appellant after the amendment of the Act as stated above. There was no other contention urged by the appellant in support of its appeal. "*The levy and collection of octroi in the area which was included within the municipal limits of Bhiwani with retrospective effect from August 10, 1965 in accordance with the notification issued earlier, are, therefore, no longer opon to question.*"

(emphasis supplied).

Mr. Manmohan submitted that having regard to what the Court had said, as emphasised above, the levy and collection of octroi was no longer open to question by the petitioners.

Mr. Manmohan urged that Sections 5 and 62 of the said Act operated in different fields. Sub-sections (1) to (3) of Section 5 dealt with the procedure that had to be followed when the local limits of a municipality were proposed to be extended and, once that had been done, the consequences that followed were set out in sub-section 4. Under the provisions of Section 5 the State Government was concerned with determining whether or not the local area of the municipality should be extended and objections were invited and considered in that regard. Section 62 of the said Act set out the procedure which was required to be followed by the

committee of a municipality when it proposed to impose a tax under Section 61 and objections were invited and considered by the Committee and the State Government in this regard. In Mr. Manmohan's submission, therefore, there was no hostile discrimination against the petitioners. He submitted that, in any event, it was open to a party within the proposed extended limits of the municipality to represent thereagainst on the ground that the levy of municipal tax upon that area would have adverse consequences; and he pointed out that the petitioners had, in fact, made such a representation.

Mr. Manmohan also drew our attention to the power of the committee and the State Government to grant exemption from payment of municipal taxes in apropriate cases and he said that the petitioners had actually availed of such exemption.

Learned counsel distinguished the judgment in the *Visakhapatnam Municipality* case by pointing out that the scheme of the said Act was quite different from that of the Andhra Pradesh Municipality Act, 1965.

Section 61 of the said Act empowers the committee of a municipality to impose a tax. A tax may be so imposed only after the committee has passed a resolution at a special meeting as required by sub-section (1) of Section 62. Thereafter the committee is obliged, by sub-section (2) of Section 62, to publish a notice defining the class of persons or the description of the property to be taxed, the amount or rate of the proposed tax and the system of assessment proposed to be adopted. Any inhabitant, that is to say, any person ordinarily residing or carrying on business or owning or occupying immovable property within the municipality is entitled, by reason of sub-section (3), to submit objections to the proposed tax to the committee and the committee is obliged to take such objections into consideration. When the committee has finally setted its proposals, after considering the objections received, it is obliged to forward its proposals and all objections received to the Deputy Commissioner or, through him, to the State Government, as the nature of the tax may require, who may sanction or refuse the same. Upon sanction being given, the State Government must notify the imposition of the tax and such notification is, by reason of sub-section (12) of Section 62, conclusive evidence that it has been imposed upon the municipality in accordance with the provisions of the said Act. It is, therefore, the committee of a municipality which imposes

a tax. Before it imposes a tax, it is obliged to set forth its proposals in regard to the same in a notice and any inhabitant of the municipality is entitled to raise objections thereto, which the committee is bound to consider the object of the inquiry under Section 62 is, hence, to determine whether or not it is feasible and desirable to impose the tax.

Section 5 of the said Act empowers the State Government to declare by notification its intention to include within the municipality any local area in the vicinity and defined in the notification. To such proposal any inhabitant of the municipality and of the local area proposed to be included may object and the State Government is obliged to take that objection into consideration. If, having considered all objections, the State Government decides to include that local area in the municipality, it may do so by notification. Sub-section (4) of Section 5 (as amended as aforementioned) sets out the consequence of the extension of the municipality by inclusion within it of such local area and it says that all rules, notification, bye-laws, order, directions and powers made under the said Act in force throughout the whole municipality at the time would apply to such local area. It is the State Government, therefore, which has to decide whether or not any local area in the vicinity of the municipality should be included within the municipality. The object of the inquiry under Section 5 is to determine the feasibility and desirability of so doing. In the event that a local area in the vicinity of the municipality is included in the municipality, that local area becomes subject to all rules, notifications, bye-laws, orders, directions and powers then in force in the municipality. That local area, therefore, therefore, becomes subject to all taxes imposed within the municipality.

