Government including Bhakra Nangal Project, Beas Project and Soil Conservation Board will not be considered as on deputation and no deputation allowance will be admissible."

It is plain from the above and indeed conceded on behalf of the petitioners that prior to the constitution of the Bhakra Management Board the petitioners who were working on the project were not receiving any deputation allowance. One fails to see how they can be on any better footing in view of the clear provisions of section 79(4) which lays down that such employees would continue to work on the same terms and conditions as were applicable to them earlier. It was rightly contended on behalf of the respondents that under section 79(4) of the Act, the terms and conditions of service of the employees working on the project immediately before the constitution of the Board were frozen as they existed at the time and they were obliged to continue on the same terms under the Board. In this context therefore, no question of treating the petitioners on deputation to the Board indeed arises. The second contention is equally devoid of merit and has to be rejected.

(22) The writ petitions are without merit and are hereby dismissed. The parties will, however, be left to bear their own costs.

H. S. B.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and S. P. Goyal, JJ.

SURINDERA STEEL ROLLING MILLS,—*Petitioner*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ Petition No. 6500 *of* 1976

14th April, 1977.

Punjab Municipal Act (III of 1911)—*Sections* 5(4), 61 *and* 62—*New area added to a municipality—Rules, bye-laws, notifications etc. imposing octroi or other taxes in force within the municipality—Whether extends to the freshly added area—Fiscal and non-fiscal matters—Section* 5(4)—*Whether makes any distinction.*

Surindera Steel Rolling Mills *v.* The State of Punjab, etc.
(S. S. Sandhawalia, J.)

Held, that the language of section 5(4) of the Punjab Municipal Act 1911 makes no distinction between the notification which may be said to be fiscal in character and another which is not so. The matter depends entirely upon the validity of the notification and if it is so then necessarily section 5(4) would extend its application to the enlarged area of the Municipality irrespective of its nature, character and the subject to which it pertains. There appears to be no magic in a notification which is fiscal in nature as against the non-fiscal one so far as the law is concerned. The object and intent of the legislature is to extend all existing provisions including the fiscal one, to the new area once the pre-requisites of sub-section (1), (2) and (3) of section 5 are satisfied. Indeed the whole purpose of these provisions appears to be that once the municipal limits have been validly extended then the distinction between the old and the freshly added area has to be obliterated altogether and a uniform set of provisions made applicable to the whole of the area without any distinction whatsoever between the old and the newly added areas. As such all existing laws and notifications would be equally applicable to the newly extended areas. (Paras 10 and 12).

Petition under Articles 226 *and* 227 *of the Constitution of India praying as under* :—

(*i*) *a writ of Mandamus be issued thereby restraining respondents from levying, imposing and realising octroi from the petitioners in respect of the goods brought into their factories premises.*

(*ii*) *respondent No.* 3 *be directed to refund the octroi amount illegally recovered from the petitioners—concerns.*

(*iii*) *a writ of Mandamus be issued thereby quashing notifications Annexure P/1 and P/2 because the said notifications are illegal,* ultra vires, *and null and void.*

(*iv*) *the provisions of Section* 61(2) *of Section* 5 *of Punjab Municipal Act and Octroi Schedule of Municipal Committee, Mandi Gobindgarh be declared unconstitutional.*

(*v*) *the filing of certified/original copies of the documents marked as Annexures P/1 to P/4 to this petition be dispensed with.*

(*vi*) *ad-interim stay order be issued restraining the respondents from recovering octroi from the petitioners in respect of the goods brought by the petitioners concerns into the factories' premises till the final disposal of the writ petition.*

(vii) or such other appropriate writ, order or direction as may be deemed fit under the circumstances of the case be issued, and

(viii) costs of the writ petition be awarded to the petitioners against the respondents.

