

## THE MEANING OF NOTIFICATION — WHETHER IT IS ALSO A STATUTORY ORDER

*Atlas Cycle Industries Ltd. v. State of Haryana*<sup>1</sup>

A commentator of a case has a difficult task as several factors enter a judge's mind to arrive at a decision. These factors may be enumerated as: the phraseology used in the statute, history, tradition, precedent, logical consistency and technical soundness of the result on the one hand, and accepted social mores of the society, individual and social good on the other. All these factors create scope for judicial creativity, the latter category of factors more than the former because of the presence of a much wider area of discretion for a judge to operate in. In the former category of factors there is some material for the working of the judge which may restrict his freedom of choices, but when such factors, as the individual and social good, enter the arena there is absence of reliable data to demonstrate whether the decision one way or the other would promote the objectives in view and the judge's philosophy and intuition are apt to become dominant in the decision-making process. Both these categories of factors constantly struggle against each other to fulfil the objectives of certainty of law and law as an instrument of social change. The task of reviewer is comparatively less difficult and he is on a firmer ground in his evaluation of the case when a judge is confining himself to the former category of factors. Fortunately for the present commentator the Supreme Court in *Atlas Cycle Industries Ltd. v. State of Haryana*,<sup>2</sup> did so confine itself to the narrow (or technical) category of factors in arriving at the decision.

The facts of this case were that under the Punjab Municipal Act, 1911 a notification was issued including within the Municipality of Sonapat the area mentioned in the notification, which area included the factory of the appellant. S. 5(4) of the Act provided that

When any local area has been included in a municipality... all rules, bye-laws, orders, directions and powers made or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such area.

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1. (1971) 2 S.C.C. 521.

2. *Ibid.*

The municipality thought that the earlier notification imposing octroi within the octroi limits of the Sonapat Municipality became applicable to the newly added area and began collecting the tax from the area. It was held by the Supreme Court that the municipality could not levy the tax as the earlier notifications did not automatically extend to the new area under S. 5(4) in the absence of the expression "notification" in the section. It was emphasised that whereas the expression did not find a place in the section providing for the inclusion of an area, another section dealing with the exclusion of an area from municipality had contained the word "notification" along with the words "rules, bye-laws, orders, directions", etc., thereby indicating an unambiguous legislative intent and making it crystal clear that notifications could not become applicable to an included area on the strength of section 5(4) of the Act. Since octroi (or any other municipal tax) could be imposed only through a "notification" under S. 62 of the Act, it did not become applicable to the new area by virtue of S. 5(4). The court's reasoning amounts to this that wherever the Act expressly required a certain thing to be done through a "notification", such a notification did not extend to the included area under S. 5(4); but all rules, bye-laws and orders issued under the Act extended to such an area (as the statute did not expressly require them to be promulgated through a notification) even though they were in fact promulgated through notifications (as actually they were, as a perusal of the Official Gazette shows). In doing so the court failed to take due notice of tradition, history, administrative jurisprudence and even administrative practice. The decision could be criticized on several grounds.

Firstly, could not the notification imposing octroi be regarded as an order and extended to the new area under S. 5(4) on that ground? Agreeing with the court, it may be said that it may not be regarded as a bye-law, but the same may not be said about an "order". That a notification could be regarded as an order is amply demonstrated by the Supreme Court judgment in *Edward Mills Company v. State of Ajmer*.<sup>3</sup> S. 94(3) of the Government of India Act, 1935 provided that a Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion. In 1949 a notification under the section was issued directing that the functions of the "appropriate Government" under the Minimum Wages Act, 1948 would, in respect of every Chief Commis-

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3. A.I.R. 1955 S.C. 25.

sioner's Province, be exercised by the Chief Commissioner. The question was whether this notification was an existing law under article 366(10) of the Constitution which defines an existing law as including any order, bye-law or rule. It was held that since the notification contained an order legislative (and not executive) in character, it was an order within the meaning of the article. It may be noted that a perusal of the notification shows that the word "order" was nowhere used in the notification. That a notification is an order is further proved by the Supreme Court decision in *State of Maharashtra v. M. H. George*.<sup>4</sup> S. 23(1-A) of the Foreign Exchange Regulation Act, 1947 provides that whoever contravenes "any of the provisions of the Act or any of the rules, directions or orders made thereunder...upon conviction by a court, be punishable...". The section does not use the word "notification". Under S. 8(1) of the Act the Central Government "may by notification in the official gazette, order that subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank...bring or send into India any gold or silver...". The accused had violated a notification issued under S. 8(1). The court upheld the conviction of the accused under S. 23(1-A). It seems to have been assumed that a violation of a notification issued under S. 8 was covered by S. 23(1-A), as this point was not at all touched in the judgment. This was a case where "notification" and other expressions like "order" were used in the Act, but the court proceeded on the basis as if a notification under S. 8 was an order under S. 23(1-A).