The object of the inquiry under Section 5 is different from the object of the inquiry under Section 62. There is, therefore, in our view, no scope for the plea that the petitioners have been discriminated against in that they were given no opportunity to object to the imposition of octroi under Section 62

The object of the inquiry under Section 5 is far broader. It would be open to an inhabitant of the local area proposed to be included within the municipality to object under Section 5 to such inclusion even upon the ground that a municipal tax should not be imposed upon that local area. In fact, the petitioners had raised the objection, under the provisions of Section 5, that the inclusion of the local area upon which their factories

were situated within the municipality would make them liable to pay octroi which they would be ill able to afford. This re-inforces our conclusion that they have not been discriminated against.

We may also note that there is power conferred by Section 70(2)(c) and Section 71 of the said Act upon the committee and the State Government respectively to exempt wholly or in part any person or class of persons or any property or description of property from payment of any tax. The petitioners, and other manufacturers, sought such exemption and were given partial exemption from the payment of octroi.

Having regard to what we have held in respect of the differences in the object of Section 62 and Section 5 and of the inquiries thereunder, there is no discrimination against the petitioners even in so far as the retrospective operation of Section 5(4) is concerned. Further, it should be noted that it is not quite correct to say that the petitioners had had no opporunity to represent against the levy of octroi from 18th August, 1967. They had made a representation before that date against the inclusion within the municipality of the area upon which their factories stood on the ground that the levy of octroi was uneconomic for them. The representation had been considered but the area was included within the municipality, and octroi was levied. Thereafter this court struck down the levy and the levy was validated by the Amendment and Validation Act.

The observations of this Court in the *Visakhapatnam Municipality* case (ibid) appear to us to have been made in the specific context of the provisions of the statute under consideration. Emphasis was laid in the judgment upon the fact that the proviso to the sub-section, which required the resolution of the council determining to levy tax to specify the rate at which and the date from which the tax would be levied, stated that "before passing a resolution imposing a tax for the first time" the council should publish a notice declaring that intention, to which objections were sought. There is no provision in the said Act which requires objections to be invited and considered before the committee of a municipality passes a resolution imposing a tax "for the first time".

In the result, the writ petitions are dismissed. There shall be no order as to costs.

MOHAN, J. I have had the advantage of perusing the judgment of my learned brother (Bharucha, J.). I am in entire agreement with the conclusions arrived at therein. However, I think it would be appropriate to add a few lines.

The facts have been set out in his judgment. I will confine myself only to the question of law.

The power to tax by the State can be exercised only by the State Legislature. The extent of the power is fixed by the Constitution. The said Legislature can impose all texes as are covered by the subjects enumerated in List II (State List) under the 7th Schedule. In so far as, the municipalities or 'local self-government' are concerned, they are authorised by the State to levy some of these taxes for their own purposes. As laid down in *Municipal Board of Hapur* v. *Raghubir Singh,* [1966] 2 SCR 891, "the local authorities levy the tax as agent of the State Legislature. The extent of the powers must be found in the statute which creates the municipality and endows the municipality with such powers."

The power to tax is a necessary adjunct of a system of 'local self-government'. The amounts collected by way of taxes are mainly intended to enable them to meet their fiscal needs in the municipal area.

In the instant case, we are concerned with the levy of octroi. The word 'octroi' comes from the word 'octrover' which means 'to grant' and, in its original use, it meant 'an import' or 'a toll' or 'a town duty' on goods brought in to a town. Grice in his National and Local Finance says (at page 303) that they were known as 'ingate tolls' because they were collected at toll-gates or barriers.

Under the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) the power to levy the octroi is traceable to Section 61, sub-section (2).

The said sub-section states as under:

> (2) "Save as provided in the foregoing clause with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution."

A Explanation:- In this section "tax" includes any duty, cess or fee.

Octroi is treacabe to Entry 52 of the List II (State list) of the Seventh Schedule. That Entry reads as follows:

B "Taxes on the entry of the goods into a local area for consumption, use or sale therein."