M. M. Punchhi, Advocate, *for the Petitioner.*

S. K. Sayal, Assistant Advocate-General, Punjab, *for respondent No. 1 and 2.*

A. N. Mittal, Advocate with Viney Mittal, Advocate, *for respondent No. 3.*

JUDGMENT

S. S. Sandhawalia, J.—(1) Whether section 5(4) of the Punjab Municipal Act, 1911 extends all the existing rules, bye-laws, orders, directions, powers and notifications (imposing octroi or other taxes) in force within the municipality, to an area freshly added thereto under section 5(3) of the said Act, is the significant question which is before this Division Bench in these six connected writ petitions.

(2) Learned counsel for the petitioners states that the issues of fact and law are, indeed, identical in all these cases and, therefore, agrees that the judgment in this civil writ would govern the others as well. A reference to the facts in this writ, therefore, suffices.

(3) The petitioner-firm is a partnership carrying on the business of manufacture of iron and steel products on the Gobindgarh—Amloh Road and its factory premises are located within the revenue estate of village Jassraon. Originally, the premises were not within the municipal limits of Mandi Gobindgarh and the petitioners were, therefore, not obliged to pay any municipal tax including the octroi tax, etc., for the raw material and other goods brought into or taken out of the said factory. The Governor of Punjab acting under section 5(1) of the Punjab Municipal Act (hereinafter called the Act) made a declaration on April 20, 1976, by a notification to the same effect declaring his intention to include within the municipal limits of Gobindgarh an area specified in detail in the said notification (Annexure P. 1). The extension of this area proposed to bring the factory premises of the petitioners within the municipal limits. Para No. 2 of the notification aforesaid expressly invited any inhabitant

of the municipality or of the local area proposed to be included therein to submit his objections in writing within six weeks from the date of publication of the notification in the Official Gazette. The petitioners, however, claim that the aforesaid notification did not come to their notice and they, therefore, could not file any objections to the proposal of extending the municipal area. However, it does not seem to be in serious dispute that some other inhabitants did file objections against the extension of the municipal limit. However, the Governor of Punjab by a notification dated 20th of August, 1976, published in the Official Gazette on September 2, 1976) (Annexure P/2) included within the limits of the Municipality Gobindgarh the local area which had been earlier notified as intended to be included therein under the provisions of Section 5(3) of the Act. It is the petitioners' grievance that by virtue of section 5(4) the respondents claim that with effect from the issuance of the aforesaid notification, the municipal limits of Mandi Gobindgarh have been extended to include the factory premises of the petitioners and they have become liable to the imposition of octroi and other municipal taxes with effect from that date. According to the petitioners the authority to impose tax under the Act is conferred by Section 61 and is regulated by the procedure duly prescribed, therefore, under Section 62 of the Act and, therefore, the existing taxation measures cannot be extended to them unless the procedure prescribed thereby is followed afresh as regards the newly-added area to the municipal limits. It is hence claimed that the imposition of octroi and other taxes upon the petitioners regarding which a claim has been made by the respondents from them is illegal and unauthorised.

(4) As is evident from the aforesaid averments the issue herein is primarily legal. The respondents raised their stand primarily on the provisions of Section 5(4) of the Act to contend that by virtue thereof the existing provisions applicable within the original municipal limits of Mandi Gobindgarh including all fiscal and taxation measures are automatically extended to the newly-included area if the procedural requirements of sub-section (1) to (3) of Section 5 are satisfied. It has been averred that adequate publicity for the notifications to include the area has been done as prescribed by law. Besides its publication in the Official Gazette, a copy of the said notification was duly pasted on the Tehsil Notice Board and the District Notice Board and publicised by beat of drum within the area and also by communicating the same to the Gram Sabhas concerned.

Relevant entries in the Roznamcha Patwari of Village Jassraon regarding due publicity had also been made. The relevant documents with regard to this publication are attached to the written statement of respondent No. 3 as Annexures R3/2 to R3/4.

