

(2014) 10 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12777 of 2014

Abhinesh Mahore

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 243Q
Madhya Pradesh Municipalities Act, 1961 — Section 345, 5A, 5A(2)

Citation : AIR 2015 MP 7 : (2015) 1 MPHT 438 : (2015) 1 MPJR 194 : (2015) 1 MPLJ 428

Hon'ble Judges : A.M. Khanwilkar, C.J.; Shantanu Kemkar, J

Bench : Division Bench

Advocate : Vivek Rusia, Advocate for the Appellant; Samdarshi Tiwari, Learned Govt, Advocate for the Respondent

Judgement

A.M. Khanwilkar, C.J.—This petition takes exception to the notification dated 18.6.2014. During pendency of this petition as final notification was issued on 28.8.2014, even the said notification is made subject matter of challenge on the same ground. The principal argument of the petitioner is that after expressing intent of inclusion of villages referred to in the first notification and on receipt of the objections from the interested persons to such inclusion, the Collector himself decided the objections and submitted his proposal to the Governor. That was the basis for issuance of the impugned notification dated 28.8.2014. In other words, the argument proceeds that the Governor has not considered the said objections himself, which is the mandate flowing from Article 243-Q of the Constitution of India and in particular Section 5-A(2) of the M.P. Municipalities Act, 1961 (hereinafter referred to as "the Act of 1961").

2. Section 5-A of the Act of 1961 was inserted as a consequence of the insertion of Part IX-A in the Constitution by 74th Amendment Act, 1992, which came into force from 1.6.1993. Section 5-A of the Act of 1961 was inserted in the State enactment vide M.P. Municipalities Act (Act No. 17 of 1994) which came into force from 30.5.1994. Sub-section (2) of Section 5-A explicitly postulates that

the Collector after receiving objections in writing with regard to the intention to include or exclude certain areas from the limits of the Municipal areas, must place the same before the Governor, who in turn, is expected to consider those objections before taking any final decision.

3. Admittedly, in the present case, the objections were decided at the level of the Collector and he submitted his report to the Governor on the basis of which the impugned notification dated 28.8.2014 came to be issued.

4. The question is: whether the power of the Governor to consider the objections to be taken by the interested persons could be delegated to the Collector? In absence of any express provision authorizing the Governor to do so such inference cannot be deduced to validate the impugned action. If the mandate of Article 243-Q predicates consideration of the objection by the Governor himself and which position is restated in sub-section (2) of Section 5-A of the Act of 1961, there is no scope for argument that the Governor could delegate that power.

5. Reliance placed on Section 345 of the Act of 1961 by the learned counsel for the State, in our opinion, is inapposite and misplaced. Section 345 deals with delegation of powers by the "State Government" to designated Officers in relation to the powers to be exercised by the State Government. That will have no application to the provision such as Section 5-A, which mandates the Governor to consider the objections himself before forming subjective satisfaction about the necessity to exclude or include certain areas within the limits of Municipal area.

6. Considering the indisputable fact in this case, that the objections submitted by the petitioner and similarly placed persons were considered by the Collector and disposed of at his level, it necessarily follows that the impugned decision is vitiated as the objections were considered by the Authority not competent to do so, if not a case of abdication of authority inspite of mandate of Article 243-Q and in particular sub-section (2) of Section 5-A of the Act of 1961.

7. Taking overall view of the matter, the final notification issued for inclusion of the stated villages in the limits of the Chhindwara Municipality cannot stand the test of judicial scrutiny and will have to be declared as null and void. At the same time, the appropriate order that needs to be passed in this case is not only to set aside the said notification dated 28.8.2014 but also the decision of the Collector rejecting the objections of the petitioner and instead relegating the situation to the stage of collection of objection by the Collector and then to be placed before the Governor for his consideration as postulated in Section 5-A(2) of the Act of 1961.

8. The petition partly succeeds to this limited extent. In other words, the original notification dated 18.6.2014 will remain undisturbed and that, the objections concerning that notification already filed by the interested persons, before the Collector, be placed before the Governor for consideration whereafter the

Governor may proceed as per law. Petition is disposed of.