In *Jothi Timber Mart* v. *Calicut Municipality,* [1970] SC 264 at page 266, it has been held:

C "Entry of goods within the local area for consumption, use or sale therein is made taxable by the State Legislature: authority to impose a general levy of tax on entry of goods into a local area is not conferred on the State Legislature by Item 52 of List II of Schedule VII of the Constitution. D The Municipality derives its power to tax from the State Legislature and can obviously not have authority more extensive than the authority of the State Legislature. If the State Legislature is competent to levy a tax only in the entry of goods for consumption, use or sale into a local area, the Muncipality cannot under a legislation enacted in exercise E of the power conferred by Item 52, List II have power to levy tax in respect of goods brought into the local area for purposes other than consumption, use or sale."

The procedure as to the levy is set out under Section 62 of the Act. F This Section details the entire procedure for the imposition of taxes and provides the method of levy right from the point when the committee conceives the idea of levy to the final stage when the proposal attains the authority of law. Such a proposal will have to be initiated by a special resolution which shall be passed at a special meeting. On passing of such a resolution, a notice shall be published defining class of persons or description of property to be taxed, the amount or rate of the tax and the system to be adopted for levy of the tax. If any objection is received, it has to be considered by the committee and the committee may amend it if it so desires. With regard to octroi, sub-section 7 says as follows:

H "If the proposed tax falls under clause (a) of sub- section

> (i) of Section 61, the Deputy Commissioner, after considering the objections received under sub-sections (3) and (5) may either refuse to sanction the proposals or return them to the committee for further consideration or sanction them without modification or with such modification not involving an increase of the amount to the imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of sanction; and if the tax falls under sub-section (2) **** of Section 61, the Deputy Commissioner shall submit the proposals and objections with his recommendations to the State Government."

The State Government may either sanction or refuse to sanction or return the proposals to the committee for further consideration. If the State Government sanctions the proposed levy of octroi, it will have to notify the imposition of the tax and specify the date not less than one month from the date of the notification on which date octroi shall come into force.

The power to fix the municipal limits within which octroi could be levied, is traceable to Section 188 of the Act. This Section, which enables the committee to frame bye-laws, under Clause (g) is to the following effect:

> "Where the collection of an octroi or terminal tax has been sanctioned, fix limitis for the purpose of collecting the same, and may prescribe routes by which animals or articles or both which are subject to octroi or terminal tax may be imported into the municipality or exported therefrom."

All bye-laws made under the Act will have to be published under Section 200 of the Act. Bye-laws come into force only when they are confirmed by the State. By a notification dated 3.11.1942, octroi came to be levied in Rohtak district in exercise of powers conferred by Section 186 and 199 of the Act. Bye-laws were also made prescribing the routes. On 11.12.1948, the following bye-law came to be notified:

> "The limits of the Sonepat Municipality for the purpose of collection of octroi without refunds shall be the bundaries of the Municipality of Sonepat as fixed from time to time."

A The result of this notification is that the limits of Sonepat Municipality were subject to the levy of octroi. What is carefully required to be noted is that the municipal limit was the area defind for the purposes of octroi as per notification dated 11.12.1948. The area of the municipality can also be altered. Such a power is available under Section 5 of the Act.

B In the instant case on 15.9.1966, in exercise of powers under Section 5(1), the intention to alter the limits of Sonepat Municipality was notified. The area to be included was mentioned in the Schedule. Objections were invited, Accordingly, the petitioner on 3.11.1966 filed his objections *Inter alia*, it was stated as under :

C

> "Para 2: That it is now proposed to extend the municipal limits of Sonepat by including therein the industrial area, hitherto outside the municipal limits. This, the petitioner understands, is proposed to be done with the sole aim to increase the income of the Municipality by bringing the
> D different indistries around Sonepat within municipal area, thereby making them to pay all municipal taxes.
>
> Para 3: That the additional taxes to be levied by the Municipality will add considerably to the cost of produc-
> E tion of bicycles manufactured by the petitioner. The octroi alone on 30 kgs. of raw material required for manufacture of on bicycle are likely to be about Rs. 1.30."