(5) The primary argument herein revolved around the provisions of Section 5 of the Punjab Municipal Act, 1911 and it is, therefore, best at the very outset to notice the material legislative background as regards sub-section (4) thereof which, in particular, falls for construction. It is worthy of notice that originally sub-section (4) of section 5 did not include within it the word 'notification' in the the relevant context. This, however, was expressly remedied by the Punjab Municipal (Amendment) Act, 1973 (Punjab Act No. 24 of 1973). The relevant part of the amending Act reads as follows:

> "In section 5 of the principal Act:—in sub-section (4), between the words 'rule' and 'bye-law' the word 'notification' shall be inserted and shall be deemed always to have been inserted."

It is evident from the above that by virtue of this amendment, the word 'notification' has been inserted in sub-section (4) with retrospective effect. It is in the light of this material fact that the said provision has to be construed.

(6) Now the basic reliance on behalf of the petitioner is on the provisions of sections 61 and 62 contained in Chapter V (pertaining to Taxation) of the Act. Section 61(1) enumerates the taxes which may be imposed by a Municipal Committee subject, of course to any statutory rules or any general or special orders which the State Government may make in this behalf. Sub-section (2) further empowers a Municipal Committee to impose any other tax with the previous sanction of the State Government. The procedure to impose these taxes, is, however, laid out with meticulous detail in the provisions of section 62. This provides that a Committee at a special meeting may pass a resolution to propose the imposition of any tax under section 61 and thereafter lays down a detailed procedure for the filing of objections and their determination, etc. After all these procedural requirements are satisfied by virtue of sub-section (10), a notification may be issued by the State Government imposing the tax and further specify a date not less than one month from the date thereof on which the taxes shall come into force. Sub-section (12)

of section 62 provides that publication of such notification would be conclusive evidence of the valid imposition of the tax.

(7) The core of the argument of Mr. M. M. Punchhi on behalf of the petitioner is that a notification imposing octroi or any other municipal tax is a class by itself. Such a notification, according to him, cannot possibly be extended to the additional area included within the municipal limits by virtue of section 5(4) of the Act. Whilst fairly conceding that this provision may well extend ordinary notifications to the freshly added area to the municipality, Mr. Punchhi contended that a taxing notification cannot definitely be so extended. Thus a clear-cut line was sought to be drawn between ordinary notifications on the one hand and a notification imposing a municipal tax on the other. Counsel was logically forced to go to the full length of contending that as a matter of law no municipal tax can be imposed on a freshly included area in the municipality by a mere extension of the existing taxing measures under the provisions of section 5(4) of the Act. The submission indeed was that for a valid imposition and levy of octroi and other taxing measures in the freshly included area, the municipality must go through the whole gamut of the procedure prescribed for the imposition of taxes under section 62 afresh. In sum, therefore, the argument was that a notification under section 62(10) cannot be automatically extended to the altered municipal limits by virtue of section 5(4) of the Act. Reliance was placed on *Bagalkot City Municipality* v. *Bagalkot Cement Co.*, (1) and *Atlas Cycles Ltd.* v. *Haryana State* (2), for contending that no tax could be imposed by implication and the same necessarily has to be done by express imposition after complying with all the necessary procedural steps prescribed by the statute therefor.

(8) As would become evident hereafter, the issue herein is in a narrow compass so far as this Court is concerned because it seems to be impliedly covered by the binding precedent in the *Atlas Cycle's case*. Nevertheless it is necessary and refreshing to briefly consider the matter on the specific language of the provisions and on principle as well.

(9) Section 5 of the Act empowers the State Government and also prescribes the procedure for enlarging the existing area of a

(1) A.I.R. 1963 S.C. 771.
(2) A.I.R. 1972 S.C. 121.

municipality. Sub-section (1) thereof first requires the publication of a notification to declare the intent of the State Government to include any local area in the vicinity of a municipality within the same. Sub-section (2) provides for the filing of objections by any inhabitant of either the original municipal area or the area proposed to be included therein. The following sub-section (3) lays down that after six weeks of the publication of the notification of intent and after consideration of the objections preferred against it the State Government may issue a notification to include the local area within the municipality. Thereafter comes sub-section (4) around which the argument turns and, therefore, its provision deserves notice *in extenso*:—

> "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 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."