The above cases thus establish the proposition that a "notification" could be an "order". The notification imposing octroi in the *Atlas Cycle* case was clearly an order of a legislative character and could be covered by the word "order" used in S. 5(4). Oddly enough, the *Edward Mills and George* cases were not even referred to by the Supreme Court in the *Atlas Cycle* case.

Secondly, rules, bye-laws and statutory orders are delegated legislation and their publication is necessary for their validity whether the parent statute expressly requires publication or not.<sup>5</sup> Where the statute was silent as to the mode of publication of delegated legislation, it was held by the Supreme Court in *Maharashtra v. George*,<sup>6</sup> that it was necessary to publish it in the usual

4. A.I.R. 1965 S.C. 722.

5. See M. P. Jain and S. N. Jain, *Principles of Administrative Law* 61-70 (1971).

6. A.I.R. 1965 S.C. 722.

form, in such media as were generally adopted to notify to all the persons concerned the making of the rules. Publication of delegated legislation was regarded as the ordinary method of bringing a rule to the notice of the persons concerned. All rules, bye-laws and statutory orders made under the Punjab Municipal Act are published in the Punjab Official Gazette, and a perusal of the Gazette shows that they have been titled as "notifications." The word "notification" is not defined by the Punjab Municipal Act but the Punjab General Clauses Act, 1898 defines "notification" as "a notification published under proper authority in the Official Gazette". It is thus left, under the statute, to the proper authorities to publish anything as a notification and if they adopt that form to publish rules, bye-laws and orders issued under the Punjab Municipal Act they become notifications under the Punjab General Clauses Act, 1898, and, therefore, they are notifications under the Punjab Municipal Act as well. The court completely ignored this aspect. Further, adoption of the form of notification appears to be necessary to identify a rule, bye-law or statutory order. In this context reference may be made to the Supreme Court judgment in *East-India Commercial Co. v. Collector of Customs*, where to distinguish a non-statutory order from a statutory order the court attached significance to one of the factors that the former was titled as "public notice" and the latter as "notification".

Thirdly, the above analysis, of course, does not mean that a notification is always synonymous with a statutory order, rule or bye-law, and there is no disagreement of the commentator with the court on this point. But the court again ignored the point that a notification may be an order or it may not be. Several illustrations of notifications which may not be characterised as orders (or statutory orders) could be given. Firstly, under S. 24 of the Punjab Municipal Act itself every election of a member of the committee is to be notified. Such a notification may not be characterised as an order of the government but an *announcement* as the government is merely announcing the election of a person. Secondly, it is normal for the government to notify the death of the Head of the State or any official dignitary. Thus, when President Zakir Husain died a notification announcing his death in the Official Gazette was issued.<sup>8</sup> Thirdly, S. 5(1)(b) of the Minimum Wages Act, 1948 says that the appropriate government shall by notification in the Official Gazette publish its proposal for fixation or revision of minimum wages for giving an opportunity

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7. A.I.R. 1962 S.C. 1893.

8. The Gazette of India Extraordinary, Part 1, Section 1, p. 278.

to file representations by the affected persons against the proposal. The proposal cannot be characterised as an order.

Assuming that there was legislative intent to exclude notifications from the purview of S. 5(4) of the Act the intention appears to be to exclude only those notifications which did not amount to rules, orders and bye-laws, etc., and not notifications which fell under any of these categories. In any case, it is quite dangerous to read legislative intent by the presence of a word in one of the provisions of the statutes and its absence in another. "It is quite possible that the ...[absence] may be the result not of any forethought but merely of accident, or inadvertence on the part of the draftsmen."<sup>9</sup> When S. 5(4) applies all rules, bye-laws, orders directions and powers including bye-laws under S. 188(g) regulating the collection of octroi, or terminal tax), it is too far-fetched to suggest legislative intent as excluding a notification to impose taxes.

Finally, it has been an established principle that notification is merely a *mode* of publication. It is true, as the Court points out in the case, that S. 21 of the General Clauses Act, 1897 (Central) speaks of the powers to issue notifications, orders, rules or bye-laws but then notification by itself cannot be characterised as delegated legislation; it only remains a method of communicating delegated legislation and other announcements of the government. This is substantiated by the following. Firstly, article 366(10) of the Constitution defines "existing law" as meaning "any law, ordinance, bye-law, rule or regulation". Similarly, the term "Indian Law" is defined in the same way by the General Clauses Act, 1897 (Central). Secondly, the *Manual of Office Procedure of the Government of India* states that the form of notification "is used for notifying by publication in the Gazette of India the promulgation of rules and orders, delegation of powers, appointments, promotions, etc." Thirdly, the usual formula used in the Central enactments these days for promulgating rules is that "The Central Government may by *notification* in the Official Gazette make *rules* for carrying out the purposes of this Act", clearly indicating thereby that a notification is merely a mode of communicating the rules. This mode may be used to notify to the public, rules, bye-laws, orders and other pronouncements of the government.

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9. M. P. Jain and S. N. Jain, *supra*, note 5 at 110-11 (1971).

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