Therefore, it was prayed on behalf of the petitioner that the proposal to extend the municipal limits may be dropped. On a consideration of those
F objections, they were overrulled by a notification dated 11.8.1967. It was stated thus:

> "No. 5998-2CI-67(B-12)/19979 - with reference to Punjab Government Notification No. 8365-ICI-66/26616 dated the 15th September, 1966, published in the Punjab Govern-
> G ment Gazette on the 30th September, 1966 and in pursuance of the provisions of sub-section (3) of Section 5 of the Punjab Municipal Act, 1911, the Government of Haryana is pleased to include within the Municipality of Sonepat in Rohtak District, the area lying between the
> H existing boundary as defined in Punjab Government

> notification No. 13295-C-55/32245, dated the 10th December, 1955, as subsequently amended, vide Punjab Government Corrigendum Notification No. 1567-CII-57/5488, dated 25th March, 1957 and the boundary now proposed as specified in the Schedule hereto appended."

As could be seen from the above extract, this Notification is under Section 5(3) of the Act. As to what is the legal consequence of a notification of inclusion of a local area in the municipality, is set out under Section 5(4) of the Act. That reads:

> "When any local area has been included in a municipality under Sub-section (3) of this Section, this Act, and except as the State Government may otherwise by notification direct, all rules, notifications bye-laws, orders, directions and powers made, issued or conferred under this act and in force throughout the whole municipality at the time, shall apply to such area."

It requires to be stated that the word 'notification' came to be inserted by Punjab Act 24 of 1973. Originally, the word 'notification' was absent. Therefore, the question arose by reason of inclusion of this area whether the levy of octroi would get attracted. It was held by this Court in *Atlas Cycle Industries Ltd* v. *State of Haryana & Anr.*, [1972] 1 SCR 127 at page 133 as under:

> "Sub-section (6) to (9) of Section 62 of the Act deal with the order of sanction by the appropriate authorities of the proposals for tax. These orders are not the provisions by which tax is imposed. *These orders are attracted by virtue of the provisions contained in Section 5(4) of the Act to the included areas.* But in the absence of notification by the Government under Section 62(10) of the Act there is no imposition of tax. (emphasis supplied)
>
> The controversy in the present appeals is solved by finding out as to whether the notification dated 3rd November, 1942 imposing octroi within the limits of the Sonepat Municipality became applicable by reason of the provisions contained in Section 5(4) of the Act. It is noticeable at the

A outset that Section 5(4) of the Act speaks of rules, bye-laws, orders, directions and powers and does not significantly mention 'notification'. It is apposite to consider Sections 6, 7 and 8 of the Act which deal with the effect of exclusion of local area from the municipality. In the case of exclusion of an area from the Municipality it is provided in Section B 8(1)(a) of the Act that "This Act and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under the Act, shall cease to apply thereto". When the Act provided for notifications ceasing to apply in the case of exclusion of local areas and in the immediately preceding section 5 refrained from using the word C 'notifications' becoming applicable in the case of inclusion of areas the legislative intent is unambiguous and crystal clear that notifications could not become applicable to an included area on the strength of Section 5(4) of the Act."

D Therefore, it was because of absence of the word 'notification', the decision came to be rendered that the levy of octroi would be impermissible. It was to cure this defect, the word 'notification' came to be incorporated by the Amendment Act. Then again, it was challenged. In *Hindustan Gum and Chemicals Ltd.* v. *State of Haryana & Ors.,* [1985] 4 E SCC 124 at page 132, it has been stated as under:

"In the instant case the only ground on which this Court had found the levy of octroi in the extended area of a municipality to be invalid was that the provisions of Section F 5(4) of the Act were inadequate in the absence of a reference to the notifications issued under the Act also in that sub-section. By the Amending Act the word 'notification' had been inserted in sub-section (4) of section 5 of the Act with retrospective effect. If the expression 'notification' had been therein that sub-section on the date on which the G municipal limits were extended, this Court would have upheld the levy and collection of octroi in its judgment in *Atlas Cycle Industries Ltd.* v. *State of Haryana & Anr.,* [1972] 1 SCR 127. This Court found that sub-section (4) of Section 5 which did not contain the word 'notification' was inade- H quate for the purpose of upholding the levy and collection

of octroi in the extended local area. Since the word 'notification' has now been inserted in Section 5(4) of the Act with retrospective effect, the basis on which the said decision was rendered has been removed because the deficiency in Section 5(4) noticed by this Court has been made good and the levy and collection of octroi have also been validated. The Amending Act satisfies the tests laid down by this Court in the decision in *Shri Prithvi Cotton Mills Ltd. and another* v. *Broach Borough Municipality & Ors.*, [1970] 1 SCR 388, overcoming an earlier decision of a court in such circumstances. The Amending Act thus neutralises the effect of the decision in the case of *Atlas Cycle Industries Ltd.* (supra) which can no longer be relied upon by the appellant after the amendment of the Act as stated above. There is no other contention urged by the appellant in support of its appeal. The levy and collection of octroi in the area which was included within the municipal limits of Bhiwani with retrospective effect from August 10, 1965 in accordance with the notification issued earlier are, therefore, no longer open to question."