(10) Now it bears repetition that originally the word 'notification' in the relevant context was not included in the aforesaid provisions and it is only by virtue of the amending Act of 1973, to which reference has already been made, that this was added thereto. In view of this Mr Punchhi perhaps could not contend otherwise but in any case fairly conceded that by virtue of section 5(4) ordinary notifications issued by the municipality would inevitably be extended to the enlarged municipal area once it has been validly included in the existing area under section 5(3) of the Act. If that is so, one fails to see why a notification which would involve a taxation or a fiscal measure should be excluded from the purview of section 5(4). The language of this provision makes no distinction regarding the character or the class of notifications at all. The provisions of the Act draw no distinction nor point out to any difference between the validity and the efficacy of the notification issued under one or the other provisions of the Act authorising the same. Therefore it is unwarranted to draw any sharp and artificial line of distinction between a notification which may be said to be fiscal in character and another which is not so. One cannot by stretching the language by a process of construction create a distinction which is plainly not there in the language of the statute. The matter appears

to be depending entirely upon the legality and the validity of the notificaton and if it is so then necessarily section 5(4) would extend its application to the enlarged area of the municipality irrespective of its nature, character and the subject to which it pertains. I for one would find it extremely difficult, if not impossible to draw an arbitrary line between one notification and another in order to hold that whilst one would get extended by virtue of section 5(4) the other would not have the same legal effect. There appears to be no magic in a notification which is fiscal in nature as against the non-fiscal one so far as the law is concerned.

(11) The abstract contention that as a legal proposition no fiscal measure can be extended to an area freshly-added to the limits of a municipality is so well-rebutted by authoritative precedent that it is unnecessary to refute it on principle. Even in the *Bagalkot City Municipality's* case on which so much reliance was placed on behalf of the petitioners, their Lordships of the Supreme Court in no uncertain terms stated that if the intention of the Legislature was clear and unequivocal to extend a fiscal measure like the octroi tax to the added area of a municipal corporation then there was no legal bar in doing so. It was only because in the said case their Lordships did not find any such clear manifestation of the intention of the Legislature in Section 48 or any other provisions of the Bombay District Municipal Act that they held in the context of its provisions that the relevant bye-law did not extend the octroi limits to the freshly-added area of the municipality. It was observed as follows:

> "Let us, however, assume that it was intended that the existing bye-laws would apply to the added areas without fresh re-enactment. If such was the intention, that intention must necessarily be referable to some provision in the Act. In such a case, it would be because of that provision of the Act that the bye-laws would be affecting people to whom they had not before their making been published and not by their own terms or force. From what we have said it does not follow that a bye-law cannot under some provision in the Act other than S. 48 affect people to whom it had not been published before it was made.".

It is apparent from the above that the primary rationale of the judgment was the non-existence of a clear enactment to manifest the

intention of extending the fiscal measure to the additional area. In the present case such an intention is more than manifest in the unequivocal and categorical language of Section 5(4) of the Act. Again in the *Atlas Cycle Industries' case* which turned on the unamended provisions of Section 5(4) of the Act (the word 'notification' was apparently added in the said sub-section in view of this judgment) their Lordships clearly observed that it was unnecessary to resort to the whole gamut of the procedural provisions in Section 62 of the Act in a case of the extension of municipal limits. It was observed:

> "Inasmuch as the provisions of S. 5(4) of the Act render the order of the relevant authorities sanctioning proposal of Municipality for levy of octroi applicable *to the included area, there cannot be any question of following the procedure for inviting objections to the proposed tax contemplated in Section* 62. It may also be stated here that a contention was advanced on behalf of the appellants that the applicability of octroi to the included area would offend Article 14 of the Constitution by reason of denial to the persons within the included area of right to object to the tax. The provisions contained in Section 5 of the Act and, in particular, sub-section (2) thereof, confer on inhabitants within the area proposed to be included the right to object to the alteration proposed and submit objections in writing. The inhabitants would thereby have the opportunity of objecting not only to the inclusion of the area but also to the incidence of tax as a result of the inclusion."