A B C D E

As seen from the above, this Court explained as to what exactly was the ratio in *Atlas Cycle Industries* v. *State of Haryana & Anr.*, [1972] 1 S.C.R. 124.

It will be, thus, clear that it is by virtue of inclusion of area within the municipal limits, octroi has come to be levied in the included area. In other words, it is the legal consequence of Section 5(4). The levy was already there. The newly added area becomes subject to the levy by a legal consequence and not by an imposition under Sections 61 & 62 and other relevant sections relating to bye-laws. F

In *Visakhapatnam Municipality* v. *Kandregula Nukaraju & Ors.*, [1976] 1 SCR 544, on which reliance is placed by the petitioner, the question was whether the property tax which could lawfully be levied under the District Municipalities Act, 1920, can be levied after the repeal of that Act, on property situated in the areas included within the Municipal limits after the constitution of the Municipality. It was held that- G

1. From the repeal of the said Act of 1920 by section 391(1) of the H

A Andhra Pradesh Municipalities Act, 1965, it must follow that ordinarily no action can be taken under the Act of 1920 after 1.4.1966 when the repeal became effective.

2. The provisions contained in the Schedule 9 of the Act of 1965 are of a transitional nature. They were intended to apply during the period of B transition following upon the repeal of the old Act and the introduction of the new law.

The object of clause 12 of the Schedule 9 was to authorise the levy of taxes which, on the commencement of the Act of 1965, were levied under C the repealed laws.

3. The Municipality might have been levying property tax since long or properties situated within the limits, but, until 1.4.1966, the villages were outside those limits. Qua the areas newly included within the municipal limits, the tax was being imposed for the first time, and, therefore, it was D incumbent on the Municipality to follow the procedure prescribed by the first proviso to section 81(2) of the Act of 1965. Residents and tax-payers of those areas never had an opportunity to object to the imposition of the tax. It was obligatory upon the Municipality not only to invite objections to proposed tax but also to consider the objections received by it within the E specified period.

4. Therefore, it was imcompetent to the Municipality to impose the property tax in the newly included areas without following the procedure prescribed.

F Thus, on facts, this ruling is distinguishable. In fact, this Court pointed out the distinction in *Bhaskar Taxtile Mills Ltd.* v. *Jharsuguda Municipality & Ors.,* AIR 1984 583, where an identical issue arose. Ektali Village in which the appellant's factory was located along with other villages came to be included in Jharsuguda Municipality. *Inter alia*, the G question arose whether the levy of octroi in the original municipal area of Jharsuguda could automatically be made applicable to the extended limit. In paragraphs 20-21, it was held as follows:

> "As a second limb to this argument it was contended by the appellant that even assuming that the bye-laws when intially H enforced might be presumed to be in accordance with law

in the absence of similar steps being taken at the time of extention of bye-laws to the newly added area, the bye-laws are not enforceable in the new area. This argument has proceeded in utter oblivion of the provisions of S.5 of the Municipal Act, it reads:

"5. When any local area is included in a municipality by a notification under clause (b) or (c) of sub-section (3) of Section 4, all the provisions of this Act and of any rules, bye-laws, notifications or orders made thereunder which immediately before such inclusion were inforce throughout such municipality, shall be deemed to apply to such area unless the State Government in and by the notification, otherwise direct."