It is also clear from a close reading of the said judgment that their Lordships drew no distinction between a fiscal measure or a non-fiscal measure so far as the extension of these to the extended area of the municipality was concerned. The matter turns only on the absence of the word 'notification' in Section 5(4) of the Act as it then stood. That position, as has been repeatedly noticed, was remedied by the amending Act of 1973. To my mind from the observations in the aforesaid two cases it is clear that the highest Court has set at naught all doubts that a taxation or a fiscal measure cannot be extended to a freshly-added area by clear and categorical legislative enactment. In view of the language of Section 5(4) it cannot be said that a fresh addition to a municipal area must necessarily involve afresh the whole gamut of the procedural steps laid out by Section

62 for the imposition of a tax in the first instance. Once those procedural requirements have been satisfied earlier there does not appear to be any bar to extend a municipal tax to the added area by virtue of Section 5(4) of the Act.

(12) Counsel's insistence that the municipal taxation measures cannot be extended beyond its original area would obviously negate the very concept of the extension of all the existing notifications, rules, bye-laws, orders, directions and powers, etc., to the freshly-added area which appears to be manifest under Section 5(4). It is possible that apart from notifications, rules, bye-laws, orders or directions, etc., may sometimes have fiscal implications. If the argument of the learned counsel for the petitioner were to be accepted then apart from these notifications, these provisions would also not get extended to the new area included within the municipal limits. Such a construction would tend to frustrate the clear object and intent of the Legislature to extend all existing provisions including the fiscal ones to the new area once the pre-requisites of sub-section (1), (2) and (3) of Section 5 are satisfied. Indeed, the whole purpose of these provisions appears to be that once the municipal limits have been validly extended, then the distinction between the old and the freshly-added area is to be obliterated altogether and a uniform set of provisions is, thus, made applicable to the whole of the area without any distinction whatsoever between the old and the newly-added areas.

(13) As I said earlier, the issue here seems to be virtually concluded by the binding precedent. This is so in view of the decision of their Lordships in the *Atlas Cycles Industries case*. It is necessary to briefly recall the circumstances in which the unamended section 5(4) of the Punjab Municipal Act came up for consideration in the said case. Therein also the municipal limits of Sonepat had been extended under section 5(3) of the Act to include within it the factory premises of Messrs Atlas Cycles Industries Ltd. the appelants had challenged the imposition of octroi in respect of raw material, components, etc., imported by them inn their factory and the question before their Lordships was almost identical as in the present case. At the relevant time, section 5(4) did not include the word 'notification' therein and it is evident from the perusal of the judgment that the matter turned in favour of the appellants entirely on the ground that the word 'notification' was not used in the relevant provisions and it

could not be said to be synonymous with rules or bye-laws. It was, therefore, held that there was not an adequate legal basis for extending the octroi tax to the freshly added area. It was observed as follows:—

> "The word "notification" cannot be said to be synonymous with rules, bye-laws, orders, directions and powers for two reasons. First, the Act in the present case speaks of notifications for imposition of tax and uses the word 'notification' separately from the other words 'rules, bye-laws, order, directions and powers'. In the case of exclusion of areas, the Act speaks of notification ceasing to apply to excluded areas whereas in the case of inclusion of areas the Act significantly omits any notification being applicable to such area.
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> and again
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> * * * Notifications under the Act are the only authority and mandate for imposition and charge of tax. Notifications are not made applicable to include areas under Section 5(4) of the Act."

(14) Now admittedly the lacuna, if it may be so said, was expressly cured by the later amending Act of 1973 whereby the word 'notification' was added in section 5(4) with retrospective effect. The intent of the legislature obviously was to bring taxing notifications well within the ambit of section 5(4) as well. Not only that, section 17 thereof further provided in the following terms:—

> "Notwithstanding any judgment, decree or order of any Court or other authority, no assessment, reassessment, levy or collection of any tax or fee made or purported to have been made at any time before the commencement of the Punjab Municipal (Amendment) Act, 1973, and no action taken or thing done in relation to any such assessment, reassessment, levy or collection under the provisions of the principal Act, rules and bye-laws made thereunder shall be deemed to be invalid merely on the ground that the word 'notification' was not there between the words 'all rules', and 'bye-laws' in sub-section (4) of section 5 of the

principal Act and every such assessment, reassessment, levy or collection or action or thing shall be deemed to be as valid and effective as if the amendment made in the said sub-section (4) of section 5 by the Punjab Municipal (Amendment) Act, 1973, had been in force at all relevant times and accordingly—

(a) * * * *

(b) * * * *

(c) * * * *."

It is plain from the above that not only was the word 'notification' added in section 5(4) but a retrospective validation of all municipal taxes collected without following the procedure under section 62 was made. The Legislature's intention, therefore, of not only extending the municipal taxes to freshly added areas but also validating those which had already been collected in the same has thus been made more than manifest.

(15) The question herein, therefore, primarily is whether in view of the *Atlas Cycle Industries case*, the amendment designedly introduced in section 5(4) by adding the word 'notification' thereto would not have the effect of extending octroi and other taxing notification to the freshly added areas. In my opinion it would plainly do so. The primary contention on behalf of the petitioner, therefore, must necessarily be rejected.

(16) Learned counsel for the petitioner had then raised an ancillary and if I may say so a rather curious contention. It was sought to be submitted that under section 5(1) of the Act, the State Government should not only declare its intention of extending the area by notification but must simultaneously therewith further determine and declare the alternative modes of publication apart from that in the official gazette. I am unable to extract any merit out of this contention. Section 5(1) of the Act is in the following terms:—

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

Its plain language visualises two clear stages. Obviously the first in point of time is the decision of the State Government to extend the municipal area and it is only thereafter that the issue of publication of such an intention arises. For this purpose the law provides a dual mode of publication. One of these modes is provided by the statute itself, that is, by notification in the official Gazette. The other mode of publication is left to the discretion and determination of the State Government. I am unable to find any warrant for what appears to me a hyper-technical argument that the alternative mode of publication must be simultaneously determined and declared in the notification to be published in the official gazette. The matter otherwise appears to be wholly academic on the facts of the present case. The admitted position is that the notification Exhibit P. 1 was dated the 20th of April, 1976. It was endorsed by the State Government to the authorities below for publication by exhibiting the same on the Municipal Notice Board, by beat of drum and by sending it to the respective Gram Sabhas on the 6th of May, 1976. Annexure R-3/3 would expressly show and apart from this there are categorical averments in the return that publication in the aforesaid manner was promptly done. Indeed it seemed to be thereafter so published in the official gazette on the 12th of May, 1976. Annexure P. 1 itself shows that objections were invited within six weeks from the date of the publication of the notification in the official gazette. Though the petitioner did not choose to file any objections, it is the common case that other persons including immediate geographical neighbours of the petitioner did, in fact, prefer such objections which were duly considered and decided. It is thus plain that on the present facts, not the least prejudice whatsoever on the ground of publication can be meaningfully pleaded on behalf of any one of the petitioners.

(17) Before parting with this judgment, I may notice that in the writ petition a vacillating challenge was vaguely made to the vires of sections 5, 61 and 62 of the Act. Learned counsel for the petitioner, however, at the hearing unreservedly abandoned any challenge to the aforesaid statutory provisions and no argument was addressed thereunder before us. Learned counsel had expressly prayed for a decision on merits on the other points only.

(18) These writ petitions are without merit and are hereby dismissed. The parties, however, will bear their own costs.

H. S. B.