"The learned counsel for the appellant however, has placed strong reliance upon *Visakhapatnam Municipality* v. *Kandregula Nukaraju,* [1976] 1 SCR 544 : (AIR 1975 SC 2172). In that case the question that fell for consideration was whether the property tax which could lawfully be levied under the District Municipalities Act, 1920 can be levied after the repeal of that Act on property situated in the areas included within the municipal limits after the constitution of the municipality. Section 391(1) of the Andhra Pradesh Municipalities Act, 1965 expressly repealed the District Municipalities Act, 1920 from which it must follow that ordinarily no action can be taken under the Act of 1920 after April 1, 1966 when the repeal became effective on the coming into force of the Act. It was, however, contended in that case that Cl. 12 of Schedule 9 of the Act keeps the repealed enactment alive for tax purposes and, therefore, the municipality had the authority to impose the property tax under the Act of 1920 notwithstanding its repeal by the new Act. This Court, however, took the view that the provisions contained in the Schedule are of a transitional nature. They were intended to apply during the period of transition following upon the repeal of old municipal laws and the introduction of the new law. The object of Clause 12 of Schedule 9 was to authorise the levy of taxes which,

A on the commencement of the Act, were levied under the repealed laws. This Court further added that the municipality might have been levying property tax since long on properties situated within its limits. But until April 1, 1966 the villages of Ramakrishnapuram and Sriharipuram were outside those limits. Qua the areas newly included within the municipal limits, the tax was being imposed for the first time and therefore, it was incumbent on the municipality to follow the procedure prescribed by the first proviso to S.81(2). Residents and tax-payers of those areas never had an opportunity to object to the imposition of the tax and that valuable opportunity cannot be denied to them. It is obligatory upon the municipality not only to invite objections to the proposed tax but also to consider the objections received by it within the specified period.

For the State, however, reliance was placed in that case on Section 3(4) of the Act to contend that the inclusion of the two villages within the municipal area attracts of its own force every provision of the Act with effect from the date on which the final notification is published by the Government under Section 3(3). In support of this contention it cited the decision of this Court in *Atlas Cycle Industries Ltd.* v. *State of Haryana,* [1972] 1 SCR 127-AIR 1972 SC 121. This argument on behalf of the State was, however, repelled and the Court observed:

"Far from supporting the argument, we consider that the decision shows how a provision like the one contained in Section 3(4) cannot have the effect contended for by the appellant. In the *Atlas Cycle* case, Section 5(4) of the Punjab Municipality Act, 1911 provided that when any local area was included in the municipality, 'this Act and....all rules, bye-laws, orders, directions and powers made, issued or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such areas'."

But this Court took the view that since S. 5(4) of the

Punjab Act did not significantly refer to notifications and since S. 62(1) of the Punjab Act spoke of "notification" for the imposition of taxes it was not competent to the municipality to levy and collect octroi from the company on the strength merely of the provision contained in S. 5(4) of the Punjab Act. That case, however, is distinguishable and cannot be of much assistance for solving the problem before us. Section 5 of the Orissa Municipal Act makes all the provisions of the Act and of any rules, bye-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality application to such area unless the State Government in and by the notification otherwise direct. This section, therefore, includes not only the provisions of the Act, rules and bye-laws but also includes notifications. This distinguishes the present case from the *Visakhapatnam Municipality's* case (supra).

This ruling fully supports the stand of respondent's municipality. This Court has also explained the inapplicablity of the ruling of *Viskhapatnam Municipality's* case (supra) and pointed out how it is distinguishable. The position is exactly the same here and this distinction holds good here too. To put it shortly, once the municipal limits have been validly extended, then the distinction between old and the newly added area gets obliterated altogether and a uniform levy is imposed to the whole area of municipality without any distinction whatsoever between the old and the newly added areas.

Though, the right of representation is a valuable right, for two reasons, the arguments addressed on behalf of the petitioner in relation to representation cannot be accepted; (i) at the time, when the municipal limits came to be altered, the petitioner did make representations on 3.11.1966. In particular, its grievance was directed against the municipal taxes as well as octroi in paragraphs 2 & 3 of its representation, quoted above and (ii) even otherwise, so long as the imposition of tax here is not by resort to Sections 61 & 62 but as a legal consequence of Section 5(4), it is incorrect to contend that the levy is made for the first time. It has already been noted how the *'Visakhapatnam Municipality'* case (supra) does not apply. Thus, the writ petitions have to fail

N.V.K. Petitions dismissed.